

Package, Position, Profit:

How to Build a Legal Practice the 21st Century Wants to Buy



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Chapter 1:

An introduction to today

Where is the legal market today?

Well that really is the \$64-million question, isn't it? Depending on who you talk to, and on which day, the legal industry is either at death's door or about to embark on the trip of a lifetime. To compound matters further, both views are supported by compelling and highly credible arguments, put forward by equally compelling and credible legal figures.

As we are faced with quite a spectrum, let's start with what we know. The legal market is certainly more complex than ever before and the reasons for that include the following:

1. Increased competition

This has to be the starting point because the fact that the legal market has never been this competitive is:

- Something we all need to wholeheartedly agree on before we go any further; and
- The number one threat to every law firm today (whatever your size, wherever you're based, whatever specialism(s) you offer).

I'm no economist but I do recognise that the more competitive a market is, the more options exist for consumers; and the more options that exist, the harder it is for those individual options to stand out. If legal service providers can't stand out from the crowd, retaining clients while still attracting a new clientele to insulate their future is always going to be an uphill struggle.

Just to compound the issue, the more competition there is, the more pressure is placed on both the tangibles (pricing, client care, service offering, recognised niche specialisms) and the intangibles (how valued and how wedded to a particular firm a client feels, how much added value they feel they receive). This pressure will eventually lead to doubt, which in turn could very well lead clients to explore new options if they start to believe those new options are better, cheaper, or more effective.

2. Increased consolidation

More firms than ever are now looking to merge or acquire, and rarely a day goes by without reading reports of a rumoured or completed merger. The stronger players see M&A as a quick fix, a short cut to growth and to inflating their value and increasing their market position. Meanwhile, weaker firms seem to see it as an escape from their current woes, all too often missing the likely downsides – most particularly the loss of independence – that tend to arise once their share of the acquisition fee has been banked. At the same time, there are of course benefits for both sides. Economies of scale, increased cross-selling opportunities, and a larger purse from which to fund the next phase of growth being the obvious ones.

Meanwhile, for those facing the spectre of a newly merged firm in their immediate marketplace, there is quite rightly a reason to worry. The new, larger entity could well be attractive to some of your clients and their ability to shed some internal support costs could allow them to shave their fee levels, which might make them even more attractive.

Moreover, never forget that consolidation is a two-way street. If your practice is commercially focused, there is a higher likelihood than ever before that your clients will merge or be acquired, and that brings with it its own threats; your client's new colleagues could well stick with their chosen or incumbent legal advisers and force the issue that they – and not you – should be retained by NewCo.

3. Cannier clients

I think it's fair to say that in all walks of life we expect more these days. Whenever we make a purchase, go out for something to eat, or stay in a hotel we want to be courted, rewarded, and generally afforded the level of care and attention traditionally reserved for a new born baby.

Those buying professional services are no different to those buying from the retail or hospitality sectors. Your clients know they can go elsewhere (and would be welcomed warmly for making the move). They also know that you are the ones under pressure to provide all of the value-added extras required to support every pound/dollar/euro your clients spend on your advice.

This is a real threat for those firms who either don't recognise that added value and service are now the key drivers in a purchasing decision. It is even more of a threat for those who pay little more than lip service to this side of their offering, steadfastly refusing to award it the respect it demands. Every client will eventually see through the insincerity and superficiality of lip service. And for those still harbouring a belief that 'doing a good job is marketing enough', this could well drive the last nail into their commercial coffin.

4. Heightened price sensitivity

Alongside a greater demand for added extras, clients also know that in many cases they can also use the increased levels of competition in the market (and many firms' increasingly public willingness to compete solely on price) to squeeze fee levels.

Contrary to popular opinion, this is not just a problem faced by smaller firms. I have seen first hand while working with clients on tenders, pitches, and beauty parades larger firms being told that they need to drop fee levels in order to compete. While many can accommodate a slight reduction by moving work around the various levels of fee earners they have at their disposal, this pressure is still eroding revenue and profitability so it has to be considered a threat.

Waters are muddied further by those firms willing to ‘buy in’ work in the first instance, thinking (in my opinion, mistakenly) that they’ll be able to uplift those fee levels once they prove their worth and the relationship is up and running.

I learned very early in my career that the old adage ‘you can’t negotiate up’ is one of the truest ever spoken. Those clients who push hard to drive down prices in the first instance are not only highly unlikely to be loyal, but are also the most likely to go back to the market for a deal should you have the temerity to attempt to put your prices up.

5. Changing consumer behaviours and preferences

Traditionally when you needed legal advice (and depending on whether that advice was for you or your business), you’d either go to the office of your local lawyers or to the office of a lawyer who’d been recommended to you by someone you trusted. However, that was back in the days when you weren’t two clicks on your smart phone from anything you wanted to buy – those dank, dark days when you thought buying something actually required knowing, seeing, or talking to someone.

Admittedly, online channels (and even online referrals underpinned by third party feedback) are unlikely to be a huge threat to large, commercially focused firms; they should still be able to thrive on client referrals and reputation. They will, however, be an increasing threat to smaller regional or private-client-focused practices whose clients will go to Google first, and will be willing to trust what they find there.

If they do like what they find, their decision is more likely to be driven by price and availability rather than location. Moreover, the potent cocktail of the right price and instant availability plus positive client feedback is likely to be enough to turn interest into a purchase.

Location is an interesting point in itself. Skype and email have rendered location an irrelevance to clients in a number of practice areas. Both allow lawyers to arrange conferences around even the tightest of schedules and the instant delivery offered

by email means paperwork can be delivered not just straight after a meeting but actually during a meeting, if required.

However, some still prefer the intimacy of a meeting so if location is important, then the timing of the meeting could be the clincher. With more and more demands on a client's time during the working week it could be the firm that embraces late opening, weekend opening, or home/office visits that wins out when a couple of options are being considered.

6. New market entrants

I think it's fair to say that the carnage many expected the aftermath of the Legal Services Act 2007 to herald has not arrived. Some high street names have entered the UK market – most notably Co-Op Legal Services – but it's hardly been the widely expected deluge. However, a number of very smartly dressed alternative business structures (ABSs) have come up on the inside rail. 'Virtual' firms like Riverview and gunnercooke continue to increase their profile and, anecdotally at least, are being well received.

Multi-disciplined ABSs, incorporating lawyers, accountants, IP attorneys, insurers, IFAs, and other professionals (including various general business services), are also springing up and, again, anecdotal evidence suggests they are allowing the law firms they grew from to gain footholds in markets they may not otherwise have been able to access.

On the other side of the coin, some legal practitioners have spun out of their firms to found new, smaller, more focused boutiques. They have recognised their clients want more specialist, more cost-effective, and nimbler, more flexible legal service providers, able to deliver all of the above without compromising on quality.

In the UK, barristers, via the arrival of direct access licences, were another potential threat to the legal profession. Perhaps it's due to many chambers marketing inactivity or many barristers' insistence that good work is all the marketing they need, but awareness levels do not seem to have been increased to a point

where direct access has established itself as a viable alternative for either businesses or the general public.

7. Franchises, alliances, and consortia

While new market entrants do pose a threat – albeit a slightly different threat than was originally expected – the much vaunted threat of franchises like Quality Solicitors have proved to be something of a damp squib.

The proposition of these franchises was simple: buy in and they'd give you a national presence, a name, a new corporate identity, marketing collateral (including, in many cases, the promise of peak time TV campaigns), and help with admin and compliance. The truth was somewhat different. I could be critical about individual issues and pick holes in a variety of shiny veneers. I could go as far as saying that even the Emperor wouldn't have fallen for this if it was gift wrapped and stamped 'new clothes', but I don't need to; the rate that the member firms are now either reclaiming their independence or disappearing altogether is proof enough.

But the failure of the franchise does not mean the legal profession cannot profit from strength in numbers. Over the last few years a number of very productive legal alliances have grown up and this could well be where the real threat lies for the traditional law firm.

These alliances and consortia take several forms:

- Domestic alliances – Blanket organisations that provide members with the opportunity to buy in to external advice on non-core subjects like business development, financial management, and IT while offering reduced rates on essentials like PI.
- International alliances – These are designed to introduce their members to their peers in other countries, ostensibly to encourage the referral of clients looking to set up or operate in new territories, but it is also the perfect forum to share best practice and pick up innovative new ideas

that can be adopted or adapted for commercial use within the member's market.

- Referral-gathering alliances – For a fee, leads are generated centrally and distributed amongst members based on location and specialisms.

Whatever form the alliance takes, they all have one thing in common: they work. They allow their members to operate, market, and grow more easily; and in my opinion, as more firms realise that this is both a viable and productive option, existing alliances will grow and new alliances will spring up.

For those lawyers who are content to tell themselves that this trend doesn't affect them, I would remind them that as clients become more price sensitive, as formal procurement becomes more prevalent, and as both businesses and individuals become more globally mobile, at least one of these types of groupings will most definitely affect you in the near future.

8. Consumer confusion

While this appears last on the list, it is probably the factor that persuaded me this book needed to be written. How is the average man (or woman) in the street (or boardroom) expected to tell one law firm from another? There are a few answers I would expect you to table immediately:

a. The quality of the firm's technical expertise

It is absolutely true that any law firm stands and falls on the technical expertise of its fee earners. However, how is a lay client, untrained and possibly inexperienced when it comes to legal matters, supposed to recognise real technical expertise? Is it not taken as read or, more worryingly, just another blanket claim all firms make?

b. Your firm's profile

Profile (in the right areas and for the right reasons) is essential for every law firm, and every firm's aspiration must be to be

seen as a leader in its chosen market(s). However, the first step in achieving that objective has to be to ensure you are being seen (consistently) within those chosen market(s). If you are visible and recognisable, potential clients will immediately be able to mark you out from all of the other firms in your area or sectors.

c. The profile of your firm's partners

The answer to this is pretty much the same as the previous one. Yes, marketing-wise it's a huge plus if your partners have a strong public profile – particularly if their profile clearly underlines their specialisms, their approach, and what it'd be like to work with them – but they will never own that space. There will always be other partners from other firms on your clients' and your prospects' radars.

d. Your firm's directory entries

Directory entries are a great qualifier. Once a prospective client comes across you – whether that's via a referral, an article, a speech, or a chance encounter – they need to establish that what they've heard or what they felt is actually true. Your directory entries will help them do that. However, if you look at the directories objectively, you are listed in and amongst a number of firms with similar skills, who say similar things, and who promote similar praise. Again, with your objective hat on, is this likely to cement your position in your prospect's mind – or confuse them further?

e. Your firm's recognised specialisms

Being known for something specific is undoubtedly the easiest way to sell your firm. When it comes to buying professional services, the purchase decision is largely based upon the mitigation of risk so underlining you have the right experience and a deep understanding of the sector, geography, or client type in question will go a long way towards starting to strip back any associated risk.

The only thing is – whether you are a charity, a manufacturing business, a software developer, or a repatriated high-net-worth individual – you’ll find an awful lot of firms promoting that very experience. However, the fact they may have a page on their website or a recent blog on a relevant topic will not necessarily mark them out from the other firms doing exactly the same.

f. Your firm’s history

Don’t kid yourself. The fact you came into being 250 years ago after a pact between your city’s leading legal luminaries doesn’t matter a jot to prospective clients. The fact you are still in business, still highly visible in your chosen markets, and still have people saying nice things about you is what is actually important.

g. Your firm’s brand

I’ve left this to the end of the list deliberately. Still, in far too many cases, what a firm (and I include every type of firm, from the Magic Circle or BigLaw to the high street) considers to be its ‘brand’ is in fact little more than its name and the logo they use to promote that name. I appreciate this statement will be hard for many to swallow, but I stand by it unequivocally.

Some of those firms have even invested heavily in creating strap-lines, manifestos, and sets of values that underpin that logo and, to be honest, in the vast majority of cases this proliferation of slogans and values is aligned perfectly to the brand the firm wants to create. However, it will never have the impact the firm wants because it doesn’t permeate every part of the organisation, so it will never resonate across every touchpoint or create true ‘brand value’ with their clients and within their target markets.

What does that mean in plain English? It means the brand will never generate the volume of business (i.e. fees) it should. But I’m not going to drop this hand-grenade and stand well back. The concept of brand – and more to the point the way you package and position that brand in order to profit financially from it – is what sits behind this book. In the following chapters

I will attempt to redress the balance and help you create and articulate a legal brand that delivers a tangible commercial return.

What is likely to happen to the legal market?

Obviously, none of us have crystal balls so it is impossible to predict exactly where the legal market will go or accurately predict the advancements in technology that will shape the way certain elements of the legal profession progress. However, if the past is a predictor of the future, then I think we can make some informed assumptions as to what is likely to happen:

1. Even more consolidation

This is not going to slow down anytime soon. On the day I'm writing this chapter CMS Cameron McKenna, Olswang, and Nabarro have announced they are planning to merge. That is not the announcement of a regional firm picking up a local sick puppy for their will bank; this is a collection of instantly recognisable heavyweights making a clear statement of intent to the market. This, in one fell swoop, will immediately create (or, by the time you're reading this, will have created) the UK's sixth largest law firm.

Now, if that model is replicated in the world's leading legal centres and the M&A activity that ensues piques the interest of the large London firms who want an instant, established foothold in the regions then – two steps along the line – we could eventually see a legal landscape that closely resembles the accountancy world.

2. Even more use of technology

If you think back just 25 years, the advancements in technology are bordering on scary. In 1992 it took up to 10 minutes of audible electronic whining to establish an email link that was little more than an onscreen facsimile. Meanwhile, client contact details were kept in hard copy in a central filing cabinet (or on a Roladex, if you were particularly cutting edge) and

mail merges were a manual secretarial task – and that’s before you even go onto websites, CRM systems, and SEO and social media! Fast forward 25 years and you have more channels to market than you can shake a stick at. All of these produce work so all need to be resourced and maintained.

If you find all of that even slightly worrying, today’s lawyers also (apparently) face the threat of being replaced by machines. artificial intelligence (AI) may no longer conjure up visions of C3PO on the Skywalker’s farm or Buck Roger’s 25th-century butler, but although the vision of automated mannequins bashing out work is as unrealistic as it is naïve, AI cannot be dismissed as a pipe dream. Some very real AI solutions are being trialled by law firms today and these nascent solutions are currently capable of managing the commoditised end of legal work (although my view is that it will be extremely difficult to develop them further than that).

However, the balance of power still sits on the lawyer’s side. If legal advice is going to deliver real value, the legal adviser behind it must be able to combine technical legal expertise and an understanding of the relevant law with an assimilation of the facts and particular circumstances so they can work out how best to apply the former to the latter. Moreover, a legal adviser then needs to be able to underpin all of that with the emotional intelligence to recognise how best to manage and support their client until they reach the best possible outcome. Once you put all of that together – at least in my ageing and highly non-technical brain – there will always be far too many variables involved for machines to replace man, other than in improving administration or reducing basic workflow requirements. That said, 25 years ago I would never have thought there would be email and internet, let alone dreamed that I’d have both in my pocket so I could very well be doing the programmers a disservice.

When considering the potential impact of technological advancements, the increasingly sophisticated coding behind tools like smart contracts should be another concern for lawyers. What is the future for the commercial department if contracts

only need to be written once and then, from that point on, they can amend, adapt, and renew themselves? Again, I think that at this point it's a good idea punctuated with too many holes for it to really take hold, but at the speed coding and automated decision making is evolving, who could say this is not a gap a highly intuitive coder could bridge in the near future?

3. A greater emphasis on the added value around the advice

We have already touched on the point that clients are becoming canner in the way they negotiate terms with their lawyers, using increased competition and higher price sensitivity to their benefit. Well, as you know, their demands don't end there. Clients are also looking at the value-added extras around the advice they receive.

These 'value adds' could be anything from a client portal to football tickets, from training and secondments to strategic introductions to potential suppliers or partners. To complicate things further, pretty much every individual or organisation has a slightly different take on exactly where they derive most value from the client-lawyer relationship. This means client partners need to be attuned to their preferences so they can make sure what is required is delivered.

My feeling is, client demands are only going to stiffen. Yes, an increasingly competitive legal market will continue to be one of the key drivers behind this, but the truth is, it is simply a sign of the times. Consumers expect more from every purchase they make and the professional services can no longer afford not to keep up with market expectations. Firms will need to continue to innovate to make sure their offering always stays one step ahead of standard if they are to remain an attractive proposition.

4. A greater reliance on product development

One of the recent trends on the legal market is the provision of 'products'. These take a variety of forms, including retainers, packages of blocks of time, training packages, advice hotlines,

audits, health checks, legal consultancy and online repositories of advice, and boilerplate documents. However, the one thing they have in common is they give the client an easy off-the-shelf idea they can recognise the need for (mainly because each is initially designed in response to specific client demands), and one that they recognise offers fixed scope and a fixed outcome for a fixed price.

Although, on the surface, this culture of ‘productisation’ appears to sit at odds with the traditional professional services model, it is something that has been welcomed by clients of all practice areas and across all major industry types, which means it is highly likely that it will continue to grow in importance and prevalence over the coming years.

5. A more enlightened approach to pricing

I’m not brave enough to come down on one side of the billable hours versus fixed fee debate. I could give a politician’s answer and say that fixed fees are more applicable to some situations and practice areas than billable hours, or say that in some instances it is very difficult to look past billable hours, most specifically when there are a multitude of twists and turns a matter could take and it is therefore almost impossible to make an informed quotation on the total cost of coming to a satisfactory resolution for your client. Both are true and both hold water, but the fact of the matter is clients are desperate for greater cost certainty and, in the main, tend to react extremely favourably to fixed fee options.

However, there are other options open to law firms. Again, retainers (caveated so that clients can recognise the additional costs involved should matters progress) are still popular. Alternatively, you could look at risk/reward structures whereby the fee recovered would be significantly higher than a standard fee if the results outstrip expectation. Or there’s the good old fashioned percentage deal whereby you get a percentage of the profit when a deal goes through. There are also layered deals where you would initially pitch competitively, but achieve

higher fees if specific terms are included and agreed and/or deadlines or price points are beaten.

Again, it comes down to creativity. Clients want more for less and the traditional open-ended approach (at least open-ended in many clients' eyes) no longer cuts it for many. If you are pitching yourself as a modern, commercial, forward-thinking firm, you need to price your services as a modern, commercial, forward-thinking firm.

6. Alliances over franchises

Given my comments in the last section, it will come as no surprise that my view is franchises will soon die off (and not before time), but the looser, more commercially focused alliances will continue to thrive – whether those alliances are international collaborations between likeminded firms, 'association' style entities, or good old fashioned lead generators. There definitely is strength in numbers and the history of business has repeatedly shown that teaming up with complementary collaborators pays dividends. The legal sector is proof this works, not the exception.

7. A greater focus on 'real' marketing

Let me set my stall out here. I'm not going to hide behind the over-simplification that firms still consider marketing to be little more than a few lunches, a golf day, and choosing a colour to tie together their suite of brochures with the furniture and feature wall in their reception. Legal marketing has come on leaps and bounds over the last 20 years and it is almost unrecognisable from what it once was.

Firms are investing in the creation of an identity, of values, and in improving their profile and their market position. Increasingly sophisticated and experienced marketing professionals (more often than not from a non-legal background) are being brought into many firms to create the brand and client experience to support the growth those firms want to achieve.

The only problem is that because of the unending demand for fees, much of the marketing being done could arguably be labelled as tactical rather than strategic. If one were to be even more unkind it could be labelled as business development or even sales support.

What do I mean? I mean an awful lot of the activity is done for what the firm needs today (enquiries, interaction on social media, tender opportunities... leads) rather than to set out what the firm needs to be tomorrow. The activity centres on what can be done to encourage a trickle of quick wins rather than addressing how the firm will need to be packaged, positioned, and perceived in the future in order to attract a new generation of purchases and the type of client it really wants.

Real marketing involves starting with the end in mind and working backwards to establish the message and the tactics required to achieve those objectives. It requires making some painful decisions about what you need to do to deliver what the market wants, not just endlessly re-treading what you have to offer.

After all, if you can't articulate exactly what you are offering, why you are offering it, why it should be attractive to your chosen markets, and why you are the best option for your chosen markets, how can you expect the message to resonate with the clients you want?