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Changing Regulation and the Future of the Professional Partnership: the case of the Legal Services Act, 2007 in England and Wales

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Abstract

The UK Legal Services Act 2007 permits external financing and unlimited non-lawyer ownership of legal practices through the formation of Alternative Business Structures (ABSs). For many, the impact of this changed regulation on the ‘professional partnership’, as the dominant organizational form through which legal services are delivered, will be considerable. However, to date few studies have explored this empirically. This paper addresses this gap by examining organisational changes within ABSs to assess how far these firms have departed from the professional partnership model. Focusing upon the ABS population licensed by the Solicitors Regulation Authority between January 2012 and August 2015, the study findings show a continuum of organizational responses against four specified indicators: incorporation, multi-disciplinary practices, non-lawyer ownership, and external investment. These range from those that depart little from traditional practices to those that are more radical. We conclude that, whilst regulatory reform has yet to dislodge the dominance of the professional partnership, it has disturbed the status quo and increased the variety of ‘economic units’ within which legal services are delivered.

Keywords: Legal Services Act 2007, Alternative Business Structures, professional partnership, legal profession, regulation, entity restrictions, professional service firms, incorporation, ownership, financing, non-lawyers.

Changing Regulation and the Future of the Professional Partnership: the case of the Legal Services Act, 2007 in England and Wales

Introduction

The ‘professional partnership’ has long been the dominant organizational form within the professional services sector. Theoretically described as the ‘P² archetype’ (Greenwood et al., 1990), its prevalence is typically attributed to it being the optimal model for, motivating hard-to-monitor professionals (Von Nordenflycht, 2014), reassuring clients, and satisfying shareholders (Empson and Greenwood, 2003). Yet, despite its popularity, in recent years the partnership model has come under increasing pressure. In part this is because of changing markets, intensifying competition and technological changes which have led many professional services firms (PSFs) to adopt ‘more corporate and managerial modes of operation’ that are ‘less distinctive from for-profit business corporations’ (Hinings, 2005, pp. 414, 419). However, in many sectors the continued viability of professional partnerships has also been threatened by new forms of regulation. The emergence of neoliberal policy regimes has meant that the focus of state intervention is increasingly oriented towards ensuring the competitiveness of national economies in global markets (Webb, 2013). In many jurisdictions, governments are now challenging existing forms of professional regulation including entity restrictions which historically have served to reinforce the partnership model (Von Nordenflycht 2007).

In recent years these regulatory changes have been especially acute in legal services. In England and Wales, for example, the Legal Services Act 2007 (LSA) (Boon, 2010) has removed restrictions concerning the ownership, financing and management of law firms and permits external financing and unlimited non-lawyer ownership of legal practices through the formation of Alternative Business Structures (ABSs) (Flood 2012). The enormity of these changes is captured by the terms used to describe them such as ‘seismic’ (MacEwen et al., 2008: 61) or ‘revolutionary’ (Patton 2008: 97). Either way their impact on established forms of professional partnership is assumed to be considerable (Francis, 2011), opening up new opportunities for alternative, more ‘corporate’ organizational forms to emerge.

However, despite attracting considerable international commentary, studies exploring organizational responses to the LSA have been thin on the ground. To date, most published research on ABSs has tended to focus on their experiences of the licensing process (e.g. SRA, 2014), impact on the market for legal services (LSB, 2013) and their potential to address unmet legal need (e.g. Gordon and Mark, 2015). In 2014, for example, the regulator for the solicitors’ profession in England and Wales – the Solicitors Regulatory Authority (SRA) – published two reports on ABSs, one based on 41 responses to an online survey and the other on six qualitative studies. But while these reports offer a useful starting point for further analysis, most have drawn on relatively small samples of solicitors firms and have not probed deeply into the motives behind different policies and practices (for example, the employment of non-lawyer managers) or into variation within the ABS population. Crucially, these studies have not looked explicitly at the impact of changing regulation on the organisation of firms. One exception to this is unpublished analysis undertaken by Sako (2015), comparing the ABS population with that of solicitor firms as a whole. Unlike earlier studies this report does provide some insight into the changing organisation of ABS firms, although questions about the precise form taken by external investment and the (arguably critical) role of non-lawyer involvement in ABS firms are not addressed. As such, it is hard to draw firm conclusions about the extent to which ABS firms have

departed from the partnership model or how – within the ABS population – one might identify a continuum of responses. Overall, what is lacking from previous research is a comprehensive overview of the field assessing the degree to which the professional partnership remains resilient in the face of radical reform.

In this paper our aim is to address this gap. Focusing upon the solicitor population in England and Wales, we assess the degree to which new rules allowing for ABS's have led to a departure from the professional partnership. Drawing on a variety of primary and secondary sources, we identify a continuum of organizational responses, from conservative to radical. A central conclusion is that while regulatory reform has yet to fully dislodge the partnership model, it has been a catalyst for change, leading to a much greater variety of 'economic units' within which legal services are delivered.

The Professional Partnership

Central to the professional partnership model, or what Greenwood and Hinings (1993: 1055) describe as the P² archetype) is the idea that professional services should be provided in the public interest rather than for commercial gain (Torres, 1991). A partnership value system also has implications for employee ownership, professional autonomy, democratic governance and human resource management practices (Greenwood et al., 1990). Ownership, for example, is restricted to professionals inside the firm with non-professionals prevented from participating in key decisions (von Nordenflycht, 2008). The emphasis on professional autonomy leads to informal forms of peer group control while adherence to democracy is reflected in decision-making processes in which all partners are involved and key management positions shared on a rotating basis (Morris et al., 2010). Where human resources are concerned, the preference is for systems of promotion and professional remuneration that reward merit and seniority, such as the 'up-or-out' and 'lockstep' systems (Harlacher, 2010: 34).

The professional partnership in its purest form remained dominant up to the 1980s after which point evidence of structural change began to emerge (e.g. see Lee, 1992; Muzio and Ackroyd, 2005). As explained below, this did not equate to wholesale replacement of the P² archetype (e.g. see Pinnington and Morris, 2003). Indeed, its enduring dominance is attributed (in part) to its effectiveness in reconciling the competing interests of owners, professionals and clients. According to Richter and Schroder (2008), allocating ownership rights to a subset of employees addresses the root cause of conflicts between principals (owners) and agents (employees). Where professionals are concerned, the partnership model helps to increase the motivation of the latter by providing an incentive of future ownership (Empson and Greenwood, 2003). Unlimited personal liability also ensures that partners are as interested in delivering higher quality services to clients, whilst internal ownership eliminates the possibility that the interests of external investors will take priority over those of clients.

To summarise, the partnership model emerged to cope with the distinctive conditions and demands faced by PSFs. In particular it has been viewed as necessary to accommodate the desire of (highly mobile) professionals while also helping to prioritise client need over commercial gain (Von Nordenflycht, 2010). However, while it is useful to emphasise the economic and technical rationale for the professional partnership (Empson and Greenwood, 2003), it is also important to note that in many fields this model of organizing is mandated by professional norms, specifically in the form of 'entity restrictions'. These 'entity restrictions' take the form of rules prescribing the types of

organizations within which professionals are legitimately (and sometimes legally) permitted to practice, rules which in many jurisdictions, have openly favoured the partnership model (Stephen, 2013). In the next section we briefly explore this role of ‘entity restrictions’ in the case of law firms, before turning to the more general question of how the partnership model is being challenged.

Entity Restrictions and the Professional Partnership in Law

Historically entity restrictions imposed on the legal profession have had the effect of institutionalizing the ‘professional partnership’ as the dominant organizational form. These restrictions are based on the assumption that adherence to common norms and standards is in the public interest, whereas organizational diversity represents a threat to professional cohesion. As intended, their overall effect has been to encourage considerable similarity in the way lawyers organized their practices (Boon, 2014).

Until recently, entity restrictions primarily encompassed three rules prevalent across common law jurisdictions. First, in England and Wales as elsewhere, lawyers were restricted to practicing as solo practitioners or in unlimited liability partnerships. These organizational forms were perceived to be most conducive to minimizing risks arising from the asymmetry of information between professionals and clients (Lee, 2010) while also providing a signal of quality to clients (Regan, 2007). However, in light of increased litigation by clients and the costs of personal indemnity insurance (Quack and Schüßler 2015, 57), the UK removed this following the enactment of the 2001 Limited Liabilities Partnership Act. This enabled lawyers to form limited liability partnerships.

The second restriction prohibiting the formation of multi-disciplinary practices and the third, confining the ownership and management of legal practices to those qualified and licensed by the profession (Decker and Yarrow, 2010). Both prohibitions seek to insulate lawyers from non-lawyers (Semple 2013) and have been justified on the grounds of protecting lawyers’ independence, their professional values, as well as their duties to the court and their clients (Knake 2012; Karmel, 2014; Hill, 2014). Since only lawyers are bound by ethical rules and capable of being disciplined by the profession, these restrictions were designed to ensure that lawyers did not succumb to commercial pressure brought to bear by those not subject to the same professional obligations (Rigertas 2014; Rayne, 2014).

The Professional Partnership under Pressure: Marketisation

Despite these enduring features, the professional partnership model in law (and elsewhere) is now under pressure. The globalisation of clients, intensifying competition (Brock and Alon 2009) and technological advances have raised questions about ability of partnerships to respond quickly (Brock and Powell, 2005; Kritzer, 1999). The need to reduce costs and increase efficiency has also intensified the demand for capital investment (Susskind, 2013), whilst litigious clients and increases in the costs of indemnity insurance have encouraged firm incorporation (Pickering, 2012). These external developments have forced some law firms to become more business-like (Muzio and Flood, 2012) and adopt management practices (if not the formal structures) typically associated with corporate firms (Gabarro, 2007; Angel, 2007).

Some observers have argued that these trends have already signalled the emergence of new archetypes in PSFs, such as the Managed Professional Business (MPB) (Cooper et al., 1996). Against this, studies in law and other professional service fields (e.g. Hinings, et al., 1999; Morris and Pinnington, 1999; Pinnington and Morris, 2002) suggest that the underlying ethos, structures and practices of the P² archetype have not been fully displaced. Indeed, this research finds that, despite being exposed to

similar market forces, structural change within (large) law firms has been fairly modest when compared to areas such as accountancy (e.g. see Malhotra et al., 2006; Von Nordenflycht, 2014). As such, while the literature highlights a clear move towards a stronger focus on commercial goals and more formalised management practices in law firms (especially the larger firms) it points to the underlying resilience of the professional partnership model. However, the question arises as to whether this will remain the case in the context of regulatory changes which, arguably, represent an even stronger challenge to the dominance of the partnership model?

The Professional Partnership under Pressure: Changing Regulation

Where the organisation of law firms is concerned, recent regulatory changes in the UK and elsewhere have particular implications for the ‘entity restrictions’ described earlier. Beginning with the state of New South Wales in 2001, Australia was the first jurisdiction to permit unlimited external ownership of law firms (Parker, 2008). More recently, other countries have also begun to remove restrictions concerning the ownership of law firms (e.g. Singapore, Spain, Italy, and Denmark) (Robinson, 2014; Stephen, 2013), but these proposals are limited in scope compared to the introduction of the Legal Services Act 2007 (LSA) in England and Wales.

As has been noted elsewhere, the origins of the LSA lie in the growing influence of neo liberal thinking and desire to open up markets for professional services and increase competition (Webb, 2013). In so doing, the government rejected the premise that lawyers perform a constitutionally unique role which requires them to be sheltered from the market (Timmermans, 2008). An influential Office of Fair Trading report concluded that entity restrictions relating to the professional partnership in law had the effect of “inhibiting competition, potential cost efficiencies, and customer choice and convenience” (2001: 62).

A further review of legal services in 2004, led by Clementi, also questioned the underlying assumption of entity restrictions and the idea that there was necessarily a conflict between “lawyers as professionals and lawyers as businesspeople” (2004: 5). It concluded that public and consumer choice would best be served by a “high degree of choice” and “competition between different economic units” where lawyers may practice (2004: 7) and presented options for extending ownership to non-lawyers and permitting multi-disciplinary partnerships (MDPs). Following Clementi’s review, the Government published its agenda for reforming the delivery of legal services in a 2005, culminating in the Legal Services Act in 2007. Going further than Clementi had envisaged, the Act permits ownership and investment by non-lawyers and allows legal practices to access external capital (Mayson, 2015). To do so, organizations require approval from a professional body, which issues a license to operate as an ‘Alternative Business Structure’ (ABS).

Hence, in England and Wales, changing regulation has opened up the possibility for an alternative forms of organisation (the ABS) to emerge in legal services which, in theory could represent a significant departure from the professional partnership. This is made possible by the removal of entity restrictions and, importantly, also by questioning the legitimacy of the partnership model as no longer essential to protect the interests of consumers. However, it is open to question just how far, if at all, this regulatory change has impacted on practice. Early indications are that only a minority of firms have opted for ABS status and that, within this population, the influence of private ownership has been limited (Sako, 2015). But while this may be consistent with the points made earlier about the highly institutionalised nature of the partnership model in legal services, can we assume that moves

towards ABS have only been restricted to ceremonial winder dressing? Is it possible that more radical changes have taken place, changes which – even if restricted to a small population of firms – nevertheless represents a challenge to the status quo? In the next section we address these questions focusing on the solicitors' profession in England and Wales.

Case, Research Design and Data

Legal services in England and Wales

The legal profession in England and Wales is divided into two main branches, solicitors and barristers, although the distinction between the two in terms of the work they undertake is becoming increasingly blurred (for detail see Boon, 2014). In the main, barristers, comprising 6% of the workforce, provide specialist legal advice and represent their clients in courts and tribunals (Darbyshire, 2014). Solicitors, accounting for 66% of the sector's employment of regulated persons (316,000 people; The CityUK, 2015), provide the bulk of 'first line' legal advice, undertaking detailed advisory work on behalf of clients that include both individuals and national and international corporate entities. Within the solicitor's profession, employment is split between those who work in private practice (87,000) and those who work in other organizations (41,000).

In August 2015, the total number of solicitor firms regulated by the SRA was 10,444 (SRA, 2015). As the market for legal services in which private practices operate is highly segmented, for heuristic purposes, regulatory and industry analysts commonly make a distinction between the 'top 200' firms and other solicitor practices (e.g. LSB, 2011; Law Society 2012). Revenue is the principal criterion by which firms are included in the top 200 list. In 2012, the minimum entry requirement was £11.5 million (Law Society, 2012: 6). These firms tend to be large when measured in terms of partner count (26 or more) or the number of solicitors employed (41 or more), although the list includes a small number firms with fewer partners or solicitors (ibid.). The top 200 includes elite firms commonly referred to as 'city law firms', 'magic circle' and 'silver circle'. Typically, they undertake high-value, complex work particularly in the areas of corporate finance and merger and acquisition transactions (Malcolm et al., 2011: 2) with clients including multi-national companies and governments. Other types of law firms within the top 200 include 'retail' service providers and those labelled as 'Specialist/Boutique', 'Regional', 'National', 'Limited international' (for detail see Law Society, 2012: 11).

Turning to the vast majority of firms not within the top 200 (98% of regulated solicitor practices), they contribute to just under 40% of total solicitor firm income in England and Wales (Law Society, 2012: 35). Often referred to as 'high street' or 'retail' firms, these labels mask significant heterogeneity within this group of mainly small and medium sized practices (when measured by partner or solicitor count). Although the above labels denote the types of services these firms typically provide (e.g. conveyancing, wills, probate, family law, employment law and personal injury) and the clients they serve (individuals and small businesses) (ibid. p. 36), this category also includes firms that provide advice on commercial and corporate law and others, similar to the those in the top 200, namely 'Specialist/Boutique' Regional', 'National', 'Limited international'.

Research Design and Data collection

To re-cap, our aim in this paper is to assess the degree to which ABSs represents a departure from the partnership model by exploring their ownership, management and financing practices against four indicators. Building on the earlier discussion, each indicator relates to a restriction previously imposed. These include incorporation, multi-disciplinary practices, the extension of ownership to non-

lawyers, and external investment. Although these measures are only suggestive of deeper level organizational change, we argue that they offer a useful proxy for assessing the degree to which law firms (becoming ABS) have moved away from the core governance principles that underpin the partnership model.

The data for this paper is confined to ABSs licensed between March 2012 when the SRA first started issuing licenses and 31 August 2015. It is largely based on archival data encompassing a range of media documents and the collection of routine data compiled from several sources. As an ‘unobtrusive’ research strategy, archival research helps uncover insights about the impact of institutional dynamics on organizational form and practice by enabling a comparison of specified characteristics among a large number of organizations (Ventresca and Mohr, 2002). The use of different data sources (detailed below) facilitated triangulation (Berg and Lune, 2013, pp. 5–8) and bolstered the validity of our findings. Validity was enhanced further by discussing, periodically, emerging results with representatives from peak level organizations, including the Legal Services Board and the SRA.

Our collection of the data and its analysis took place over six main stages. First, we began by drawing on publicly available data to construct a database of ABSs in order to identify the types of firms that had chosen to do so and to record their key characteristics. The development of the database itself involved a number of steps. We started with the SRA’s online register of ABS firms, which provides basic information about each firm. From this, we were able to identify the location of the headquarters ABS firms, their legal status (i.e. LLP, limited company), and whether they were a subsidiary of, or part owned by, a quoted company.

We then turned to an online directory compiled by the Law Society, called ‘*Find a solicitor*’. This provides details about individual solicitor firms regulated by the SRA and the people working within them, although such details are confined to solicitors with a practicing certificate (and their equivalent) and all ‘SRA Approved Managers’. These are individuals regulated by the SRA and held accountable for their respective organization and which, as firm owners, typically hold the position of ‘Partner’, ‘Member’ or ‘Director’. Importantly, for ABS firms, the online directory provided details of non-lawyer (i.e. non-solicitor) owner/managers. Thus, ‘*Find a solicitor*’ directory allowed us to record the total number of SRA Approved Managers for each ABS and, of this, the number of solicitor and non-solicitor owner/managers. We were also able to record the total number of solicitors employed by each firm (but not the number of non-qualified fee earners or support staff).

The third stage of our data collection entailed searching for new stories relating to each ABS firm. Although the formation of ABSs were occasionally reported in the national press, stories relating to individual firms mainly originated in trade press, notably, *Legal Futures*, *The Lawyer*, and the *Solicitors Journal*. We created a folder for each firm within which we deposited all news stories relating to it together with any information gathered from other sources (e.g. firm websites) and subsequently transferred the folders to NVivo.

In the fourth stage we undertook a qualitative analysis of the media stories, which enabled us to further populate the database (e.g. whether they had accessed external investment or were planning to do so), and uncover themes and issues relating to motives for becoming an ABS, attitudes towards the professional partnership, and any changes in organizational and management practices. Before we embarked upon this endeavour, we constructed a ‘protocol’ to support our analysis. Essentially a tool for “ask[ing] questions of a document” (Altheide and Schneider, 2013: 44), the protocol comprised

categories designed to uncover the “dramaturgical character” (p. 46) of social action, such as context, actions, motives, rationale, time and place.

The use of documents in social research, including newspapers and online media reports, is an established research strategy, although as with other data collection methods, not without its drawbacks and limitations. Accuracy is perhaps the most common issue associated with media reports since those relating to news about organizations are often based on press releases issued by the organization itself with the journalist possibly following up one or two points (Scott, 1990: 146). Since press releases and associated news reports may contain hidden agendas (to present the organization in a favourable light) we did not assume these reports necessarily offered ‘accurate’ representations of organizational motives and plans (Atkinson and Coffey, 2004: 73). Rather we followed Scott (1990: 146) in applying our understanding of the way news is produced to infer and interpret the surface and implicit meanings contained in the reports.

In terms of ‘representation’ we found that consistency in the coverage given to ABSs varied. ‘High-profile’ ABSs generated a high number of stories whilst smaller or more ‘ordinary’ ABSs generated less coverage and were reported upon primarily in Legal Futures, a website dedicated to providing “daily news coverage on alternative business structures”. We also noticed that the level of detail for new ABSs reported by Legal Futures changed over time. Greater detail was provided for ABSs that received a license in the first 18 months or so compared to those receiving a license later on unless they deemed to be prominent or conspicuous. For example, the US based firm LegalZoom and JB Leitch secured ABS licenses about the same but the former generated much attention whilst the news story reporting the latter was little more than a 150 words.

To strengthen the confidence of our findings, as a fifth stage, we drew on interviews conducted with ABSs for two separate studies and have, where relevant, incorporated quotations from them to illustrate key points. The first study took place between September and December 2013 where interviews were undertaken with 13 Compliance Officers for Legal Practice (COLPs) in ABS firms (hereafter, CP). These interviews focused primarily on the firms’ motives for becoming an ABS and early experiences. The second study took place between April and July 2015 and involved interviews with spokesmen and women at nine ABSs that had secured external investment and representatives from four private equity firms that have invested in ABSs or sought to do so (hereafter, INV). In total, 18 interviews were conducted, all of which were recorded, transcribed and content analyzed. Changes in governance and management practices comprised a key theme discussed with informants.

Finally, we compared our analysis with the extant conceptual and empirical literature. This supported our analysis of the nature and trends in ABS formation and helped inform our thinking as to the factors influencing this change. With notable exceptions, comparison is largely confined to the ‘grey’ literature due to the paucity of academic research on ABSs. The ‘grey’ literature included research commissioned by the regulators examining the impact of the LSA (e.g. LSB 2013), surveys of law firms and other research undertaken by professional service firms (e.g. Baker Tilly 2013), and wider research exploring the dynamics of change within the legal market in England and Wales (e.g. LexisNexis 2014).

Study Findings

ABS firms include two broad types: conversions by incumbent law firms and new entrants comprising non-lawyers establishing new legal practices or acquiring existing ones. In terms of how the 412

ABSs in the study population compare with other law firms, they are more likely to provide services in high-volume, commoditised markets, particularly personal injury and markets servicing the needs of businesses. In terms of size, ABSs also tend to be larger compared to the total solicitor firm population if partner numbers are taken as a proxy.

In what follows, we explore how far firms within this new population of ABSs have departed from the partnership model, focusing on the four key indicators described earlier: levels of incorporation; multi-disciplinary practices, non-lawyer appointments and external investment. We also look more closely at a minority of firms which have move furthest away from the old entity restrictions, have invested in increasingly corporate governance arrangements.

Incorporation

Although law firms in England and Wales have been permitted to incorporate since 1992, relatively few have exercised this option especially when compared to other professional service firms (Empson, 2007). A difference in the legal status of ABSs and traditional solicitor firms against this context is, therefore, noteworthy. As shown in Table 1, whereas two-thirds of ABSs are incorporated, the comparable figure for the total solicitor firm population is considerably lower at 36% (SRA, August 2015). For some incumbent law firms, incorporation was linked with obtaining an ABS license and often preceded it. A few firms reported that these changes were part of a wider organizational reform programme including the introduction of corporate governance arrangements (explained in more detail below). For instance, for Schillings, incorporation provided the opportunity to abolish its equity scheme, shift to performance-related pay, and introduce an employee share-ownership scheme (Legal Futures, 2013a).

INSERT TABLE 1 HERE

Multi-Disciplinary Practices

As noted earlier, professional rules prohibited solicitors and barristers from sharing fees both with each other and with non-lawyers. For that reason, the move to ABS, where these restrictions are lifted, potentially could mean a radical break with the past. One way of exploring this issue is to calculate the proportion of solicitors in each firm relative to other professionals. To do so, we accessed data made available by the Law Society, which identifies total people, total solicitors and the total number of ‘approved managers’ (i.e. firm owners or those held accountable for their organisation) in each firm.

Our assumption is that, where solicitors make up 100% of ‘total people’, the firm is unlikely to be drawing on the expertise of other professions or knowledge workers to provide services other than that relating to legal advice. Conversely, it is inferred that legal services comprises one of multiple service offerings where solicitors constitute a small proportion of ‘total people’. Admittedly, this is somewhat of a crude barometer because the ‘total people’ category excludes two types of employees: paralegals and non-lawyers who are not firm owners. Nonetheless, when the results summarized in Table 2 are augmented with qualitative data, patterns emerge from which it is possible to make several observations regarding different types of MDPs, the motives underpinning their formation, and why these developments may be considered innovative.

INSERT TABLE 2 HERE

In broad terms, it is possible to discern four types of MDPs ranging from the less ‘radical’ at one of the spectrum to those which, arguably, epitomize the types of organizations policymakers envisaged following the removal of the fee-sharing rule. Each type includes both incumbent law firms and new entrants diversifying into new areas and/or bringing in-house expertise previously outsourced. For example, by acquiring a firm of town planning consultants, Knights Solicitors LLP is an example of an incumbent law firm offering clients a portfolio of legal and related professional services (The BusinessDesk, 2013). Conversely, Brookson Legal Services Ltd is an example of an accountancy firm now able to provide clients legal advice which it previously outsourced (Legal Futures, 2013b).

The first group of MDPs is confined to different types of lawyers – predominately solicitors and barristers – working together within one entity. Vertically integrated ABSs comprise the second group with the most frequent combinations found in high-volume, commoditized markets such as personal injury (solicitors, insurance and claims management), property services (solicitors, surveyors, estate agents, managing agents), and debt recovery (solicitors, debt recovery agents). ABSs offering legal advice, financial services and wealth planning is another popular combination. A third type comprises ABSs’ launched by membership bodies such as the British Printing Industries Federation (BPIF), trade unions and other professional bodies, like the British Medical Association. Although small in number, the final group includes those ABSs’ identified by commentators as exemplar MDPs because of their size and/ the disciplines they bring together. Systech International, a global consultancy firm, is a prime example. Managing “some of the world’s largest infrastructure and energy projects”, the firm is able to provide legal advice to its clients following the acquisition of a construction law practice (Legal Futures 2013c).

The formation of MDPs signals a departure from the P² archetype within which expertise is confined to one profession. However, their development within English legal services is significant for other reasons too. MDPs typically involve a wider range of service offerings than legal advice. For lawyers, who have, hitherto, resisted pressures to diversify (e.g. see Malhotra and Morris, 2013) this represents a sea-change in organizational practice. Moreover, the ‘lack of plasticity’ (Malhotra et al., 2006) or ‘closed’ nature of the legal service field is one factor that is often used to explain the lack of, or slower pace of organizational change with legal services. The very nature of MDPs, by contrast, exposes solicitors (within those firms at least) to ideas and practices from other professional fields, thus increasing the possibility of change within the wider field.

Non-Lawyer Ownership

Non-ABS law firms are, typically, owned by a small elite of equity partners who share firm profits. At the heart of this model is an ideological commitment to confining ownership to professionals. Conversely, extending ownership rights to non-lawyers is one of the most distinctive features of ABSs. Turning to the study findings, Table 3 shows that 83% of firms had appointed non lawyers, thus signalling a fundamental challenge to the partnership model. However, once more we find a continuum of organizational responses from the traditional at one end to the more radical at the other end. Specifically we identify three types of response.

INSERT TABLE 3 HERE

The first includes a small group of ABSs who have not extended ownership to non-lawyers. For example, upon obtaining its ABS license, a partner at Crabtree Law reported that appointing a non-lawyer partner, “was not something we’ve thought about” and “not part of the plan”, and nor was external investment (Solicitors Journal, 2012). Typically, such firms are keen to emphasise continuities with their existing working practices as a way of preserving firm identity, brand and reputation. With the absence of change, in effect, portrayed as a virtue, these firms specifically wish to make clear that, by obtaining an ABS licence, they have not abandoned traditional practices or are metamorphosing into a new firm.

The second group – the largest – comprises incumbent law firms for whom the extension of ownership to non-lawyers is the primary reason they obtained an ABS license, although the precise nature of their motivations vary. For some, succession planning is the primary driver but for others, rewarding non-lawyers for their contribution is the principal reason as can be seen in the quotations from the ABSs we interviewed:

We wanted to bring new blood to our partnership table, we wanted people who think differently to solicitors. So we’ve used it [ABS license] to promote our head of costings and our head of marketing, both of whom are very clever, talented proactive people who have a different mindset to all the lawyers around the table. And that’s interesting for us... (ABS-CP11).

We became an ABS to protect my [non-solicitor] wife, who is with me jointly, a substantial stakeholder by investment... And it always struck me as extremely odd that somebody who has a substantial financial interest should not be allowed by law to have any official status. And also, of course, if something happens to me, what would happen to her? I’m told this practice is worth somewhere between £3 and £7 million, ...If I were to die, why shouldn’t she get some value out of that? And she won’t get any value unless she’s in a position to sit in the boss’ chair and control the exit (ABS-CP8).

Amongst a more ambitious group of ABSs, ownership rights are being used to attract high-calibre non-lawyers in the hope that their business and management skills will support firm success. Finance, operations and business development are the most common skills in demand, although IT skills have also featured in the extension of ownership rights to non-solicitors.

The third group, arguably the most ‘radical’, includes ABSs where non-lawyer ownership exceeds lawyer ownership. As summarised in Table 3, this represents nearly one quarter of the study sample. Two thirds of these are new entrants, with the sample including new start-ups established by non-lawyers with minimal or no lawyer ownership. Attracting considerable press attention, Genus (previously Brilliant Law) was the first such ABS. It was formed in January 2013 by three highly successful entrepreneurs, including Bert Black, the co-founder of the world’s largest betting exchange (Legal Futures, 2013g). Other examples of non-lawyer ownership are new entrants to the market created following the conversion of in-house legal teams or subsidiary businesses. Hence, out of the four directors of BT Law - previously a ‘cost-centre’ providing in house claims management - only one is a solicitor (Legal Futures, 2013h). Co-operative Legal Services is another example of a subsidiary business that converted to an ABS. Now offering reserved services, the firm employs over 70 solicitors but, of the four approved owner/managers, only one is a solicitor.

Slightly more intriguing is for incumbent law firms (35 within the sample) to be managed in this way. Analysis of the data suggests several reasons for this. First, the sample includes firms (such as the specialist will-writing firm Parchment Law) previously providing unreserved legal services which have now expanded their operations by offering reserved services. A further category include new start-ups founded by lawyers in partnership with non-lawyers (e.g. Advantage Solicitors; Centenary Law Limited, Courmacs LLP) as well as those formed exclusively by non-solicitor lawyers. The acquisition of incumbent law firms by new entrants also explains why non-lawyer ownership might dominate.

External Investment

A final, and critical, distinguishing feature of ABSs is that they are permitted to secure capital investment from external sources instead of relying solely on bank financing or the personal contributions of partners. Once more, we find a continuum of responses. First are, a majority of ABSs (around 75% percent of the sample), primarily incumbent law firms, who reject the possibility of obtaining external investment on the basis they do not need it and are concerned about the loss of partner control to external investors. The following quotation captures this sentiment:

Our business model is predicated upon being a high-quality boutique firm and that's what we want to remain. We don't need to seek external funding for that. We don't want [it] because we don't want to have to answer to external shareholders. We want our business to be based on providing a good service. The only people we want to answer to are our clients (Legal Futures, 2013i).

A second group of ABS (around 10%) also reject outright the possibility of accessing external investment but are prepared to acknowledge that, in some distant future, market conditions may force them to do so. Unlike the preceding group, these firms emphasise the need to change traditional ways of working in order to respond to perceived client demands and survive in an intensely competitive environment. They use their ABS license essentially as a signal to portray themselves as 'modern' practices – client-driven, efficient, competitive businesses. Nonetheless, for these firms, obtaining external investment is a step too far and as such they retain their commitment to 'insider ownership'.

The third group comprises ABSs (around 4-5%) who report they will obtain external investment in future, the likelihood of doing so is high, or that they would be very willing to explore such opportunities if these were presented to them. For some, accessing external investment is part of a medium to long term strategy and is viewed as an opportunity to introduce new skill sets to the business. As a senior partner of Stephenson's reported, "For us, external investment is not just about having the additional finances. If we take an investment partner we want them to bring additional skills to the table to make best use of that investment" (Legal Futures, 2013d).

Finally, are a minority of ABSs that have accessed external investment. Although stock floatation and private equity investment are often identified to be the most common sources of external finance, as highlighted in Table 2, investment from a parent firm is more typical amongst ABSs. In the latter, the decision to buy and be bought has been facilitated by a pre-existing, long-standing relationship between two firms (e.g. Abbey Legal Services and LHS, Capita and Optimal Leal Services). In this context, capital investment is viewed as necessary to firm survival and long-term growth. Relinquishing (at least some) independence and control is considered a price worth paying for the

potential benefits associated with external investment. The latter include opportunities to scale up operations, diversify and introduce new technology.

INSERT TABLE 4 HERE

Given the high degree of averseness, if not outright hostility, amongst lawyers towards private equity, one might argue that the nine law firms that have secured such investment are quite unique. A common feature that all nine share is their ambition to accelerate the expansion of their respective firms. Not content with mere firm survival or modest growth, their outlook is aggressive, proactive rather than defensive. As such, they view the new environment as an opportunity to lead the market in their respective field. Whilst the specifics of their investment plans vary, common areas include acquisitions of other firms, entry into new service areas, overseas expansion, the development of new client bases, marketing, and investment in technology and other infrastructure.

In line with the theoretical literature, four of the nine firms with equity investment are high-volume providers specializing in personal injury. Some of these provide services directly to individuals (e.g. Roberts Jackson), whilst insurance companies comprise the main clients of others (e.g. Keoghs). The other five provide commercial services, although these tend to be oriented towards “the high volume, rather than high margin end of the market” (Financial News, 2013). Indeed, Genus Law, which secured a seven-figure sum of investment, is candid about the commoditized strategy being pursued: “This is all about turning legal services into a commodity, doing things differently and stripping away the mystique that still surrounds the industry” (Legal Futures, 2013e).

Finally, we turn to Gateley, the only law firm to be listed on London’s Alternative Investment Market (AIM).^{1 2} As a conservative, corporate law firm, Gateley does not immediately match the profile of the type of firm that would seek external investment (Harlacher and Reihlen, 2014). Instead, its rationale for doing so is to attract new lawyers and fund firm acquisitions, “which offer geographical expansion or specialist services”, or those “offering complementary professional and other business services” (Legal Futures, 2015). It is not clear why Gateley preferred IPO over private equity, but the processes of persuading institutional investors to consider investing in the law firm proved quite challenging. Undertaking up to 60 presentations to different investment funds, not only did Gateley have to convince a sufficient number of “stony faced” investors that the law firm was a good prospect, it also had to assure them that it had “learnt the lessons” of other professional services firms which “haven’t done so well” by going public (Legal Futures, 2015). Following floatation, day-to-day control of the business remains with Gateley’s senior partners, although the firm is subject to greater scrutiny. It is required to release financial results to the market every six months and if it fails to meet market expectations, it is likely that its share price will go down. As the Managing Director of Slater and Gordon reflected on the firm’s experience of being listed: “Institutional investors will reward you

¹ AIM is the London Stock Exchange’s market for smaller companies, enabling them to participate with greater regulatory flexibility than applies to the main market, including no set requirements for capitalization or the number of shares issued.

² Other law firms that have ‘gone public’ are listed on the Australian stock exchange. Of these, only Slater and Gordon operates in the UK. Since its first acquisition in 2012, Slater and Gordon has acquired in England and Wales numerous other law firms (e.g. Fentons, Pannone, Goodmans, John Pickering, Walker Smith Way, Leo Abse & Cohen) and also specific practice areas (e.g. personal injury practice of Taylor Vinters, professional services division of Quindell).

if you do what you say you're doing to do, and kick you down the stairs if you don't" (Legal Futures, 2010).

Changes in Corporate Governance

In the preceding sections, we outlined a continuum of organizational responses to new-found freedom and flexibilities under the LSA. This analysis suggests that a majority ABSs have not departed in significant ways from the established partnership model, preferring their firms to be ran and owned by lawyers. However, it is also clear that a minority of firms have taken quite radical steps away from partnership. This is especially true with regard to their strategic decision-making and governance arrangements, which increasingly resemble those of private corporations. In what follows we first describe these arrangements in broad terms and then look at how they have emerged amongst three distinct groups of ABS firms.

A hallmark of a more corporate approach to firm governance is the introduction of smaller boards that are tasked with strategic planning and held accountable for firm performance. These boards tend to be led by a managing director or the equivalent with other board members either elected by partners and/or recruited specifically for their commercial experience and business acumen. With a clear demarcation between ownership and management, other partners no longer have voting rights on strategic matters. For instance, following the acquisition of their firm by a PLC, some of the former equity partners of an ABS we interviewed no longer played a significant role in the running of the firm and were excluded from decision-making:

The reality of the situation is that whilst the equity partners are tied in for two or three years post-acquisition, several of them already no longer play a part of any significance in the management of the firm now. I suspect there will be various people who decide that, you know, they've taken the cash and as soon as they can, they will retire.... Well, I don't think it's necessarily their choice. I think our Managing Partner rightly identified that there were former equity partners who had a significant role to play in the business going forward and that there were those who didn't (ABS-INV8).

Perhaps not surprisingly, these changes have been met with considerable "resistance" from staff in some firms (Legal Futures, 2013f). In the sample of ABSs we interviewed, for example, many of the equity partners were still struggling with the replacement of the partnership committee with a corporate board whose membership comprises professional executive managers. No longer involved in running the firm, equity partners are now defined as 'custodians' of professional values and culture, a development still being met with resistance:

... it's [corporate structure] been very difficult and it remains a challenge for the partnership, particularly for those people who've been there fifteen, twenty years to acclimate to a corporate environment where really you give up an awful lot of your own autonomy for this promise of stability and growth. It's going to be a struggle for a little while longer, you know. But that's where force and personality comes in (ABS-INV3).

Nonetheless, the leaders of these and a minority of other like-minded firms now view the shift towards more corporate-style governance as necessary and unavoidable. As David Beech, Managing Partner, Knights Solicitors LLP explained:

.... The traditional partnership does not exist because, for me, it is not a viable option any more. Equity partners have competing interests as individuals within a traditional partnership, which often means that decision-making is flawed. The whole process becomes massively time consuming and demotivating. At Knights, the management team provides the firm with a commercial decision making process and I assume the role of the CEO. This means decisions get made much faster which leads to efficiencies for staff and clients (The Law Society, 2013).

So, which groups of ABSs are going down this route of more corporate style management and governance? First are those which have secured external investment. Our analysis suggests that ABSs seeking private equity tend to introduce corporate governance beforehand as a way of signalling their ‘investor readiness’ as confirmed by some of the ABSs we interviewed. In the words of one informant:

...well M, our former managing partner and now Chief Executive, sort of saw the writing on the wall and knew that the business needed to professionalise, corporatise to be saleable, to grow, and things like that. So he started at that time [2012], bringing in a professional management team rather than making lawyers managers and that required the development of a traditional corporate structure (ABS-INV3).

These concerns about the quality of firm management are accentuated by the difficulty of securing equity investment, often requiring a costly and lengthy due diligence process. In this regard, ‘how well the firm is managed’ is an important criteria and it is not unknown for equity investors to demand (sometimes radical) changes. As noted earlier, the firm Gately was forced to change its governance arrangements to comply with the rules and regulations of listing on the London Stock Exchange, including an assessment of the “quality of the [firm’s] management team” (AIM, 2014: 14).

A second group adopting more corporate governance practices are ABSs that have secured external investment following their acquisition by a listed or a non-listed firm. Examples include firms such as DAS Law (formerly C W Law), Simpson Millar and Minster Law. In contrast to the first group described above, in these firms new management practices have been largely introduced after the acquisition has taken place. The negative perceptions of partnership governance held by non-layer investors has been an important driver of change. So too has been the perceived need to standardize reporting and monitoring procedures across the organisation to align them with the parent firm. As one informant from the ABSs we interviewed remarked:

...there is now in place a structure whereby certain information has to be extrapolated every month into a report in a particular format, which is delivered to the PLC Board. A huge amount of time and effort has been spent into getting our systems in good order to produce that information and I know that has been time consuming and difficult to achieve.... Everything is far more tightly controlled and managed than it ever it was as an LLP (ABS-INV8).

Finally, it is worth noting that in some cases firms that are predominantly run by lawyers (both established and new start-ups) have adopted new corporate decision making structures. As observed by the Bellwether Report II, many such firms have been founded with the explicit aim of delivering legal services in non-traditional ways (LexisNexis, 2014). Much like the firms with private equity investment, they are ambitious, implementing aggressive, high-growth strategies and thus frequently discussed in the press. Often under the leadership of visionary and charismatic individuals, they include firms such as Irwin Mitchell, Tees Law, and Schillings.

Discussion and Conclusion

To recap, our study explored the degree to which ABSs represents a departure from the professional partnership model by exploring their ownership, management and financing practices against four indicators, each of which relates to an ‘entity restriction’ previously imposed. The continuum of organizational responses leads us to conclude that regulatory reform, on its own, has not yet dislodged the professional partnership model, despite questions raised about its legitimacy and sustainability.

In this respect our research builds on and extends earlier studies conducted by the SRA (2014) and others (ICF and GHQ, 2014). We have been able to probe deeper to explore the organisational consequences of ABS and the underlying motivations behind moves to extend ownership rights to non-lawyers. Likewise, although responses to the SRA survey indicated that 13 firms had “changed the way ... [their] business is financed” (SRA, 2014: 17) after being granted an ABS license, our study assesses take-up of external investment of a much higher sample population. This allows us to confirm earlier impressions about the relatively small proportion of firms taking advantage of external investment opportunities, while also looking in more detail at the forms this has taken. In a similar way, this study extends the work of Sako (2015), by exploring a wider range of indicators of organisational change (including non-lawyer involvement) and helping to produce a more fine grained understanding of how ABS firms have responded differently to change.

What this deeper analysis shows is that, while the partnership model continues to be resilient, a vocal minority of ABS firms have engaged in more radical change. It is clear that the threat of new entrants posed by the LSA, the impact of the ‘great recession’ and the introduction of civil justice reforms in the personal injury market encouraged many firms to regard their traditional operations as no longer tenable. However, what our data suggests is that they have embraced this challenge with varying degrees of enthusiasm. On the one hand are those firms (the majority of ABS) which have introduced one or two new practices which depart from the traditional (partnership) model but fall short of radical change. In these cases, organisational changes are essentially a pragmatic response, perceived as necessary to keep their business afloat. By contrast, in a smaller number of firms, the exploitation of new opportunities is the primary driver of change. These firms share the perception that the professional partnership is no longer suited to the modern practice of law and, therefore, have instigated more radical change. Unlike the preceding group, change is driven by the desire to lead the market and less from a position of defensiveness.

Our conclusion therefore is that significant shifts in organisation and management practice have been set in motion by the LSA. Even though ABSs retain residual traces of the professional partnership, they still, arguably, go further than anything that has been witnessed before. To be clear, we are not suggesting that non-ABS law firms, particularly large ones, have not introduced ‘corporate’ management practices such as hierarchical governance structures, performance monitoring systems,

the recruitment of professional business managers and other such changes. The extant literature on this, however, overwhelmingly points to a “sedimented partnership”, representing “a collective reinterpretation of both the traditional and corporatized partnership” (Empson et al., 2013, 838). Put another way, “the structures and systems in these firms may have become more corporatized, but the beliefs and behaviours associated with the traditional professional partnership persist” (p. 817). Whilst it is no longer uncommon to find professional managers within law firms, the extant literature on this topic highlights lawyers’ ideological aversion to centralized management and ways in which partners are able to sidestep formal management control (for a review, see Chambliss, 2009). Hence as Pinnington and Morris note, (non-ABS) law firms may have become more managed and formalized, but partner control remains “largely undisturbed” (2003: 97) because ownership remains with them.

By contrast, the extension of ownership rights to non-lawyers is, we argue, a key factor that now differentiates practice in some ABS firms from what has been observed in the sector as a whole. In the past ‘insider ownership’ contributed to the resilience of the P² archetype even in firms with a marked increase in professional managers (Empson et al., 2013). By contrast, the opportunities to substitute new practices for existing ones are much greater in ABSs’ where non-lawyers have ‘effective control rights’ (Harlacher, 2010). Even though many law firms introduced committee structures and delegated decision-making to elected partners (Lee, 1992), other partners retained sufficient power to obstruct, influence or control decision-making (see Morris et al., 2010). In theory at least, this is also no longer possible in those ABS firms that have departed from the traditional, more collegial model.

Given these points, what conclusions might we draw about the changing organisation of legal services in the sector as a whole?? Since ABS firms comprise a small proportion of the total solicitor firm population and the data shows radical change is confined to a limited number of firms, it would be easy to dismiss these developments as being of little significance. Our inclination however is to suggest otherwise. The combination of regulatory reforms coupled with ongoing market forces has dislodged the foundations of the professional partnership in a way that has not previously occurred in legal services, in any country. At no other time has the efficacy or legitimacy of the professional partnership come under such scrutiny. As new practices ripple across the wider field, the prevalence of the professional partnership as a dominant form appears uncertain. We do not suggest that it will become extinct in the foreseeable future. As we are beginning to observe, lawyers will choose from a variety of ‘economic units’ within which to deliver legal services. Like the field of banking and accounting (see Levin and Tadelis, 2005), partnerships may dominate those areas of service that require less information technology and greater personal skill. However, for the first time a radical alternative way of doing business has been tried and tested in legal services and may eventually come to dominate in high-volume, commoditized areas. ABSs, for example, have massed significant market share in the personal injury market in a relatively short time. That said, it appears unlikely that ABSs will lead to greater concentration in the legal services market more widely in the foreseeable future. The sector remains as fragmented as it was prior to the introduction of the LSA, partly because new entrants (notably consumer brands) have not entered the market as predicted. It was envisaged that the inherent advantages of large retail entities (e.g. familiarity and trust in brand, experience of understanding and addressing the consumer experience, and access to financial investment and technology) would enable them to take market share, leading to a mass closure of small high-street law practices. A few consumer brands have entered legal services market but not in the manner envisaged or with the outcome expected and a few have even withdrawn (e.g. AA (Law Gazette, 2016)). Clearly, there are market and institutional forces at work that continue to deter or create higher than normal entry barriers for new entrants to operate in the legal services market.

Of course when drawing these conclusions, it is important to highlight caveats and directions for future research. Given that the reforms set in motion by the LSA are unfolding, more work will be required to identify trends in ABS formation over a longer time period. It would also be useful to probe deeper into the management practices of ABS firms using qualitative data sources to better understand their impact on working practices and the way services are delivered. Lastly, there are possibilities to do more comparative analysis of trends in the organisation of law firms, notably between national jurisdictions which have embraced neo liberal reforms (England and Wales, Australia) and those which have not and may never do so (the US).

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Tables

	ABSs Aug 2015 ^a	All solicitor firms 2015 ^b
Sole Practitioner	0%	27%
Partnership	7%	22%
Limited Liability Partnership	31%	15%
Limited Company	62%	36%
Total	100%	100%

Source:
^a SRA: Register of Licensed Bodies:
<http://www.sra.org.uk/solicitors/firm-based-authorisation/abs/abs-search.page>
^b SRA Regulated population statistics: Breakdown of solicitor firms:
http://www.sra.org.uk/sra/how-we-work/reports/data/solicitor_firms.page

Solicitors as proportion of total people	No	%
0	8	2%
1-25%	14	3%
26-49%	33	8%
50-75%	144	35%
76-100%	213	52%
Total	412	100%

Source: Law Society: <http://solicitors.lawsociety.org.uk/>

	No	%
No appointments	72	17%
1-25%	98	24%
26-50%	149	36%
51-75%	66	16%
76-100%	27	7%
Total	412	100%

Source: Law Society 'Find a Solicitor' webpage:
<http://solicitors.lawsociety.org.uk/>

Type of investment	No of ABSs
ABS is a subsidiary of, or part owned by, a quoted company	21
Private equity	9
Other*	5
Private investors	3
Stock floatation	1
Total	39

* Includes: (i) National Lottery; (ii) a trade union; (iii) Welsh Government; (iv) Business Growth Fund; (v) private share placement.

