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RESEARCH ARTICLE

Willingness to innovate in family law solicitor practice in England and Wales: a qualitative study

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Abstract

This paper analyses interview data from 24 long-qualified family law solicitors working in private practice traditional settings in the Midlands and North of England. Experiences and perceptions of change are explored in order to contribute to contemporary understandings of practitioner willingness to innovate in the new legal services landscape, particularly as family law solicitors have been called upon to adopt new practices such as unbundling to survive (Resolution, 2018). Three 'types' of emergent identities are identified amongst the sample respondents. These are linked to attachment to traditional role orientations, values and boundaries, as well as practice settings and perception of opportunities and threats.

Keywords: family solicitors, LASPO, market, culture, innovation

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Introduction

It is clear that over the last ten years family law solicitor practice has been subject to unprecedented external pressures, partly as a result of the global financial crisis in 2007-8 and consequent austerity measures. Changes for family law solicitors include the effective withdrawal of public funding under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), as well as increasing numbers of litigants in person and a family court system under strain (Law Society, 2015, p.5). In addition, potential clients (who have sufficient funds) now enjoy greater choice, linked with the availability of information on the internet and new service providers within a fragmented legal services market (Maclean & Eekelaar, 2016, p.24). Technological developments, such as email and electronic service, present additional challenges for family law solicitor practice and wellbeing. This article uses qualitative interview data to explore practitioners' perceptions of change and considers the implications for willingness to innovate, concluding that a proportion of family law solicitors across all practice settings may be resistant to innovation, even if needed to deal with commercial threats or plug gaps in public access to legal advice.

Context

Family law solicitors form a distinctive group within the legal profession, practising in accordance with the Code of Practice of their professional association Resolution which promotes a constructive approach and consideration of the needs of the whole family, unlike other areas of litigation. Upon the establishment of the civil legal aid scheme in 1949, family law solicitors in private practice benefited from a privileged position in the marketplace: they had a monopoly on the regulated provision of advice and representation for clients and were able to run practices subsidised by public funding. Their work comprised acting for privately paying and/or legally aided clients with respect to matters such as divorce, domestic violence, financial matters and children's issues. Indeed a family

law case would involve guiding the client through a process (Davis, Cretney & Collins 1994, p.125) to resolve all aspects of the relationship breakdown: a larger practice would triage the case between different fee earners within their team depending on their specialism within family law, for example in financial matters or private law children's issues. As well as specialism, family law solicitors could also be categorised according to the income grouping of their clients: a team of researchers who carried out observations of private practice family law solicitors in 1998 divided them into 'two distinct professional sub-groups': one working with mainly privately paying clients and the second working with mainly legally aided clients (Eekelaar, Maclean & Beinart 2000, p.57).

It is undeniable that over the last ten years family law practice has undergone considerable change. LASPO came into force on 1st April 2013 and removed the category of family law from the scope of legal aid. Although public funding remains for mediation and public law care proceedings, legal aid is not available for advice or representation in private law matters unless there is evidence of domestic violence. Thus a major source of revenue for law firms has been lost and the impact on firms is suggested by the huge reduction in the grant of family law civil representation certificates, from 60,000 in 2011 to 10,000 in 2014 (Ministry of Justice, 2014, p.23). However, even before LASPO, firms had been choosing to opt out of public funding because of increases in bureaucracy through franchising and quality audits and in 2010 the number of firms awarded a contract to carry out family legal aid was decreased from 2,400 to 1,300 (House of Commons Justice Committee written evidence, 2010). As Hilary Sommerlad has written:'The neo-liberal order … transformed legal aid from a service which in 1991 was offered by 74% of all law offices into one largely confined to an impoverished rump of the profession' (Sommerlad 2007, p.191).

Another challenge for family law solicitors has been the increasingly competitive market for a shrinking pool of privately paying clients following the global financial crisis in 2007-8. This has impacted upon practitioners in a number of ways: by the subsequent recession reducing the number of people able to pay for their services and by government austerity measures prompting a court closure programme and other budgetary cuts. These changes have contributed to lengthier delays and other difficulties in the family court system, compounded by an unprecedented number of litigants in person as a consequence of LASPO. According to the latest family court statistics released by the Ministry of Justice, the proportion of private law children's cases with both parties represented fell from 47% in 2012 to 20% in the fourth quarter of 2017 (Ministry of Justice, 2017, Figure 4). Hearings involving litigants in person have been found by researchers to be less predictable and less likely to settle (Trinder et al, 2014, p.52) and the family courts have been under severe strain which affects all court users.

As the majority of litigants now have limited access to lawyers, proposals have been made for the court system to be less reliant on lawyers' involvement. Proposals have included the simplification of the court system (Bevan, 2013, p.51) and the law (Smith & Paterson, 2013, p.66), as well as the development of web-based document assembly systems (Trinder et al, 2014, p.113). In addition, to assist potential litigants, the Family Justice Review proposed the establishment of an online information hub (Ministry of Justice, 2011, para 4.11 and 4.77). A Sorting Out Separation app was subsequently launched in 2012 and, although receiving a negative evaluation of effectiveness (Department for Work & Pensions, 2014), the empowerment of the public by the availability of online information represents another significant change for the work of family law solicitors.

Further challenges for solicitors working in private practice law firms have been posed by the liberalisation of the market following the Clementi Report (2004) and the implementation of the Legal Services Act 2007. This statute relaxed restrictive practice rules and permitted the establishment of law firms owned and managed by non-lawyers ('Alternative Business Structures'). As a result there is now an increasingly competitive market, comprising private practice law firms, networks of firms such as 'Quality Solicitors', Alternative Business Structures such as 'Co-op Legal Services' and specialised online providers such as www.quickie-divorce.com (which offers a divorce for £67). This new market has prompted some law firms to offer new charging methods to attract or retain clients. These include unbundling where elements of the case are itemised and separately priced as fixed fees instead of the open-ended liability in a full retainer, albeit with costs estimates. For example, unbundling could involve an agreement whereby the solicitor represents the client up to and including the First Hearing for residence of the children but not for any other aspects of the relationship breakdown, such as the resolution of financial matters. The benefits of unbundling have been identified in a report written for the Legal Services Board as affordability for clients and commercial opportunities for solicitors (Ipsos MORI, 2015, p.47). However, there are also insurance risks: a key concern for practitioners was reported to be the danger of taking steps based on inadequate knowledge (Ipsos MORI, 2015, p.50).

John Dewar has argued that family law systems are unique in that they are 'fragmented, horizontalised, dispersed and high reach, low intensity' (Dewar, 2010, p.378), comprising an array of dispute settlement processes such as lawyer-led negotiation, mediation, collaborative law and arbitration. Mediators and lawyers have distinct roles and professional boundaries, characterised as the mediator promising neutrality to a couple and the lawyer offering partisanship to one client (Wright, 2007, p.481). Lisa Webley has noted that 'the professional accreditation requirements set by the solicitor and family mediation professions are greater than would be needed for the purposes

of marketing a service,' being a form of socialisation into that professional sphere (Webley, 2010, p.127), yet some family law solicitors practise as lawyer-mediators and it has been argued that, particularly within the arena of children's disputes, there is a hybridisation of role (Wright, 2007, p.487). Since the 1990s, mediation has been promoted by government, the latest example of which is the legislative requirement that would-be applicants attend a mediation information and assessment meeting before commencing certain qualifying proceedings (s.10 Families and Children Act 2014). Ironically LASPO has prompted a dramatic fall in mediation starts, from 15,357 in 2011 to 8,432 in 2013 (Law Society of England and Wales, 2017, p.19). According to pre-LASPO research carried out for the Ministry of Justice (Barlow, Hunter, Smithson & Ewing, 2014, p.6) the majority of their sample of 288 divorcing adults (53%) had sought legal advice but the post-LASPO level of demand for initial advice from solicitors after LASPO is unclear. To ease the gaps in legal advice provision and survive these challenging post-LASPO times, family law solicitors have been called upon to innovate, for example by offering unbundling. This article considers their propensity to do so in the light of qualitative data.

Literature review

Observational studies from the 1980s onwards have identified a strong settlement culture in family law practice with a preference for negotiation between solicitors. This involves the avoidance of contested hearings by putting pressure on the client to compromise (Eekelaar et al 2000, p.76), (Davis, 1988) and (Ingleby, 1992) and has been described as being part of the welfare discourse of a 'good lawyer' (Neale & Smart, 1997), prioritising the interests of the wider family over those of the client. The settlement culture has been observed amongst family law solicitors specialising in children's issues (Bailey-Harris, Barron & Pearce, 1999) and in those dealing with financial matters for low income clients (Davis et al, 1994, p.211) yet the extent to which it pervades the whole of the family law solicitor profession is unclear: the team of researchers who carried out observations of

private practice family law solicitors in 1998 found that solicitors acting for wealthy clients presented more as an 'adversarial commercially minded stereotype' (Eekelaar et al 2000, p.79). The settlement culture also has been observed more recently: in a report written for the Ministry of Justice in 2013, the writers noted that most guidance given by family law solicitors included 'a strong steer to avoid court if possible' (Barlow et al, 2014, pg.6).

Allied to the settlement culture, a strong ethos of client management and paternalism has been identified among family law solicitors in a number of research studies. The initial literature was American: Lynn Mather et al interviewed 163 family law attorneys in Maine and New Hampshire who described a number of strategies for seeking to control clients: advice and persuasion as well as the use of delay and careful selection of clients by screening (Mather, Maiman & McEwen, 1995). In this jurisdiction, family law solicitors have been observed to move between discourses to control and motivate clients (Piper, 1999, p.109) and client management has been described as part of the professional role of family law solicitors (Webley, 2004, p.249). Eekelaar et al (2000) found some support in their observational data for the deduction that 'privately paying clients are more likely to control, or attempt to control, the agenda than legally aided clients' (p.99) which suggests that LASPO, which has turned nearly all clients into privately paying ones, may affect practitioners' ability to use strategies of client management.

The most relevant recent study into family law solicitors was conducted by Mavis Maclean and John Eekelaar (2016). The purpose of their study was to understand the structure of service provision and work of family law practitioners since the enactment of LASPO. The researchers carried out a survey of divorce information and advice legal websites available to help the public and discovered more commercial choice for consumers, offering 'a complex, varied, though largely unregulated'

landscape (Maclean & Eekelaar, 2016, p.37). The researchers also observed and conducted interviews with 24 family law solicitors working in 17 practices including new practice settings. The study characterised their respondents according to practice type, dividing them into four groups and concluding that the work of family law solicitors 'appears to be relatively unchanged for high-income clients, but seems to be changing to a more limited specific activity for middle-income clients combined with other services, and under threat and undergoing complex but energetic change for the client group without the resources to purchase legal help in the market place' (Maclean & Eekelaar, 2016, p.68). The researchers also found that there is less total care for a client, a wider range of pricing mechanisms and more limiting of services to fixed price and specific tasks (Maclean & Eekelaar, 2016, p.122). The study recommended the development of a stronger, stand-alone form of legally-assisted mediation by the removal of anomalies created by professional boundaries to allow legal advice to be given by lawyer mediators (Maclean & Eekelaar, 2016, p.148).

Method

This article draws on qualitative data from interviews with family law solicitors working in private practice law firms, such interviews taking place over a period of two years (2015 and 2016). Qualitative data was sought to give voice to practitioners and to discover how they make sense of any changes they have experienced (Ambert, Adler & Detzner, 1995, p.880). Studies of occupations experiencing change have also chosen to analyse qualitative data, such as healthcare (Waring & Bishop, 2011) and probation (Mawby & Worrall, 2013).

Possible interviewees were identified using the 'Find A Solicitor'online search facility of the Law Society's database of family law accredited members. Those with lengthy experience were selected, as the study was seeking to incorporate an element of historical perspective when commenting on

changes. Possible recruits were approached by email to introduce the project and to ask whether they would be prepared to be interviewed. Attached to the email were relevant ethical approval documents assuring confidentiality, anonymity and data security. If the email received a positive response, arrangements would be made for the interview: convenience for participants was optimised by offering flexibility over location and timing.

Regarding the sample, of the 133 approached, 24 long-qualified solicitors participated in the study: 7 men and 17 women. The vast majority (n=22) had post qualifying experience of over 20 years and the remainder (n=2) had post qualifying experience of over 10 years. All had spent all of most of their professional lives as solicitors on family law work and considered themselves to be specialists. All were partners in private practice, except one who was an associate. All had carried out publicly funded work earlier in their career but most (n=15) had given it up prior to the enactment of LASPO. The solicitors were from 24 firms and these varied by size: 7 were small (2-5 solicitors), 8 were medium (6-39 solicitors) and 9 were larger (more than 40 solicitors) of which 6 were in the top 200 firms (as ranked in terms of revenue in the UK in 2017 by The Lawyer). The firms also varied across broad and narrow practice areas: 4 were niche boutique family law, 15 were high street and 5 were predominantly commercial practices. None of the respondents worked in new practice settings such as Alternative Business Structures. A geographical spread was sought but was limited to 9 cities across the Midlands and North of England. Although 10 of those interviewed had qualified as family mediators, only 4 were active at the time of interview. All except one were members of the family law professional association, Resolution. 5 had decided, since LASPO, to spend more of their time on child protection work in order to benefit from that public funding income stream. Of the sample, 9 were offering unbundling.

Interviews took place face-to-face and individually. They lasted between 30 and 60 minutes. They were all conducted at the respondent's place of work, except one which took place at the researcher's office. The interviews were loosely structured, all starting with 'What has changed for you in family practice?' and being open-ended. All responses were digitally recorded, transcribed for analysis and reviewed manually.

In the following data analysis, verbatim quotes are presented to help illustrate key points. As respondents have been assured of anonymity, all biographical detail in the text is limited, including gender where possible. Given the sample size and geographical spread, the data cannot be said to be representative of the views of all family law solicitors practising in England and Wales; instead the purpose is to find out how this group of practitioners approach innovation in the context of the changes they have experienced.

Qualitative data

In this section, common themes arising from the qualitative data are explored, before considering the implications for willingness to innovate. At the end, unbundling is used to illustrate the different orientations to risk and adaptation.

Common themes

Across the entire sample, common themes emerged from the interview data. Responding to the external pressure of the effective withdrawal of legal aid, many expressed nostalgia for the days when the provision of a public service was subsidised by the state (n=8). A conceptualisation of the role of legally aided solicitor expressed by a number of respondents was of a family GP. This

confirms the findings of other studies, one of which described a 'mixture of general medical practitioner and social worker with clout' (Eekelaar et al 2000, p.63) and is a common perception amongst all sectors of the legal profession, not only family law. For example, in his analysis of corporate practice, Gerard Hanlon has described 'an older, more social service version of professionalism' for firms serving individual, non-influential clients (Hanlon, 1997, pg.799). The following quotation suggests nostalgia for the days when there was less emphasis on business development.

INT17: I've had lots of changes. I've been in practice for [20+] years. It's a long time. And a lot has changed. Obviously when I started out in practice a lot of family law was legally aided and it wasn't quite so - certainly at a junior level - the emphasis wasn't quite on so much business development because it literally just sort of happened. People arrived – they wanted help. And it was almost as if it was a role in some way similar to almost as a family GP sort of counselling role.

Now that virtually all family law clients are privately paying, there is increased emphasis on marketing, requiring a more commercial mindset and sharper pricing. All respondents commented upon the increasing business pressures, most in negative terms (n=16). In the following extract, the preceding respondent expresses negativity about the new cut-throat commercial environment.

INT17: People are far more financially orientated. Having to fund the cases themselves and having to represent themselves to a large extent as well. So it has changed significantly. I won't say it has necessarily changed for the better. [Laughs] It's become a lot more cutthroat I think. It has become a lot more survival of the fittest. Definitely.

The pressure to attract and retain privately paying clients alters the power balance between solicitor and client and could potentially constitute a challenge to professional authority. Traditionally the family law solicitor has screened clients and some of the respondents were still in the privileged position of being able to do so. Lynn Mather in her observation of US family law attorneys in Maine

and New Hampshire has commented that, by screening, 'from the start they also would begin to demonstrate authority and power over their clients' (Mather, Maiman & McEwen, 1995 at 295). However, in the light of changing commercial realities and greater consumer choice aided by the internet, the respondents in this study commonly reported that their potential clients are shopping around, either to select a firm if they have resources to fund the action or to benefit from free legal advice if not. Here is an example which refers to beauty parades being carried out by wealthy clients.

INT22: We offer this one hour free consultation. I think many firms offer that now. They're ringing and they're having beauty parades basically. Often we see clients who say 'I've seen two firms already in [place] – you're my third'. They are pretty much gauging who they like, cost. And I think at our level – in terms of clients with wealth – for them what is important is that rapport with who they are meeting.

Respondents also commented on the advantages of giving up legal aid such as being released from the paperwork and benefiting from increased charging rates, as well as feeling more connected with the client and having a more honest, client focused relationship, rather than being in a tripartite relationship involving the Legal Services Commission. The practitioner in the following extract refers to the increased pressure to adhere to the client's instructions, namely to carry out a more tailored service, as clients have increasing power in the lawyer/client relationship, now paying the solicitor directly. They contrast the current privately paying regime with that under the old legal aid system, formerly called 'Green Form'.

INT6: Sadly I think looking back to Green Form days, I suspect that because it was largely commercial, largely turning over numbers, getting the money in, probably you paid less heed to the client's wants and instructions. You just got on with the job. Um but there might be a bit more time these days just to tailor what you're doing. Again this is awful to say but the bottom line is that if the client's paying for the service then they are entitled to get the service they want. End of story. If on an old Green Form Divorce, you might have scribbled down some particulars and bunged those on the petition and got on with the job – these days you might work a little bit harder getting those particulars more pursuant to how they want and the advice you've given to them.

Three respondents expressed concerns about a loss of professionalism in the new more commercially orientated market: there is greater pressure to defer to clients' demands even if unreasonable. The following extract expresses the same sentiment as the previous quotation but is taken to an extreme, illustrating a failure to manage the client.

INT4: I have noticed that my colleagues are much more keen to zip off to court than we used to be [20+] years ago and it's to do with fees. That's a libellous comment – I'm mentioning no names. I think it's to do with fees. And I think lots of clients demand that. The clients says 'I will go to court and I will go to court and you either do it with me or I'll go on my own or I'll find someone else'. That borderline between business and professional is getting blurred.

'Zipping off the court' is contrary to the welfare discourse of the settlement culture and would not have been done by a 'good lawyer'. Nevertheless, most respondents commented that clients are now more demanding (n=18), requiring greater transparency over costs and more insistent in having their instructions carried out. Below is an extract from an interview with a respondent who finds their current (privately paying) clients more difficult to deal with than the clients they used to have, who were legally aided.

INT11: I still do them [children act cases]. I find those hard work. Because you know you're dealing with – quite often in the old days – this sounds really condescending it's not meant to – in the old days you'd be dealing with relatively simple and straightforward people. Now I'm dealing with professional complicated people. And they're not easy, not easy cases.

With the exception of those respondents who carry out public law work, all respondents said that they are at court less. The following respondent blames the broken court system and clients choosing to pursue alternative processes of dispute resolution.

INT21: Yes and I go to court far less than I ever did. And that's another change. Because the client group that I'm dealing with want to take more control of their lives so they don't want judges making the decisions for them. So they're much more keen to do round table meetings so we do internal meetings here. We have [number] practising mediators in the office so we do lots of mediation. So our main aim is to keep it away from court. Not just because it's cheaper and more private but the court system has completely broken and deteriorated to such a degree now where you could be waiting for months to get a reply to a letter or you have to pay £20 to get a photocopy of one page whereas before I'd just smile sweetly at the usher and they would just do it for me.

Respondents said that they are choosing to avoid court for strategic reasons. Three explained that they would not go on record when carrying out unbundled services or when the other party is unrepresented. This is because of the adverse costs consequences for their client: indeed a Ministry of Justice report about litigants in person noted that the litigants who were represented had a disadvantage in proceedings because the court would expect their legal adviser to prepare bundles and do other administrative work, even if this would normally be the responsibility of the litigant in person as applicant petitioner (Trinder et al, 2014, p.76). Below is an extract from an interview with a respondent who chooses not to attend court because of the costs implications for their client.

INT8: For myself, I try and avoid going to court now like the plague. So I would rather my clients do straightforward things themself or they have counsel at a fixed rate because the notion of me sitting around for half a day and my client wondering why they've got to pay me is so graceless it's just lacking in any kind of respectful relationship and I just don't want it.

Unsurprisingly, the respondents in this study displayed an enduring attachment to the values of the settlement culture, despite the reducing opportunities for lawyer-led negotiation. The respondents who do not carry out public law work reported that they are at court less and the prerogative of the settlement culture, namely to avoid a contested court hearing, appears to be consolidated by the crisis unfolding in the family law court system. This development can be viewed in the context of a

growing privatised market of dispute resolution for those clients who can afford to pay for such services, reinforcing the role for the family law solicitor of 'solution finder' rather than officer of the court. Alison Diduck has referred to the 'system's strategy to promote the privatisation, individualisation and delegalisation of [private law] family disputes' (2016, p.143), a strategy appearing to succeed with the respondents in this research study.

The closure of local family courts has also affected some of the respondents in this study: one commented that they no longer have a settled weekly routine dictated by the local court, having lost the weekly 'finance day' and 'children's day'. In addition, in the following extract, another respondent commented that they have lost a reassuring sense of familiarity.

INT19: We've lost the county court here now so the court doesn't sit as much as it used to anyway. But no I hate going now because I feel all fish out of water. I get there and I don't even know where anything is. I don't know where the waiting room is. I don't know what the code is on the robing room. So I absolutely hate going.

Respondents mentioned the closeness of the family law solicitor community and the importance to them of good relations. The collegiate atmosphere of family law solicitors has been remarked upon in previous studies: (Davis & Pearce, 1999, p.550 and Wright, 2011, p.381). However, there was also a perception amongst these respondents that their community is contracting and aging. In addition, community ties may be weakened by the closure of local family courts and the influx of litigants in person. In fact, the latter represent a significant challenge for some of the respondents. They recounted stories of physical abuse from litigants in person, as well as other problems such as discomfort over professional ethical issues, namely the delicate balancing act between negotiating with a litigant in person while being careful not to advise. The following respondent expresses regret for the lack of a professional on the other side, making settlement more difficult.

INT18: And then obviously you've got the personal aspect of it in that, when you're dealing with a litigant in person, you've not dealing with the solicitor who's sanitising all the information that is coming from the litigant in person. You're getting it in the raw aren't you? So you have to deal with a lot more emotion and that's a new different skill set dealing with those sorts of people. Some of them can be highly articulate but even so they aren't one step removed from their own lives like the solicitor who would be acting for them would be so that makes it harder as well.

Complaints have always been a part of family law practice but the respondents in this study said that there is a perception that client complaints are increasing, even some hadn't personally experienced this. They referred to the emotional repercussions of this changed environment and the following respondent describes a recent complaint that they had received.

INT1: People go onto the internet as well. And see what they can do on the internet. And then they complain when you give them the same advice that they've read on the internet. I had one client who complained about my bill because I told him what he'd read on the internet. I said 'I'm sorry – I can't do anything about that - that is the advice – you take it or leave it'.

A recurrent theme, repeatedly mentioned by respondents, was the prevalence of information on the internet and the threat to their professional authority, no longer having exclusive access to knowledge. Below is a typical quotation that refers to the fact that clients are no longer afraid to challenge.

INT22: To me, I think the market has completely changed. When I first started practising, there was almost an assumption that the solicitor's word was like God and nobody would dare question the solicitor's advice or their approach. That has completely gone out of the window. Clients are very savvy. They want to know why you have done it, why they have been charged for it. And it is a very different dynamic.

The phenomenon of loss of professional autonomy has already been widely documented in the context of corporate practice and is not confined to practitioners in England and Wales: for example Joanne Bagust has written about corporate practice in Australia where the 'major change to the more sedate days of traditional professional legal practice [is] cited as a factor in the much vaunted 'loss of happiness' among lawyers' (2013, p.37). In this jurisdiction, Lisa Webley and Liz Duff interviewed female leavers and commented that all their participants struggled with pandering to clients' unrealistic demands and felt on a treadmill that they could not get off while staying in the profession (2007, p.394). Family law solicitors must now justify their fees in other ways, given the greater autonomy of clients and their potential to represent themselves with assistance of the internet. The following respondent comments that they no longer pursue one single linear process of negotiation then court proceedings, now claiming to adopt a more skilful approach which explores a range of privatised procedures.

INT12: I think that family lawyers have gone from being advisors cos the internet – everyone comes they all know, they've all googled it – they all know what clean breaks are – they all know everything. Half of it is wrong! Yes you used to provide information about the law and advice about the law. And it is much less about that now. And much more about solutions. And about options… So you become more of a…. yes solution finder or a negotiator really than an advice giver.

Three respondents expressed a sense of feeling under attack from government policy. The following respondent comments angrily on the promotion of professional rivals, mediators.

INT3: I think that people wouldn't dream of getting the Janet and John book to plumbing and doing their own plumbing. Or lets rewire my house. Or lets do the accountancy. But bizarrely they seem to think – 'Well all I need to do is look on the internet and you know get some ideas'. And I think the government is saying to people 'You know, you can do it yourself'. Or: 'You can do it just with mediation. You don't need a solicitor'. That's the message: 'You don't need a solicitor - just go to mediation'.

It is understandable that the respondent quoted in the preceding extract feels under attack. The marginalisation of family law solicitors has been acknowledged elsewhere. For example, Felicity Kaganas has noted 'the received wisdom [of policy makers] that law and lawyers should be avoided in private law family disputes' (2017, p.175). The same respondent also commented on the growth of other commercial threats which have arisen in a climate seeking to assist litigants in person at court. These include direct access barristers, as well as pro bono services such as law school clinics. In the following extract the respondent refers to fee-charging McKenzie Friends who are unregulated but purport to act as lawyer-substitutes at court.

INT3: We are seeing more paid McKenzie Friends down there [at court]. And as I understand it depending on which judge you get in front of whether or not they'll permit to do them a little bit of advocacy. Where does a little bit of advocacy end? And from their perspective you can see it because it's much easier to deal with a paid McKenzie Friend who probably is an ex solicitor or has at least got some legal background than deal with a litigant in person themselves. From our perspective it's sort of the thin end of the wedge. Why are we solicitors? Why am I paying my practising certificate? Why am I paying indemnity insurance?

Technology was a common theme for respondents, saying that it had had a huge impact on their daily working practice. There were frequent complaints about the time-consuming nature of emails. Others referred to a changing relationship with the client, one that is more informal. The following respondent encourages clients to contact her, offering to assuage worries immediately as part of the service she offers.

INT4: On a bad day I probably get about one hundred plus emails a day. It's rarely less than fifty. And a lot of it is not just rubbish that you're deleting. But it is actually things that you have to deal with. And that is hairy. The good thing about that is that it is immediate. So the things that they're worried about – you can reply straight away. I say to clients 'if you want to know something, email me. I will reply to you whenever I get it'. I've got a smart phone like most lawyers. I'll reply to them at any time. I'll reply whenever I happen to wake up in the night. It's ridiculous in one way because of the stress level. But clients expect that now.

Emails were considered by some respondents to be particularly challenging. The receipt of email is unpredictable and interruptive. In addition, the possibility of immediacy of response means that delay, recognised in other studies as a method of client control (Mather et al 1995, p.302 and Sarat & Felstiner 1995, p.56) is no longer available. Emails also threaten autonomy which is an aspect of professional identify, being one of four role behaviours that reflect traditional ideals of professionalism (Wallace & Kay 2008, p.1023). Some of the difficulties posed by emails are referred to in the following extract.

INT18: The bane of my life actually. Sometimes I think I wish I could just go back to the old days where I've always had a heavy caseload right from even being a trainee. But you know when you could get letters in and you could get your secretary to type a letter up and post it out and at least that file would be off your desk and in the cabinet for at least a week perhaps – or perhaps a few days if they rang up. But now you have a big file and it's on your desk and you do a load of work on it – it takes half the day – and you get your emails out and ping - in five minutes they're back…Really difficult cos it just makes you – it's like a hamster on a wheel running faster and faster. And never pleasing everybody.

Respondents commented that they struggled to convince clients to attend meetings with them, as their clients prefer the more instantaneous and (clients perceive) cheaper method of communication by email. Days are less structured and predictable, as there are fewer scheduled meetings and fewer letters. Hence, as well as local court closures affecting weekly routine, there has been a loss of daily routine. This loss is apparent in the following extract where previous working practices are described.

INT7: When I could come in the morning, see you know five or six clients in a day and turn all the stuff over. That's the other thing I find with email and so on. In the old days, I'd see a client, I'd pretty much do the work that it generated before I saw the next client. And at the end of the morning my secretary would give me lots of pink pieces of paper with the telephone messages on. But now of course they're on the inbox and I open it up and I think 'I'll just do that and I'll just do that'. It's shocking, isn't it?

Some of the respondents said that they appreciated the ability to work in different locations such as court and home (n=10). In the office, for some, there has been a change in working practices involving reduced secretarial support, as expressed in the following extract.

INT20: I can work remotely which is great to a certain extent because I can reply people's emails and I can read things. But then you have to recreate your day when you finally get back to your desk… I spent two hours the other day doing nothing but recreating what I'd done over the previous days I'd been at court. So you're on top of it on a superficial client level but from an admin point of view? And so I think there's a shift from you becoming something other than just a solicitor. You've actually become your own secretary.

It is now possible to work all hours of the day. A significant minority of respondents (n=9) referred to having a 'responsibility to manage' and viewed a 24/7 commitment as part of their professional identity. Well-being literature has commented on the adverse effects of 'workaholism', particularly in the context of large, commercial 'City' firms (Collier, 2016, p.44). The following respondent says that they struggle with the changing of boundaries of working life, caused by technology.

INT24: You're working all the time. The weekend my phone goes on but it pings so I know the emails are coming in. You are going to read them. You would have to be pretty resilient not to. So the boundaries of working life have changed. In the old days I worked maybe 8.30 till 6 but the clients couldn't get me then. I'd finish my work. The clients get you all the time. So there's an emergency - in old days they'd wait till Monday. Now they ring you. So I think as a professional you never are off duty. That's not good. And you can't monitor that. I would say also it's invasive.

This spillover of work into family life has also been noted in professions such as probation and others (Westaby, Phillips & Fowler, 2016) and the potential consequences of the softening of boundaries between work and family made possible by technology was remarked upon in both positive and negative terms, by most respondents in this study (n=17).

Willingness to innovate

Analysis of the data reveals three 'types' of respondents, characterised in this paper as innovators (n=9), traditionalists (n=7) and the compelled (n=8). The members of each grouping shared similar characteristics in terms of risk and role orientation but were spread across all levels of practice size and practice breadth. All respondents (regardless of grouping) commented on the same changes such as external pressures but there were important differences between groupings of conceptualisation and approach.

Innovators were open to new ways of working and, although negative about increasing commercial realities, they displayed greater job satisfaction overall. They had less attachment to the past traditional ways of working, being happy for clients to deal with parts of the case themselves. They were positive about the opportunities made available by new technology including social media such as Twitter, Facebook and LinkedIn. They were more prepared to work with litigants in person and were motivated by the possibility of acquiring new skill sets. Although aware of ethical issues, they were not discouraged from adapting their practice. Below are extracts from interviews with two innovators which illustrate their positive approach to new ways of working.

INT15 (innovator): It's all challenge but what are you going to do? What are you going to do about it? I suppose part of it is diversifying – so I'm doing the collaborative. .. Mediation will always be there so we just add another string to our bow. I do some [other] work so I can just diversify if needs be. But it's planning isn't it I suppose. Yeah. You can't beat it, can you?

INT12 (innovator): I like working with litigants in person because if I'm going to do litigation it's my natural habitat. I'd rather talk to another client than an aggressive other solicitor. The bane of my life are aggressive solicitors because I hate them. And aggressive barristers. So no I don't mind them [litigants in person]… It's about getting it sorted as quickly as possible – and I will meet with them I will sit – I'm very clear with the other person 'I'm here as her solicitor but I am happy to sit and talk about process with you or work out a way forwards if we can because we don't want to end up in a court case'. I have no problem with that. And as I say I prefer it.

The compelled showed a great deal of anger and frustration with new working practices and felt under attack. This grouping included some who were in a stable financial position but expressed dislike of changes such as the growing commercialisation of their role. Some had adapted their practice (using new funding methods such free half hour appointments) but, unlike the innovators, they had felt compelled to do so and expressed considerable resentment. They were nostalgic for the past, feeling that family law practice is being eroded. They were frustrated with current market conditions that make it more difficult to carry out a traditional client management role. They were very negative about change and adaptations, using words such as 'hard', 'stressful' and 'difficult' to express the strength of their emotion. Below are extracts from interviews with two respondents were felt compelled which illustrates the strength of their feelings.

INT17 (compelled): I find the managing expectations probably the most difficult thing in that you constantly have people saying 'why haven't you done this?' 'Why haven't you done that?' 'I expected a call here.' And that is really difficult. I find that incredibly stressful cos I feel like I'm always behind and I've never quite caught up with myself.

INT5 (compelled): Are you doing the job that you thought you'd be doing that you signed up for - when you trained in this area? No, of course you're not! The job has changed completely. Do you get the same satisfaction out of the job? No! Would you do something else if you possibly could? Yes! Is there anything else you're trained to do? No – you're a family lawyer!

Although also experiencing misgivings about the changes in family law practice, the traditionalists were in the fortunate position of not being forced to adapt their practice, unlike the compelled. They offered a holistic, one-stop service and, by screening clients, were able to turn away those who would not submit to their way of doing things. Traditionalists were very reluctant to deal with litigants in person, being very aware of professional boundaries and concerned about maintaining ethical standards. They were resistant to using new forms of technology, preferring the personal

touch over virtual communication and slower thinking practices over instant decision making. They showed a strong attachment to old ways of practising, saying that the client should trust them to work in their best interests. Julia Evetts has noted the importance of trust in professional identity (2011, p.4) and, in the context of family law solicitors, Michael King has written about the privileged role of the solicitor having 'trust to do the right thing' as a way of distinguishing themselves from mediators (1998, p.263). Below are extracts from two traditionalists.

INT11 (traditionalist): I'm pretty hard in my judgement on things and I say to people 'I will do my absolute best for you but you have to trust me to do it my way and there are certain things I won't do'. And they can take it or leave it...

INT4 (traditionalist): All lawyers have got smart phones. That makes it very difficult to switch off. You don't switch off. There is no demarcation. Actually I was at a marketing meeting a while ago and the marketing person said – 'You can be on twitter, you can be on Linkedin, you can be doing this that and the other when you are watching television in the evening'. And I thought: 'Great - there is literally no minute at all ever that I get to be me!'

Unbundling can be used to illustrate the different approach of each grouping, related to their orientation to risk. Unbundling is an interesting phenomenon, prompting strong opinions amongst practitioners yet subject to much policy interest. In a report published about unbundling by the Legal Services Board, control was flagged as an issue for both solicitors and clients (Ipsos MORI, 2015, p.3); clients were empowered by taking an active role in the case, feeling 'more in control, and more involved' (Ipsos MORI, 2015, p.34). Among the three groupings, innovators were happy to do it, being prepared to take risks and viewing it as an administrative or marketing matter. They liked the cash flow benefits and the fact that the transparency was popular with clients. The first extract below is a quotation from an innovator who focuses on efficiency. By contrast, the second extract is from a compelled respondent who is carrying out commoditised services but doing so with anxiety

and the third extract is a traditionalist who simply refuses to do unbundling, focusing on the insurance risks.

INT9 (innovator): So you've got to pitch it at the sort of right amount. And it's all standard letters anyway. So it's a question of filling in the blanks frankly. So we've been quite tight in getting to do it efficiently… We're efficient in terms of producing the work anyway. It's just a question of getting people in to sign really and pay.

INT5 (compelled): It changes the whole dynamic of it. Is it [unbundling] less efficient? Yeah, of course it is. Are clients more likely to do and say stupid things? Yes, because they don't have that constant ability to check back to you before they do something. And they're not intentionally trying to do something that is disruptive or. It's just because they don't necessarily understand what's required.

INT24 (traditionalist): I don't want to do that [unbundling]. And I find that terrifying. Because if somebody came to me and said draw up a consent order for me my instinct would be – how have you got to where you've got to with the agreement and is it right? I don't want to just do an order because what I might be doing is entirely wrong. That doesn't appeal to me - at all. No. I want the entire thing from start to finish and I want detail… It's cards on the table. Cos unless you know the facts, how can you give advice? Well mistakes get made and assets missed.

Conclusions

This study provides rich qualitative data from 24 long experienced family law solicitors, at a time of significant and unprecedented change in the provision of family law services, in order to explore perspectives that have not been captured before through empirical research. These respondents have unique understanding of practice over a lengthy period and are able to explain how they have been personally affected as family law solicitors. Although the study was based on a small sample, the emergent identities identified here (innovator, compelled and traditionalist) may be generalisable as similar groupings have been observed in other occupations experiencing structural change, such as healthcare (Waring & Bishop, 2011) and probation (Mawby & Worrall, 2013).

All of the respondents in this study were affected by the new legal services landscape: even if not directly affected by LASPO, respondents suffered indirect consequences, such as having to deal with litigants in person, the growing crisis at court or threats to their livelihood caused by measures to assist unrepresented litigants. Family law solicitors have always run a business but some of these respondents expressed how increasing commercialisation has led to changes in their professional identity, from a public service orientation to a more enterprising identity driven by market forces. This empirical data has implications for the well-being of family law solicitors, given the strength of negative feeling expressed by some of the respondents. In addition to these changes, weekly and daily routines have been lost due to the closure of local courts and technological developments, yet a sense of community (although perceived to be aging and contracting) remains. In the context of family law, given the virtual demise of legal aid, private client solicitors are now paid directly by their clients for services so are subject to clients' increasing power to determine the conduct of their case, as well as their ability to challenge using information from the internet. The tension between client autonomy and professional authority is apparent from the qualitative data in this study: one respondent [INT11] commented in interview that her clients are '*paying to be managed*'. In other words, clients with resources now have more choice in the market so can decide whether or not to pay for a service where they are expected to place trust in the solicitor to manage them and their case.

This study finds that, in response to the changes identified in this paper, a variety of identities may be emerging amongst practitioners, characterised as innovators who are open to adaptation, the compelled who incorporate changes but are resentful about having to do so and traditionalists who resist change and offer a service based on trust. The recent study of family law solicitors by Mavis Maclean and John Eekelaar helpfully sets out observational data in the context of practice setting,

noting for example that a solicitor who felt 'deeply frustrated and distressed by her inability to continue helping her clients after LASPO' was about to take early retirement from a firm that was 'under pressure' (2016, p.57). The practitioner focus of this study adds complexity by suggesting three groupings where membership is not linked to practice setting: some practitioners with the role orientation of innovator were noted to be working in settings that had not offered new forms of service, and some traditionally-orientated practitioners (for example those who put hard copies of emails in the post to delay delivery to clients) were working in large practices that had invested heavily in new technology. Individuals are influenced by a myriad of factors, both current and historic, as well as personal and environmental, and this data suggests that a proportion of family law solicitors across all practice settings may be resistant to innovation, even if needed to deal with commercial threats or plug gaps in public access to legal advice. Thus, practitioner resistance may pose a difficulty for the adoption of proposals that would require renegotiation of professional boundaries such as legally-assisted mediation or a relaxation of client management such as unbundling. Of the three groupings, innovators appeared less concerned about client management, which suggests a link between willingness to adapt and fluidity in professional identity. Further changes in the practice of family law solicitors may be needed in future but these qualitative research findings suggest that attachment to existing professional boundaries and traditional values associated with family law solicitor professional identity such as client management may present a barrier to innovation in this new legal services landscape which presents both opportunities and challenges.

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