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An independent mind

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LAW FIRMS AND THE FORMULA FOR SUCCESS

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Why is it that some law firms, ostensibly operating in the same sector and providing much the same services in much the same way, do better than others? Understanding the underlying factors that might explain these relative differences becomes ever more important in an over-supplied market recovering from the financial crisis as well as facing fundamental change and restructuring as the Legal Services Act 2007 comes fully into effect.

1. What do we mean by 'success'?

It seems to be a source of endless fascination for partners in law firms, aided by consultants and commentators, to speculate about why some firms do better than others. They want to know on what basis others can be placed higher in the league tables, or why a competitor can produce (so much) more profit per partner. Of course, 'smoke and mirrors', misinformation and misinterpretation could be the reasons. But let me assume otherwise for the purposes of this paper¹.

First, we need to be clear about what we mean by 'success'. With so much published economic and market-related information available about law firms these days, it would not be surprising to find money and reputation (shown by relative position in league tables) being used as measures or indicators of success. However, other possibilities might be staff morale and job satisfaction, low staff turnover, and professional recognition or preferment (perhaps demonstrated by partners being involved in high-profile cases, or being appointed to the Bench or to leadership positions in professional and other organisations). These are all legitimate and acceptable, and it is often the case that they will appear together.

¹ This is a revised and updated version of an article that originally appeared in *Managing Partner* magazine in December 2002 (Volume 5, Issue 7) under the title 'Why some law firms are more successful than others'.

In any event, we can describe all of these success factors with Es (if not with ease): earnings, esteem, engagement, elevation, excitement. Forgive me if, in the interests of economy, I appear to give primacy to the first of these.

It is also important for me to emphasise that I am not here looking at success in any absolute sense. A firm ranked lower than first in the league tables might still be a very good firm; a partnership that does not produce as high a level of profitability as the most profitable firm might still earn more than many outside the profession (or even within it) would regard as decent. The issue is why others do *better*.

There are, I believe, three principal factors that contribute to relative success.

2. Market

The first contributing factor – admittedly at a rather high level – is a firm's choice of market. I recognise that the use of such a word takes me close to the debate about whether law is a profession or a business. Personally, I have never believed that the two are antithetical or mutually exclusive, and would rather hope that, in the twenty-first century, it's no longer a debate. For my immediate purpose, I would in any event side-step it by saying that, however we view it, the practice of law is an economic activity and, as such, inevitably subject to market forces.

By recognising and considering market forces, firms can then choose to practise in such a way that those forces are more likely to play out in their favour. This means making choices about what type of work to engage in, for what sort of clients, and in what locations (which these days are as likely to be virtual as physical), as well as being mindful of the competition. This, of course, is the essence of strategic thinking (services, clients, geography and competitive advantage²). Understanding the dynamics of different markets, and making informed assessments of future trends, are key components to sustainable success.

With some inevitable exceptions to all that follows, commercial work is generally more lucrative than private client work, privately funded work is better paid than publicly funded work, arcane technical work (such as tax) typically generates better rates than more routine work, large financing and M&A transactions attract higher fees than property transfers, and so on. Investment banks are less fee-sensitive than retail banks, commercial organisations pay better than the public sector, high net-worth individuals can afford higher fees than the less well-off, and so on. Having said this, a client's *ability* to pay more than average has to be accompanied by a *willingness* to do so as well. The legal economy in London is more lucrative than the rest of the UK, the US is more profitable than Europe, Western Europe is better paid than Central and Eastern Europe, and so on.

None of these relative advantages will necessarily last forever, of course. In many mature legal economies, for example, we have seen the decline of domestic property transfer as a source of profitable work; and in the UK, solicitors and barristers are pulling out of legal aid work. Also in the UK, the number of litigated commercial claims has declined markedly as more clients have opted for dispute avoidance or alternative

² See further Mayson (2007) *Law Firm Strategy: Competitive Advantage and Valuation* (Oxford, Oxford University Press).

resolution. Some types of work are also related to the economic cycle – such as property transfer, M&A activity, insolvency and restructuring – so that levels of return may not be constant even in supposedly higher value areas of practice. However, making informed choices about work, clients, and geography will at least increase the chances of success, as against relying on fate, happenstance or serendipity.

Finally, given that currently there are virtually no areas of legal practice that are the exclusive preserve of lawyers³, the number and the nature of the competitors will also influence what it takes to be successful. Other lawyers will remain part of the competition; but depending on the nature of the work, in-house lawyers, other professionals, legal process outsourcers, and even banks, financial advisers, insurance companies, and supermarkets may enter already crowded markets with more reach, deeper pockets and a more commercial approach. Clients convert to become competitors – often while remaining clients. Given the current philosophy of political economy, we can only expect more competition as countries discourage monopolies and protected markets. Successful firms understand sources of competitive advantage: they develop and protect their own competitive difference.

It would be idle to pretend that all firms have equal choices when they select their work types, preferred clients, and locations. The firm's staff have to be both competent and credible, based on their knowledge, skills, experience and temperament. Its own unique 'path through history' may therefore have predisposed its lawyers and its client base in favour of or against certain types of work or market position. For example, the Magic Circle firms in London were better placed than any other European law firms to capitalise on the developments in the global finance markets, with the result that they have been able to globalise faster and more effectively than others – to the extent that the gap between them and the chasing pack is arguably now too wide to be bridged and achieve an equal competitive status.

There are, therefore, no guarantees of success or greater profitability. Nevertheless, by balancing these market considerations, firms can in principle give themselves a head start on comparative success by choosing the configuration of services, clients, and geography that is most likely to lead to competitive advantage and higher rewards, given client expectations and the competition they face.

3. Commitment

Choosing what may be inherently more 'successful' markets is ultimately merely a point of entry. The more successful firms make a series of commitments that distinguish the implementation of their market strategy from others apparently following the same course.

First, many firms now make a commitment to market sectors (such as financial services, the public sector, energy and utilities, transport, retail). Their lawyers make it their business to keep up to date with developments in the sector, to join sector-related groups and associations, to consider how the need for legal services within the sector

³ For a review of these 'reserved activities' in England and Wales, see Mayson & Marley (2010) *The Regulation of Legal Services: Reserved Legal Activities History and Rationale* (London); and Mayson & Marley (2011) *The Regulation of Legal Services: What is the Case for Reservation?* (London): both are available at www.stephenmayson.com.

will develop, to understand the pressures and success factors within the sector, and so on. They also use some of this knowledge and experience to promote their reputation within the sector through networking (increasingly through social media), publishing articles or books or other material (increasingly electronically), and speaking at seminars. Clients in the sector recognise the firm and its practitioners as part of the sector; they know that when they instruct the firm, they do not need to educate their advisers about the salient features of their market. Less successful firms contend that they have clients spread across too many industry sectors for this approach to be viable; or they undertake the process in a half-hearted or under-resourced way.

Second, the more successful firms make a commitment to their clients and referrers. As with sectors, lawyers and others in the firm make it their business to understand what makes the client tick and what is important to them, to understand and deliver what the client expects, and to keep up to date with personal or business developments. Rather than paying lip service to flavour-of-the-month notions of 'relationship management', the more successful firms actually give relationship management programmes support and resources.

More than this, relationship partners actually fulfil their responsibilities in the role by spending time with clients and referrers, thinking about their need for legal services, and keeping both the client and others within the firm informed; they review and improve the provision of the firm's services so that real value is delivered to the client; and in larger firms they liaise with matter partners and keep abreast of the client's work (or the referrer's portfolio of work) and progress on it.

This level of care and attention cannot be given to every client or referrer, but only to those who are economically and reputationally important to the firm; these 'key relationships' become voluntarily bound to the firm. This approach assumes that continuing relationships and repeat business are possible, whereas there are some types of practice (and some clients) that are more transactional: for them, delivery of service is more important than enduring or close relationships.

Third, then, it is necessary to look at each area of practice and make sure that it is appropriately structured and resourced – in other words, that the firm's 'business model'⁴ is robust. Higher leverage, and pushing work down to employed lawyers or paralegals is not a sure-fire route to profitability: that structure has to be the right one for the nature of the work and client expectations of partner involvement. But where it is right, the more successful firms ensure that partners spend their time effectively on filling the capacity they employ, and on quality control and supervision.

Where lawyers can be substituted by non-lawyers, or human beings with technology, and virtuosity with case management and processes, this is done in the interests of cost-efficiency and delivery better value to clients. Financial management and profit-sharing systems do not encourage or recognise partners' personal chargeable productivity where that is not an appropriate measure of their contribution.

Fourth, the more successful firms also ensure that technical, market, client, and case management know-how is developed and maintained: time on training and know-how is budgeted and recognised as productive. Further, the departmental and central

⁴ For a detailed consideration, see Mayson (2010) *Business models in legal practice*, available at <http://www.stephenmayson.com>.

infrastructure is sufficient to support the firm's staff and does not distract them from their professional task, but yet is not so over-bloated as to burden the overhead of the firm or interpose administrative hurdles. In this way, the firm achieves a greater degree of consistency in quality and style that becomes recognised as its way of doing things – and which are important to both relationship and transactional clients.

These commitment factors represent good management and in some senses are fairly obvious requirements for greater effectiveness. The issue here lies not in understanding what the factors are: knowing what the better firms do is again only the starting point. The difference lies in making these things happen, and happen as close to constantly, consistently and cost-effectively as is possible.

4. Contribution

One of the largest disconnects in many law firms is between what a firm needs its partners to do in order to achieve its strategic and other objectives, and what the partners actually do. There is always some excuse (usually client work). The more successful firms, on the other hand, make very clear connections between aspiration and action. There is a business planning process that links individuals' priorities and actions to practice area or departmental plans (in larger firms) and then to the firm-wide plan and budget. The connections are explicit and measurable. This is not an exercise in bureaucracy; indeed, there may be no formal process or written plans at all – but there is nevertheless a process of articulation and agreement.

Even where the plans are written, the combined firm-wide, departmental and personal plans in successful firms are often considerably shorter and seemingly less detailed than the prolix, 'motherhood-and-apple-pie' (and inevitably unread and unrealised) business plans of less successful firms. Steps are taken to make personal plans relevant on almost a daily basis – admittedly not an easy task in a law firm! Partners commit not to 1,200 (or whatever the number is in your firm) chargeable hours, but rather to making an agreed total contribution of hours representing both chargeable and other time. What is planned and managed then is a partner resource usually of between 2,000 and 2,500 hours a year (depending on the agreed work ethic and lifestyle of the partnership). Within that time, all partners must do all the things that are required of them collectively to make the firm successful: doing yet more chargeable work at the expense of other investments that the firm requires is unlikely to foster sustainable success. Those firms that are better at achievement also tend to be better at harnessing and coordinating this total partner resource.

Personal plans are both individualised and contextualised: that is, they play to partners' individual strengths, and harness and coordinate those strengths in the context of firm-wide and departmental plans. Not only are the plans made, they are monitored. Partners are held accountable for their performance against the agreed personal plan. Planning for chargeable time is almost non-existent: it is, after all, so unpredictable. However, client satisfaction, the effective utilisation of all staff, and the return on chargeable activity, are taken into account.

What counts just as much is producing a return on the investment of other time and effort in such activities as relationship management and networking, business development, innovation, nurturing talent and know-how within the firm, and

contributing to the fabric of inter-partner relations and the firm as a whole. The measure of performance is not therefore just the time spent (which, as with chargeable time, is a crude indicator bearing no relation to value) but an assessment of the effectiveness of the time invested and of the return to the firm on that investment.

Finally, on the basis that practising law is an economic activity, partners must also contribute to the firm's profitability. This, ultimately, is the hard measure of return on partners' total contribution of chargeable and investment time. Again, the more successful firms do not see profitability as the variable outcome of (hopefully growing) fee income. Partners are not valued for their own high chargeable time, for bringing in new business, or for carrying high-billing clients. They are instead expected to manage their matters, clients and referral relationships, and teams, to produce profit and not just turnover: profitability is measured and monitored by matter, client and team, as well as by practice area and across the firm as a whole.

Differences in the relative profitability of different types of work or specific matters, and of different types of client or specific clients, are explored. Lessons are learnt about where and how the firm delivers relatively more value and effectiveness to the client and relatively more profit to the firm. And these lessons in turn feed back into the future choices that the firm makes about its markets. Successful firms, in other words, make explicit connections between strategy, contribution and profit, and the daily priorities and actions required of partners to make these links a reality rather than unrealised aspiration.

5. A theory of professional relativity

The E factors of success are therefore the product of market, commitment and contribution. Alternatively expressed as a formula, $E = m \times c \times c$. We then have a notion of relative success that can be expressed as $E = mc^2$ (a 'theory of professional relativity', if you like). Each one of the elements is important, and needs working on. Each needs to be optimised, and the effect is cumulative – which is why competitive advantage can be so difficult to achieve and maintain, and can be so easily lost.

Perhaps you don't need to be Einstein to work out why some law firms are more successful than others ... but it obviously helps!