

# STRESS TESTING YOUR FIRM'S STRATEGY



HOW WELL DO YOU KNOW YOUR BUSINESS PLAN? ARE YOU ASKING THE RIGHT QUESTIONS? HERE'S AN EDITED TRANSCRIPT OF THE PRESENTATION THAT PROFESSOR STEPHEN MAYSON GAVE AT NETLAW MEDIA'S RECENT LONDON LAW EXPO EVENT. TRANSCRIBED BY DIGITAL DICTATION SPECIALIST LEXACOM.

'What I wanted to do was give you some way of thinking about how you formulate strategy – the questions you ask or sometimes the questions you don't ask, with a view to testing not only where you are, but where you want to get to.

Now most people think of strategy in terms of where they're trying to get to but, of course, you can only get to there from where you are at the moment so you need, in a sense, to ask exactly the same questions about where you are as where you want to get to.

These are the four elements I'm going to use for the purposes of stress testing that I've used as a consultant over the years and they're elements that I now use as a non-exec.

- What is the content of the strategy – have you stress tested that?
- What does that look like in terms of the risks that exist, the risks you might take or avoid in the future?
- Have you stress tested the business model that will deliver the strategy within the context of the risk?
- And does all of that deliver a competitive advantage that is meaningful and as sustainable as a competitive advantage ever can be?

So these are the four hooks, if you like, on which I'm going to hang this presentation: strategy, risk, business model and competitive advantage.

I'm going to give you 50 questions. I shall probably be exhausted at the end and you might be too, but believe me, they are not exhaustive; I've had to prune them down.

## Strategy

So let me start with the strategy questions, what is it you're trying to build and from where are you trying to move.

## 'The core content of strategy only revolves around three things – your clients, your services and your geography'

The core content of strategy only revolves around three things – your clients, your services and your geography. So in terms of strategy, who do you want to act for, who are your targets, what do you want to provide for them, where are those people and where do you need to be to get them? Just think about that – I often describe it as a triangle. It's not that one is any more important than the other; you can't actually have a legal business that hasn't got all three, but have you tested the elements of those three bits?

Have you looked at the profitability of the clients, the work you do, the type of work you do, the offices you've got? Have you stress tested the money side of the three bits of the pyramid? Are your future targets specific, identifiable and named? You probably have issues with marketing people because that's the question they want answered. If they're going to target something for you or a group of people or put you in the right place, they need to know – not generically, not abstractly – but exactly who it is you're trying to sell services to. Where are we going to find those people? Are there actually enough of those people to provide services for in your jurisdiction? It's an issue I'll come back to.

Equally important though is who do we not want to act for? Sometimes it's easier to say yes than it is to say no, so are you clear about what you don't want to do, who you don't want to act for, where you don't want to be? And who has the gift of instructions and where are they located?

It's all very well to say well we'd like to do that sort of work for that sort of client but it may be, of course, that that sort of work for that sort of client isn't actually given out by who you think. It might be done by an intermediary. It might be done by a procurement department. It might be done by some other advisers. How do you get to them, what's the point of contact, who has that gift of instructions?

Have you quantified your target markets? I've sat in on many lawyer strategy conversations about the wish to

act for high net worth individuals. Well, let's connect that to my earlier question – do you know who they are, where are they, what is a high net worth individual? It's a very handy phrase but what exactly does it mean? At what point does somebody become a high net worth individual? Is it because of their income, is it because of their capital, is it because of disposable income, or accessible or liquid capital? What exactly do you mean? What legal issues arise to make you want to work for those sorts of clients?

But then, crucially, have you quantified how many high net worth individuals there are within your reach? It might be a nice aspiration but there might actually only be two of them within your reach? Is that going to sustain a practice, is that the strategy you really want? And if not, do you need to change your geographical spread in order to access more of them? So, how many of them are there, where are they and what do they think about legal services?

Remember, just because people are rich, does not mean they want to spend a lot of money on legal services. Remember James Caan's point, he was probably the richest man in the room, I don't know that for sure but he probably was at the time. He's not going to waste his money on legal services and splashing out just for the sake of it. So where is your market, how big is it and how do you get to it?

Will the volume and the anticipated rates of growth in that market sustain you? If you'd made a big bet on legal aid in the last 10 years you'd now be thinking – whoops. There are other bits of the market that are also going to change. Again, think of James's views about consolidation, commoditisation, the use of technology. Something that's good today and sustainable, in two to five years' time might be a very different market. What do you know about it, have you tested how that bit of the market is likely to evolve?

Do you have a notion of your ideal client? Again, a point James made: a client who doesn't pay is not a good client, however much they might otherwise fit that description of being 'ideal', whatever the ideal is, be it high net worth, corporate, bank, whatever. If they're not paying, they're not ideal.

Have you described what your ideal client is? Have you thought about those clients you really love acting for, being with, spending time with? What are the characteristics of those clients that make them good or ideal? Once you've articulated that, you're in a much better place for saying, so where do we find more of those sorts of people? Where are the clients with those characteristics? Sometimes it's not their net worth or their business activity that makes them ideal, it might be the sort of people they are – but how do you get to them?

Will the future market require a different mix of services, including multi-disciplinary services? My short answer to that is, yes. But what does it mean in your location for your type of firm, and the sort of clients and services you want to act for? How are people in general going to access legal services in the future? Are they going to buy them separately, are they going to unbundle them, or are they going to re-bundle them into a different multi-disciplinary offering?

Are some things inherently attractive to your competitors? I'm actually struggling to think of any

## 'Is your strategy going to take you from the frying pan into the fire? Is your risk profile going to change?'

area of legal practice at the moment that is inherently attractive, but it might be as we move forward, when we think about the goal that could be driven by multi-disciplinary, highly commoditised, maybe standardised, scaled businesses, maybe there is something that's inherently attractive. But if you think about it from the entrepreneur's point of view, can we scale it, can we build it, can we do it more efficiently? If there's part of your current market that is susceptible to those forces then maybe the answer to this is, yes, it is inherently attractive. So you should be thinking, how do we compete with those people?

And if you believe, as many lawyers do, that your future lies in relationships rather than scale and commoditisations, what have you done to stress test that assumption? You might be right. I fervently hope you are right because I do think there are some areas of legal practice that shouldn't be scaled and commoditised, and which do need to remain personal and tailored. But what are they and what's going to happen to them over time? Are they going to be traded away, competed away, given away, or can we in a sense, ring-fence some of that territory for ourselves and maintain those relationships?

### Risk

Now for the risk that lies behind all of that – is your strategy going to take you from the frying pan into the fire? Is your risk profile going to change? I have to say in most of my dealings with law firms, we've not had terribly long conversations about risk. If any of you were in the session earlier, I asked the question about how many firms had a risk register – it was an astonishingly low number of hands that went up. And I suspect a lot of that was about operational risk whereas what I'm talking about here is strategic risk.

So again, have the risk conversation because it will shape how you think about the future and then what you do about it. What are the risks that arise from the clients or the markets that you're in and you want to be in? Are there trends happening? Are they growing, are they declining? Are they shifting to commoditisation, all that stuff? How credible are you? What barriers to entry and exit are there, for you getting into or out of the areas in which you're currently working or prospectively interested in? Is there a history of consolidation?

What about the dependence that you as a business have, or might have, on a limited type of business or a limited source of business? What are the risks in having something that is so closely aligned to a limited number of sources of access or people who provide or people who buy, that might then undermine your strategy? What are the risks in the services and products that you produce? Again, the same sort of issues of trends, what's happening to the way in which, say, personal injury is being provided, or litigation? Are we moving towards an anti-litigation culture that means that clients, whether they are personal or corporate, are not likely to litigate as much in the future, and might want either to ignore the problem and just do a negotiated settlement or go for arbitration or mediation?

What are the trends on services, the barriers to entry? What's the growth profile? Are some of those services inherently profitable or difficult to run economically? Do they have money laundering or other compliance





obligations that ratchet up the cost? Are there pressures on how you price – do clients want to buy in a different way? Again, what's the profile of those services? Is regulation and funding going to change how people provide or buy what you want to do?

On geography, the usual sort of stuff really – are you in an area of demographic growth? Are people coming into where you are, or want to be, or is it getting more and more run down and people are beginning to shift? Again, if your profile is a certain type of client, are you likely to find them in one type of geography, one town, one location, one part of the country or another? Where are your entrepreneurs going to live, where are your high net worth individuals going to live? How close are you, how do you get there? All of these questions are about risk.

Don't forget the operational risk. Most law firms, if they do risk, tend to do this bit to death. But if you're moving to technology, how often do you need to turn that technology over? How long before it becomes obsolescent? How long before somebody completely reinvents how that particular type of service works or that the expectation of clients will change?

I suspect many of us were not prepared for the way in which social media has taken off and the way in which mobile technology is now used by people in every aspect of their life. I had a bit of a smile this morning as I walked into the railway station from which I travel – everybody, everybody was looking at a mobile phone. What are they looking at? What does that say about their propensity to buy or access legal services from a mobile? Are you geared up for that if that's the technological shift that clients are making? And it's all very well for us to say no, we want to deal with people who want a relationship, but how many people arrange their relationship over the mobile technology? Are we making it as easy as possible to secure and maintain those relationships?

Do we need to think about outsourcing? It's sort of come and gone a bit, and I detect that a lot of law firms that did outsource are sort of bringing bits of it back in because they're not getting the reliability or the relationship that they wanted from it. So again, what are the risks in outsourcing? What are the risks in not outsourcing?

Do you have risks in ownership and governance? Most law firms do, I'm sorry to say. They take enormous risks on letting some people into ownership. They take enormous risks on not managing the performance and accountability of those people once they're in ownership, and they take even bigger risks by not getting rid of them when they should or getting rid of them in the wrong way. There's a whole package of ownership and governance issues that increase the risk profile quite dramatically and can systematically undermine whatever decent strategy you might otherwise have.

Are there risks in your decision-making process? Do you have too much information, not enough information? Are you data rich and information poor? Do you actually have the ability to analyse all the data you might be collecting and make sense of it? If not, you're increasing your risk by capturing that data because that's got costs associated with it and then you're not making the right decisions based on whatever that analysis ought to be telling you.

Are you taking risks on remuneration by not rewarding the people who are producing for you, by over-rewarding some of the people who aren't, or by rewarding the wrong sort of behaviour? I could give you more than 30 minutes on law firm profit sharing systems and how what you reward distorts behaviour and totally destroys strategy or any sense of strategic achievement. So again, there's a package of risks in there that need to be assessed. Part of my message in all of this is if you haven't aligned strategy, risk, business model and competitive advantage, your strategy is not going to work.

Are you prepared to make a decision without complete information? This is often a real challenge for lawyers because we're used to investigating and analysing and weighing up pros and cons but, of course, a lot of business people don't. They take that risk as a business risk that, if you like, is what they get rewarded for. So there's a balance to be drawn between over-analysing and making decisions on as much information as possible, but then find you make a slow decision that has allowed somebody else to beat you to the market. So what's your risk appetite, in other words? Where do you need to sit on that balancing act of how much do I need to know before I make a decision?

Do you prefer to avoid risk than manage it? Most law firms do. You put a proposal to a partnership of lawyers and they will analyse to the nth degree where all the risks are at that point, some of which will never happen, some of which are so remote they're fanciful, but the whole package looks terribly scary. And that leads you to a decision not to take any risk at all, this is risk avoidance. Whereas what you should be saying is, where are the risks, how big are those risks, what is the impact of those risks going to be and then how do we manage them? They are very different mental processes.

So don't play lawyer with your business, don't play lawyer with business risks. I'm not saying don't analyse them, I'm not saying not to think about it very carefully, but realise you can never know everything and even if you knew everything now, the future would have changed it. So make the best decision you can, but please make a decision. Make it quickly and get on with it.



From dictation...



...to delivery.

## Lexacom has it covered

Join the growing number of law firms choosing Lexacom's cost effective, accurate and user-friendly digital dictation and workflow system.

Designed to help you improve efficiency, profitability and client service, Lexacom enables professionals and their secretarial teams to create documents, file notes and letters quickly and easily.

- Dictate and review documents from your smart phone or tablet, anytime, anywhere
- Store or send documents with ease
- Choose our exclusive one stop dictation to delivery service as an approved Docmail partner
- Monitor your workload with advanced management and reporting tools
- Add fully integrated voice recognition
- Securely share information across sites using Lexacom Connect cloud technology
- Access approved secure outsourced transcription services

It's easy to switch to Lexacom, so before renewing your current contract or taking on a new provider, contact us to find out why thousands of professionals in the legal, financial and healthcare markets already rely on Lexacom.

For more information, or to book a free 30 day trial, contact

[sales@lexacom.co.uk](mailto:sales@lexacom.co.uk) +44 (0)1295 236 910 [www.lexacom.co.uk](http://www.lexacom.co.uk)

QUOTE: PM14



## The business model

This is the building blocks of the firm, the things that actually make your strategy happen within whatever your tolerance for risk is. Those of you who have heard me talk about business models before will know that I've got four elements to it: value creation, resourcing, financing and rewards. If your strategy, either current or future, does not create value for clients as they see it, it's a worthless strategy. It might be logical, it might be analytically perfect, but if it's not creating value for the people you want to buy from you, it's not doing its job.

So where and how do you create value? Do you know where your clients see the creation of that value or where they would like to see it? There's only one way you can answer that question – go and talk to them. Don't make any assumptions – I've seen it far too many times, lawyers will say, 'Yes, I'm close to my clients, I understand them, I know what they want, I understand how they think and therefore I know how to create value.' You probably don't. And to be fair to you, very often at the point you ask the question, they don't know either, but at some point in their journey with you along that lawyer/client relationship, they will have worked out where the value is.

So if you don't know the answer at the beginning, stay close, stay in communication. Not just about the legal stuff, but where's the benefit of what I'm doing for you? How can I do a better job? How can I create more value? And remember value isn't just economic, it might be psychological, it might be social, it might be about relationships. Lawyers can do an awful lot to destroy relationships between clients and other parties. You could create enormous value by not destroying those relationships. And that might mean not litigating, for instance.

And do you have the right resources in place to deliver that value? Do you need all of those resources on the inside? Do all of those resources need to be lawyers, do they need to be human beings? All sorts of questions go into that perception of value that the client is coming to you for and your response can be infinitely varied. (When I come to the question of competitive advantage at the end, remember my point about infinite variety. The ways in which you create value and the ways in which you resource the firm, the sort of people you are, how you behave, that can be where you find your competitive advantage.)

Do you then have access to the internal and external debt and equity capital that you need? Since the Legal Services Act, you've got many more opportunities to finance the firm in ways that make business sense – as opposed to fitting the old professional partnership model. Can you get access to the finance that will give you access to the resources you need to deliver the value to the client? Do you know what those resources are so that you can work out how many of them you need and therefore what finance you need to support them? And is that better coming from inside or outside?

There are no generic answers to that, the real question is how do you structure the business to run the cash to get the business moving, to keep it moving and if you're likely to run out of cash, where else are you going to get money from? Try and match your source of capital, your working capital and fixed capital, and the terms of that capital to your need. If you've got a

**'Lawyers will say, "Yes, I'm close to my clients, I understand them, I know what they want, I understand how they think and therefore I know how to create value." You probably don't'**

short-term working capital need, go for short-term finance; if you've got a long-term investment need, go for long-term finance.

But have some projects in mind, so you can demonstrate to those who fund you that you've got a history of taking money in, turning it over, paying it back, making a return on it and then moving onto something else. The law firms that say we don't do debt, we don't want debt, we hate debt, are actually the ones who are missing a trick. It's a sort of laudable objective, but it's not a business one; it's an attitude to risk that probably won't take you very far in business.

And then on to the rewards – are you generating sufficient income and capital returns over a decent period of time to represent a good return on the finance you've done to invest in the resources to get you the value creation that keeps you in business? Again, we've got a much bigger, richer package of possibilities on how we reward people now. Are we rewarding the right people for doing the right things, are we rewarding them in the right way, and are we rewarding them over the right time frame? Do we have to pay everything out as current income and pay huge rates of tax on it? Should we keep paying rewards out to people who actually aren't performing, they just happen to be an equity partner in the firm for the time being? How do we distribute the return on what we're creating here to motivate the right people to do the right things and to keep the business going?

This rewards point – again James Caan made it – are you actually linking performance to rewards? If you're not, you're missing a link that is likely to drive different types of action or, indeed, inaction, and might mean that you don't actually deliver your strategy. Is there accountability? Is there consequence to what people do or don't do in terms of delivering your strategy and what they take out of the business? Are you linking that contribution to rewards?

Do you have a structure or a system that somehow distorts behaviour? Do you appoint the best people, the right people to management positions or is it just last man or woman standing or the one who happened to miss the meeting and they were volunteered? It's a job, it needs doing, it's a complex job now in a complex world. So make sure the best people get to do it and then allow them to do it. If you've been to any law firm management conference in the last 30 years, those two points are high on the list all the time.

Don't appoint the senior people, don't appoint the big hitters to management jobs just because they're senior and big hitters. They're great at doing the job – terrific; let them do it. And don't employ expensive non-lawyer managers or even lawyer managers and don't let them do the job. There is no point, what a waste of money. That's capital that could have been invested somewhere else for some other purpose and some other return.

The biggest problem in law firms today, surprisingly after the recession, is that they've still got over-capacity. In fact it's worse than that, even at the height of 'busy-ness', they had over-capacity. There's no surprise that it's been painful for the last seven or eight years. If you've got over-capacity, recognise it and deal with it. It's not going to go away. It is the



most expensive drain on profitability. You're effectively paying people to sit and not produce. No other business on the planet would do that, why should law firms?

## Competitive advantage

The thing that makes you stand out and, hopefully, is the golden egg for you is your competitive advantage. Where does it come from? Do you know why your clients currently buy from you? What is it they think makes the difference? Why do they buy from you at the price you're charging? why do they buy from you with the method of pricing and charging that you're using? Understanding those things are actually quite important in differentiating you from the rest of the market. Why should your clients go on doing that in the future? Will they? How do you know? Again, have you asked them?

Who will be your real competitors? Remember in the future, your competitors won't necessarily be other lawyers or other law firms, it could be a whole raft of different providers, some of whom are only virtual. But who are they, where are they, how are you going to be different? What is it that makes you different and does the difference lie in elements of your strategy or business model?

At one level it's actually quite difficult to find difference in what you do, who you do it for and where you do it because there's probably always someone else there who's doing pretty much the same thing in that triangle. So the difference probably doesn't lie in the core or content of your strategy, it will lie in those elements of the business model that I've just described, so how you do it, how you resource, how you charge, how you create value for those people in those places – that's where you probably need to look for difference. And how sustainable is it? Most people are going to compete away any difference that they see in your business model and strategy, so this is not a one-time thing, you've just got to be all over it constantly.

## Looking ahead

The future – is there one? Baroness Deech started by asking us whether we were looking at extinction or a future. I think she came out on the side of yes. I'm definitely on the side of yes. I don't see the need for legal services disappearing any time soon, I don't see it being competed away or regulated away. One staggering number from some recent Legal Services Board research is that of all the problems that private clients and small businesses have, only 17 per cent of them end up in the hands of qualified lawyers. Only 17 per cent. Think of that as an untapped market of 83 per cent or another five or six times. That's a lot to go for, that's a big future and that's what we should be working for. We've got some challenges, we're in a world of markets and competition, that's not going to go away.

So what's the demand and how do you know it's there and what's your response? That's being clear about what your strategy ought to be and how you intend to compete. And that means thinking strategically and entrepreneurily, and remembering that being a professional is not antithetical; it's not mutually exclusive to being an entrepreneur. It's different and sometimes it's difficult but they are not mutually exclusive.

And then how do you position and resource the business to respond in the way you want to? That means being very clear about your business model, being absolutely clear about value creation, resourcing, where the money's coming from and who it's getting distributed to.

So think about those different elements that make up your future and that should give you probably enough stress to be testing for the time being.

So what I'm concluding is, I think there is a great future. I'm not saying this because normally I'm a doom and gloom merchant and people say 'Oh stop upsetting us, Steven, and give us some good news'. Here's the good news, I think you've got a great future but the future is not what you're used to at the moment, and it's certainly not what you've been used to in the past. The future needs reinvention from lawyers and law firms – but that's along those lines of clarity that I've talked about. The world that we're now in is one of the monocultural, single solution, professional services partnership that many of us were either brought up in or probably joined latterly. It's just a different world and we can't expect law to be immune from that.

Remember businesses take risks, they don't avoid them, and profit is the reward to risk. So be clear about your risks, be clear about your risk appetite, so you know what you're in for and how far you're prepared to go and what you're prepared to risk. And that's really what this presentation is about: clear strategic thinking, identification and management of risk, not avoidance of it, build an effective business model and understand exactly what you're doing with that model and why, and find some meaningful difference to clients. It might be small, it might be temporary, it might be personal. It doesn't really matter what it is, but find it and deliver it and if you keep on doing that, that will be your rosy future.' ■

• The full transcript of Professor Stephen Mayson's speech is available online from Netlaw Media. Visit [netlawmedia.com](http://netlawmedia.com).



Lexacom®  
Doing more with digital dictation

Lexacom's secure, accurate and flexible digital dictation and workflow software helps law firms and other professionals improve business efficiency, profitability and customer service.

Lexacom enables solicitors to quickly and easily record and prioritise accurate dictations for instant dispatch to their secretary for transcription. Our latest software offers optional voice recognition and secure outsourced transcription, secure mobile dictation and advanced reporting features to monitor and manage workload. Highly configurable, it will accommodate the needs of small office networks or multi-site organisations.

Already established as a market leader in the medical sector, Lexacom continues to grow in popularity in the legal market, as more law firms switch to Lexacom to take advantage of our flexible, easy to use and cost effective system.

So if you are still using tapes, or if your current digital dictation contract is up for renewal, then contact us to find out what Lexacom has to offer.

For more information visit [www.lexacom.co.uk](http://www.lexacom.co.uk), or email [sales@lexacom.co.uk](mailto:sales@lexacom.co.uk) or call on +44 (0)1295 236910

[www.lexacom.co.uk](http://www.lexacom.co.uk)