

## Using Technology to stay in the Personal Injury Market

### **Abstract:**

*The current wave of legislative, procedural and regulatory changes to personal injury litigation may be the tipping point for many firms who, like many before them, have been considering withdrawing from this market. The former Justice Minister Lord Faulks indicated back in May this year that there would be no retreat on the far-reaching and controversial plans to reform the personal injury sector. At that time, he told the Association of Personal Injury Lawyers (“APIL”) annual conference in Birmingham that the Ministry of Justice intends to press ahead with the five-fold small claims limit rise to £5,000 for all personal injury claims and to scrap general damages for whiplash claims.*

*That announcement was then somewhat overshadowed by the Brexit result, a new Prime Minister, a cabinet re-shuffle, and Lord Faulks’ subsequent resignation. Whilst the impact on policy and timescales is yet to be understood from these changes, it can be reasonably assumed that the overall reform strategy will remain on the cards.*

*Change is never easy in any industry and it is a natural instinct to resist but as these new proposals bite then those who continue to practice in this sector can no longer just maintain a holding pattern until the dust settles, as in truth it never will.*

*This paper considers an alternative option for firms contemplating exiting the personal injury market. By adopting a systematic approach to the application of modern technology, firms can continue profitably in this market.*

*The central proposition is*

- technology is now a commodity;*
- it is possible to buy only what is needed, for as long as it is required;*
- you do not need extensive development or expensive infrastructure;*

*Successful exploitation of technology requires lean in-house processes but don’t change one without the other.*

*The author draws on his 20+ years' experience of business and technology vicissitudes across finance, government and legal sectors.*

*The last 20 years have seen substantial organisational changes in each sector, affecting the livelihood of many hundreds of thousands of people. Some changes have been legislative and regulatory but many others have been driven by evolving markets, which continually strived to find new products or higher levels of efficiency.*

*Technology use has changed from large and costly bespoke arrangements to the current position of 'cloud native' with applications specifically built to run in the cloud and available on a subscription basis.*

## Background

It is sobering to recall that until comparatively recently the legal profession was working well and profitably with the majority of small clients being able to access skilled advisors to manage their injury claim for them. However, the perception was carefully cultivated that personal injury claims were rife with fraud and a manifestation of the claimed 'compensation culture' developed.

We all know only too well the savage and coordinated changes to the system in relation to costs and recoveries not to mention civil legal aid of the last few years. Yet, despite the initial outcry following the Autumn Statement, the government has recently indicated it is still planning to scrap general damages for minor soft-tissue injuries and increase the small claims limit for personal injury next year to £5000.

Given that intense background over the last few years and the proposals for years to come, law firms still in the personal injury market face a stark choice: drop out of the small claims injury market entirely or substantially re-engineer their offering to become competitive.

To remain in the market, a firm must create a service proposition that moves clients away from the traditional office-based interaction and to one which clients will find:

- convenient to use;
- contemporary in its design;
- available when they need it 24/7;
- an overall improved experience;
- works just like the other apps and services they use in the rest of their lives.

Whilst the drive will be to create a dynamic, on-line environment for the client to deal with the firm in a modern convenient way, it will also benefit the firm in terms of process efficiency (clients doing more for themselves) and cost reduction. Additionally, in an increasingly competitive market, it will provide the firm with additional opportunities to offer other services to their clients.

This paper focuses on the potential personal injury market after the current proposals have been implemented, which is substantially smaller with lower margins but where the number of competitors is reduced and those who remain are smart. The paper will draw on experiences from other client-based industries that have been subjected to an equivalent tsunami of change over the last decade or so and, importantly, survived.

However, first we need to face the hard fact, in simple economic terms, that the supply of personal injury legal support will soon far exceed its demand by clients and that will mean one thing basically supply will drop, practices being driven out by a fall in price.

This is unpleasant, not least as it translates directly to peoples jobs, but be warned there are many examples of businesses where failure to recognise the wider environmental changes within their industry has led to their distress or demise. Most of the recent reports about failing high street retailers argue that their problems stem from a failure to identify the fluctuations in the market and adapt quickly enough.

This paper looks at how to adapt and survive.

## Understanding Strategic Change

Successful firms will be those which can adapt rapidly. They will need to understand that the old model they are working to, if based on a historic personal injury market, has now gone and that they must promptly implement new strategies.

All firms have an **intended strategy**. Even if it is not formally documented, they will have spent time and effort to agree which clients, the markets and services they want to pursue and will have set up processes accordingly. Unfortunately, there will in addition be constant environmental changes and outside influences beyond the control of the firm, such as new legislation, which force it to revise its strategy and change direction.

The firms that survive are those which can react and adapt, revising their strategy and continuing to sail with the wind, rather than fight against it. Whilst this may sound like basic common sense, unfortunately many businesses fail to grasp the gravity of their situation. For every large high street retailer that finds itself behind the competition and hits the news headlines, there are countless smaller businesses that suddenly realise that their customers have, or are about to disappear, or that they are no longer competitive with the new entrants to the market and need to take radical and constructive action.

If so many firms find themselves adrift; what are the warning signs? Why is there a lack of awareness by the organisation's leadership of the true business situation?

Here are a few examples to watch out for:

- in a close knit team, unpleasant information can be re-interpreted to fit with their view of the world;
- there are influential individuals with a vested interest in maintaining the existing status quo for their power and status;
- leadership becomes too pre-occupied with everyday operational issues (firefighting) to maintain the strategic perspective;
- past success is clouding the current situation and preventing change from the 'tried and tested' path;
- any change is perceived as failure of the existing state;

- the business is unable to identify what it does well, so will not change anything in case that was the only good part.

### **Understanding Personal Injury as a Process**

If the problem with personal injury is that the market environment is changing, what should a firm do to re-align its activities to the new trajectory? Whilst the initial reaction of many firms may be to discontinue their offering, there is an alternative and, by reviewing their strategy now, they may identify how the service could continue to operate profitably.

Each personal injury case is made up of a set of processes, starting with the initial engagement with the new client. The ultimate conclusion will be case settlement and payment to the client. Between these two points some steps will be common, whereas some will be unique, dependent on the details of the case.

The following three step approach can be used to identify where efficiencies can be achieved. This will enable the firm to deliver a profitable service but also to address some of the hot spots highlighted above namely issues ready for:

- Elimination;
- Outsourcing;
- Re-engineering.

And underpinning all these is:

- Technology.

The following sections will look at each of these stages in a little more detail.

### **Eliminate with Technology**

In the good times, when there is sufficient margin, there tends to be less pressure to remove non-value adding processes. However, now it is time to review how a personal injury case is completed and question any element which does not benefit the firm.

The legal sector tends to gold plate it's processes, however the efficiency lessons from other industries can be applied and, by adopting a 'just enough' approach to processes, firms can avoid substantial amounts of non-value adding activity.

Technology can help here. Many of the manual processes that were once necessary, such as checking, storing and archiving are now easily replaced by automated procedures available as standard in many applications, with cloud-based data storage and automated synchronisation available for a fraction of the cost of local management.

Document backup storage is a good scenario to demonstrate the concept of process elimination. Not so long ago memory sticks or even floppy discs were the simplest and cheapest of back-up methods without resorting to expensive systems but that required a regular manual process to transfer all of the files onto disc and then store offsite. Due to the effort required, backups were usually undertaken less frequently than appropriate or forgotten entirely, with the subsequent panic and loss of documents when the inevitably the system crash occurred.

Fast forward to today and cloud storage is the new standard, holding all files centrally as well as locally but just as importantly replicating that central store every time a document is updated. If a laptop dies, then it can be up and running again in no time, reproducing all the documents on the replacement device immediately.

Adopting what in effect are the new basic level services, removes a chunk of time consuming and substantially ineffective processes. By forming alliances with technology innovation partners, i.e. those that know the legal sector but are not looking to just sell their latest product, efficiencies can be identified without embarking on a substantial financial journey.

### **Outsource with Technology**

'Outsource' is in some ways a misleading title as it's not only about moving processing work, and often offshore, it's really just about getting someone else to do parts of the work more effectively and cheaply. With personal injury work for most firms this mainly comes down to the client being enabled to do some of the work.

With successive developments in technology there are now secure and direct interactions between the client and the firm's own systems. If the client can complete 90% of the steps themselves, using the firm's portal, then core skills are only required for the remaining 10%. For example, equipping a client with web based questionnaires and templates supported with online help will provide them with all the necessary details to create a client file, a basic proof of evidence with an on-line signature, contact details of witnesses and their statements. This would all be accessed from the firm's web site. This work would previously have been completed at a cost to the firm.

Unlike the first stage, elimination, this is work that still needs to be completed but outsourcing it will substantially reduce the costs to the firm and the data is entered once only, by the client. One of the main lessons which many firms have learnt over the years has been that if they get their online presence right, then customers or clients will adopt that contact channel in preference to phone, postal or face to face contact. It must be better, and more convenient than other channels, but above all it must be more reliable.

Once the client interacts through a standard portal with the firm, then it again opens the path for automation and this leads back to the first step that is using technology to eliminate manual processes.

What happens if you do a lot of routine processing? Then there may be a case for using an offshore provider and despite some of the horror stories about outsourcing, there are some excellent companies out there. The global technology is now available to make the offshore company and the firm look like one business to the client. Again, learn from the outsourcing experience of the last 20 years across multiple industries, for instance:

- Never outsource core competencies; that's what makes a firm unique;
- Never outsource processes when they are in a mess; sort them out first;
- Never let it be 'out of sight, out of mind'; the firm must improve its supplier management skills;
- Never expect huge cost savings; they're not there anymore.

Outsourcing, especially with offshore partners, touches on the tricky subject of data protection. The problem is no longer how to move the data, that's now the easy part via encrypted file transfers. In some ways, the replacement of hard media (discs etc) as a means of transfer has removed one of

the worst sources of data security lapses. The difficulty lies in the security of data at the partner's site, i.e. where is it kept and who can view it?

Whilst data contracts and agreements are available between some countries, European data protection law prohibits the transfer of personal data outside the European Union to countries that do not enjoy an adequate level of data protection.

As part of the due diligence processes when selecting a provider and setting contracts, the question of data needs to be addressed fully. Note though that offshore data security is typically **better** than within the UK. Security standards often become more relaxed within the UK because there is no immediate or obvious threat to onshore data transfer.

Thus, whether data is being sent six miles from Manchester to Stockport or 5260 miles to Mumbai is actually irrelevant; if it's being transferred it needs the highest standards of security to be applied.

### **Re-engineer with Technology**

Those processes which cannot be eliminated or outsourced are those which differentiate a law firm as a specialist in the personal injury field. These core procedures need to be as efficient as possible and supported by emerging technology, which is developing at a frantic pace.

The Intended Strategy of today soon becomes the Revised Strategy of tomorrow. With technology evolving in ways that were not even envisaged a few years ago, firms need to continually review the remaining core processes against the technologies becoming available. Whilst this may end up with 'ripping up and replacing' a firm's existing infrastructure, in many cases the flexible pricing structures and lack of large capital outlay will more than compensate for the cost.

Improving broadband speed allows the whole cloud experience to snowball. In the same way that movies are now downloaded on request, music is streamed and apps on phones are technologically highly advanced, businesses will also now have access to 'on-demand' applications.

Look at accounting software, for example, where many firms have used the same package for years, probably sitting on someone's computer in a back office. If it is agreed that those accounting processes remain core, then the firm retains responsibility, at least for one end of the process.

There is still a perception that on-line applications are just simplified or trial versions of the real thing but that's no longer true; they are superior. They are fast, secure, resilient and, above all, excellent value for money.

Using the examples of accounting, there are now on-line applications that replace the creaking software under someone's desk and, because it is cloud based, it links directly to the accountant. This has to be the new way of looking at applications, rather than just being functionally specific. They are now collaborative tools, linking together the chain of parties within a transaction.

## **Conclusion**

The underlying message is that technology will be a differentiator for the legal profession over the next decade. The creation of the Online Court, as set out by Lord Justice Briggs (**provide a like to the interim reports in a footnote**), is a further example of how 'modern technology' 'can be used to resolve disputes without incurring the disproportionate cost of legal representation'. That is exactly the ethos practices need to live and breathe by if they are to survive in the personal injury market.

We are entering a new era of computing technology, which many are calling the Internet of Things (IoT), or Internet of Everything (IoE). This is all about communication, whether it is machine to machine, machine to infrastructure or machine to environment. The potential is huge for the legal sector but to benefit from the technology advances businesses must do the groundwork now.

Success in the new personal injury market requires a modern, efficient, technology-based firm. The service needs to be centered around a website portal offering a comprehensive knowledge-base guiding potential clients through the initial process, with further support seamlessly available from capable outsourced partners off or on shore.

From a potential client's perspective, the first point of contact with the firm is vital. They need to have a clear view of their options, the level of support available from the firm and the cost.

Completing their details and much more besides will all be possible online at a much reduced cost to the firm, using questionnaires and guidance on the firm's portal.

However, transforming from one mode of operation to another is not a skill that most firms will already have in-house and partnering with a specialist transformation advisor is highly recommended. They will be able to support the business process and technology journey, providing access to structured methodologies and innovative technology capabilities. This is unlikely to be a journey to be undertaken more than once, so having a capable guide to point out the pitfalls is invaluable.

Tony Arnold is a Director of Zecter Technology. He specialises in enterprise architecture and the effect of technology on business strategy. Over the last 20 years he has acquired extensive experience of technology driven change across the financial, government and legal sectors. The technology path is fraught with difficulties and Arnold strongly recommends finding a specialist firm to help you review the needs of your practice and the potential for process change using cloud based technology. Additionally, search for consultancies who understand law firms and who know what is happening in your practice areas rather than those who just speak about their current piece of proprietary software as an answer to whatever question is asked. Most of all, find a firm who will commit to assembling solutions that are flexible enough to scale up or down or even be turned off at short notice and who can offer fixed price commitments both for the technology and their assessment.