

If partnership ain't broke, don't fix it

Partnership law specialist Ronnie Fox argues that remodelling law firms could undermine the industry's traditional strengths

On 31 March 2009 it became possible for a firm of solicitors to become a Legal Disciplinary Practice (LDP). The key advantage of becoming an LDP is to enable solicitors to practise in partnership with non-lawyers.

This was the latest step in the erosion of the professional status of solicitors, a process that has been gathering pace since it became inevitable that solicitors would cease to regulate themselves.

Will many law firms take the opportunity to become LDPs? At least 75% of managers of an LDP must be lawyers, so only firms with three or more partners can become LDPs. There are around 10,000 firms of solicitors in England and Wales. Approximately 80% of those do not have three or more partners. Arguably, the firms within that 80% bracket would benefit most from consolidation, additional investment and management capability, and they are unable to take advantage of the new structure.

At the other end of the spectrum, large international firms are likely to encounter problems structuring themselves as hybrid organisations while complying with restrictions in local jurisdictions. Olswang has faced a number of issues by promoting non-fee-earners to the partnership, particularly in relation to German professional rules. Olswang's response is to consider splitting off its UK business from the rest of its European operations. Fracturing international partnerships may not be practicable for other firms: hiving off may conflict with attempts to maintain a uniform culture and central management. Substantial costs in terms of time and money may be incurred.

I always ask candidates whom I interview about their long-term ambitions. At one time, the invariable answer was 'partnership'. No longer. The burdens of partnership are now more widely understood.

The new hybrid structures are unlikely to be widely taken up. LDPs now (and Alternative Business Structures in the future) offer solutions to non-existent problems. Non-lawyers have been in senior positions within firms for years. Some hold phantom equity so that they take the upside on the firm's profits but not the risks and liabilities of partnership. One wonders why a non-lawyer manager would want the risks and burdens of full equity in the present difficult economic climate.

John Durcan, a chartered accountant, joined Yorkshire legal aid firm Switalskis in 2001. Managing partner 'in all but name' since 2002, he claims that being made partner of one of the largest publicly funded firms in the country might put a small spring in his step. 'I feel I will be called by the right name,' he says. Is that a real benefit to him or to the business?

Alan Johnston, the first licensed conveyancer to be brought into partnership, had been with his law firm for 28 years. He said that his job would not change.

The claimed benefits of offering partnership to non-lawyers include the ability to attract able managers and business people with skills not to be found within a pool of lawyers. I don't believe it. Designing an attractive remuneration package for a chief executive, or a bonus package for a finance director, related to the firm's profitability is not difficult without offering partnership. Moreover, the appointment of non-lawyer partners may well be seen by senior associates as making it more difficult for them to achieve partnership status and the right to share profits.

Some see LDPs as a step towards Alternative Business Structures. Are we really going to see the profession positively transformed by the introduction of outside capital from commercial organisations and private equity investors? Can additional investment, financial engineering and management expertise really increase the profitability of law firms to the point where both partners and outside investors will feel well-rewarded?

A number of long-established firms of stockbrokers were acquired by banks at great cost. Many partners walked as soon as they were able to do so. The banks were left with brands but not much business. A listing has superficial attractions, but look at what is happening to quoted firms of estate agents.

Outside investment will generate pressure to merge and consolidate; the result may well be damage to the unique brands created by many of our leading law firms. External management, ownership and investment will not provide solutions to the challenges faced by the largest international firms as they grow and evolve.

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I believe that the special nature of legal practice will discourage investment by outside investors or by other professions. Introducing management principles applicable to ordinary trading businesses may compromise a law firm's values and service models. The idea that UK law firms are not capable of running themselves without non-lawyer involvement flies in the face of the dominance of City firms across the globe.

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RONNIE FOX, principal of Fox, is a leading expert in employment and partnership law and the founder of the Association of Partnership Practitioners