

What are the prospects for legal firms in Scotland now that the shape of the Legal Services (Scotland) Act is known? Stuart Bushell considers some other possible players, and a move that solicitors could make to grow their practices organically

# Evolution or revolution?

The Legal Services (Scotland) Act 2010, and its English counterpart the Legal Services Act of 2007, have prompted a reappraisal of professionalism. In England, the principal preoccupation of the regulatory overlord, the Legal Services Board, is with consumer access to legal services, whether this be through professional firms or High Street retailers such as the Co-op and Tesco.

In Scotland, as a result of the rearguard action fought by the Scottish Law Agents Society, the legislation will only permit legal services to be provided by firms controlled by solicitors or other professionals. Consequently, the impact on solicitors is likely to be much less severe than in England, where it is still expected that the number of solicitors' firms may contract by up to 30%.

The principle of control by professionals has been established, and the Act attempts to define the



term "other regulated professionals". However, it is still not clear which professions will be included, though the term seems unlikely to include financial advisers. What is certain is that it will include chartered accountants, and the Institute of Chartered Accountants in Scotland is set to be recognised as the only additional regulator of legal services in Scotland, standing alongside the Law Society of Scotland, with a remit confined initially to executory work.

#### Alternative entrants?

Further complicating the picture is the fact that the term "legal services" is very loosely defined by s 3 of the Act. Research conducted by the Legal Services Board suggested that 80% of London City solicitors' work could be conducted by non-solicitors and may not require regulation, and it seems likely that a similar statistic would apply in other parts of the profession. The threat to solicitors' livelihood and clients'

interests posed by unregulated will writers is being addressed in Scotland (though not in England), and there have been suggestions that the scope of activity reserved to solicitors might be further extended.

Pulling in the other direction is the idea being promoted both within and beyond the legal community of minimising regulatory costs by hiving off into separate entities those administrative and support functions which do not require regulation.

The idea of outsourcing has already been trialled by the public company Capita, to which the volume law firm Optima transferred its staff and delegated its administration. Private equity houses have expressed a preference for investing in outsourcers rather than professional firms, the parallel being with the Klondike gold rush, when the money was said to have been made by those who supplied the shovels rather than those who sought the gold.

The advent of multi-disciplinary practice might have been expected to result in mergers between legal and accountancy firms, but in practice this seems unlikely. The two professions have essentially different cultures, as was demonstrated by the failure of the law firms spawned by several national accountancy practices in the 1990s.

A particular issue here, which militates against the MDP concept generally, is that – particularly in the case of larger firms – clients expect their professional advisers to seek the best external source of advice possible, in the same way as when a solicitor selects counsel, rather than turning automatically to a captive firm. The likelihood, therefore, is that accountancy practices will expand organically, extending their existing services to include complementary activities – such as executry – and thereby nibbling at the edges of solicitors' established preserve.

### Growth from within

But what of solicitors' organic development? Significant in this context is the fact that the concept of the authorised professional firm (i.e. a professional firm authorised by a legal regulator for legal work and by the Financial Services Authority for investment business) is likely to be maintained under the new regime.

APF law firms enjoy marked advantages over other financial advice firms, in that they are exempt from the FSA's increasingly onerous capital adequacy requirements, they are subject to much reduced reporting

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requirements and, having the benefit of their professional compensation scheme, they are not required to participate in the expensive Financial Services Compensation Scheme.

Another important advantage of the legal and financial combination is the fact that financial advice requires ongoing client contact and provides the means of reducing solicitors' reliance on transactional business. It is also being appreciated increasingly that there is a natural synergy between legal and financial advice, particularly in areas such as executry, trust and estate work and matters involving older clients. Matrimonial work also has an important financial dimension, as does personal injury work.

The combined legal and financial model has much to commend it. However, firms need to be aware that the game has changed for financial advisers. For the past several years the FSA has been working on a major project aimed at abolishing remuneration by commission and increasing the qualification requirements. The new regime will be implemented as from the end of the year 2012 and is expected to result in

position themselves as trusted advisers, co-ordinating the various professional inputs required, in particular, by high net worth clients. A handful of enterprising law firms have risen to this challenge and are presenting themselves not just as solicitors and investment managers, but as family offices, with designs on the clientele hitherto served by the private banks.

### Professionals as business people

The slick and scaleable business machines of the likes of Co-op and Tesco would have presented a major challenge to the local solicitor estate, and now that this threat has been removed, this business model looks to have a secure future. Indeed, the opportunity which may well be afforded by the Act to bring surveyors into solicitors' partnerships will enable them to extend the range of their services while continuing to provide clients with the reassurance of the solicitor brand.

The solicitor estate agency phenomenon is clear evidence that Scottish solicitors possess commercial instincts which are largely absent south of the border. However, even

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many financial advisers who currently describe themselves as independent becoming tied to individual product providers and thereby forfeiting the right to work with solicitors. Those who work with solicitors are therefore likely to be fee-based and oriented towards advice rather than product sales, making them much more likely candidates for partnership status (albeit not in a controlling capacity).

For many years, a distinction was drawn between solicitor investment managers on the one hand and solicitor IFAs on the other. However, both concepts are being superseded by that of the fee-based financial adviser whose investment services may be managed internally, either actively or passively, or outsourced to external discretionary managers.

The pervasive nature of financial advice enables solicitors who straddle the legal and financial disciplines to

Scottish solicitors may be less financially adroit than some of the other professionals – accountants in particular – who will in future be able to muscle in on the legal patch. A positive response to this challenge might be to invite accountants into the partnership, either in a multi-disciplinary capacity or simply as business managers with partner status.

Psychologically, the challenge for solicitors will be to overcome their traditional reserve and to accept members of other professions and disciplines as equal partners. In the words of Giuseppe di Lampedusa in *Il gattopardo* (*The Leopard*): "If you want things to stay as they are, things will have to change." ■

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