

Legal Week

Designing the MDP of the future

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The events at Enron and the impact they had on the Andersen organisation were truly amazing. Never had a professional services organisation of such size, breadth and, until then, reputation, disintegrated so quickly. For Andersen Legal, the growing legal arm of Andersen, the events were cataclysmic. From being the ninth largest legal business by turnover in 2001 with a limited but rapidly growing reputation, it was suddenly gone.

So does this spell the end of the multi-disciplinary partnership (MDP) movement, which has been making so much noise in recent years? Recent events are clearly a setback, but the issues which created a demand for MDPs have not gone away.

The law firms linked to the big accounting firms will clearly need to take stock. The Sarbanes-Oxley Act in the US, the increasing ring-fencing of audit by the client so that non-audit services are not purchased from the same organisation and the impact of the collapse of the most successful of the audit-linked law firms, such as Andersen Legal, will inevitably take their toll. The irony is that the Andersen Legal firms had no involvement with Enron, and whatever the detractors of MDPs may argue there is no evidence that the judgement of lawyers in the audit-linked firms has ever been impaired by the connection. However, as so often, perception is reality and it would be a brave general counsel or chief executive officer who would now instruct a law firm connected to his auditors on a significant transaction.

It is not a credible answer for the auditors to say: 'Don't worry, our firm only audits 25% of the market, you still have 75% to play for.' The quarter of the market where the firm has the best contacts is off limits. Conflict rules will prevent you suing or acting against such clients. The key point of contact provided by the auditors will be lost. Inevitably this will have an impact upon the quality and reputation of the lawyers prepared to join or stay in such law firms. The financial performance of such firms will suffer just at a time when the sponsoring organisation is itself feeling the effects of the financial downturn. It is therefore hardly surprising that the English-based audit-linked law firms are clearly struggling this year.

The auditors keep looking at the 'problem' through the wrong end of the telescope. They identify the issues as a problem with consulting, legal, HR, corporate finance and even now some areas of tax. They fail to recognise that audit will be increasingly regulated. Audit will be subject to strict independence rules. Audit has become a commodity-priced business. Audit carries with it nuclear levels of risk.

While the big four are audit-dominated rather than broader 'professional service firms' this tension will prevail and they will fail to address the inevitable, spin-off audit.

For lawyers in such an environment, it is unlikely they will be able to move out of the lower and mid-tier work they are currently doing.

Indeed, over the next two years they risk a declining presence especially in the more mature markets such as England and Germany. They will need to stabilise and redefine their position in the market and their lawyer and client base. Then, if the conflicts with audit are successfully dealt with, they can restart the long, hard process of re-establishing their position in the legal market.

But away from the big four, MDPs — albeit clearly controlled by lawyers — could develop. The larger international firms are increasingly receptive to recruiting other professionals in areas where there are clear business synergies and clear professional standards.

Back in the late 1980s, Clifford Chance effectively had a non-lawyer partner who was a share schemes specialist. Of course, he was not formally a partner, he was a partner in a parallel partnership, which just happened to produce for him the equivalent income as a Clifford Chance partner.

In the late 1990s Clifford Chance hired in Moscow a partner from Price Waterhouse as a ‘partner’. He was a specialist on financial institutions tax, but not a lawyer, so he became a ‘director of tax’. Would the firm have collapsed if both had been real partners in Clifford Chance?

Law firms increasingly have economists, forensic accountants, lobbyists and others with direct fee-earning roles on their staff. But the best of these are often put off joining by the absence of real partner status.

Law firms have an opportunity to seize the initiative. Given the falling profitability and liability issues facing the big four, the law firms have an opportunity to reassert their positioning in a number of key markets including complex tax work, employee benefits, fraud investigations and insolvency.

They can hire the best out of the big four. In tax they could confirm the lawyers’ role as advisers to complex transactions and relegate the accountants to compliance work. But to get and keep the best real partnership status will be needed.

Unfortunately, it appears unlikely that most law firms and their regulators will have the courage and vision to grasp this opportunity.

One further area for MDPs should not be forgotten. In a debate dominated by the audit-linked MDPs, the UK Office of Fair Trading and indeed, the American Bar Association Commission on MDPs both recognised the importance of accessible advice to the general public.

The pressures being faced by high street firms are enormous. Legal aid has been transformed and only pays (and then only just) for firms that are well organised and have a strong pipeline of such work. Conveyancing is increasingly a commodity business (but with substantial inherent legal risk). Personal injury work, if done on a contingency basis, again requires volume and increasingly specialist skills.

One possible way to deal with this pressure is to team up with other professionals to provide an ‘advice’ centre or even a ‘transaction’ centre. This could contain lawyers, financial advisers, surveyors and accountants. They could share premises and facilities and staff, subject to strict confidentiality rules and a clear method of identifying and addressing conflicts.

If they can share these items a form of profit-sharing should be permissible. Each professional would be responsible to his own regulator for the work he does and the client would have to be clearly advised of the qualification and expertise of the person he sees.

Whether our regulators will be flexible enough to ensure that legal advice is available to all sections of the community remains to be seen.

*Tony Williams is a consultant to law firms operating as Jomati.
He is the former managing partner of Andersen Legal.*