

Unbundling by Law Firms through Cloud Computing: Responding to changes in Legal Aid

I. Introduction

The structure of legal aid in England and Wales is changing beyond recognition. Extensive cuts have been introduced by the Coalition with the aim of saving an estimated £370 million from the legal aid budget by 2014-15. The bulk of this cost reduction will come from a cutback in scope including a withdrawal of support for areas like divorce, child custody, clinical negligence, housing and debt. By the government's own admission this will result in around 600,000 people no longer being eligible for aid for civil legal problems¹ These cuts will inevitably have a serious impact on the 2,000 firms currently undertaking civil legal aid work and other non-profit organisations with legal aid contracts. It has been estimated that around 50% of civil legal aid firms will cease to undertake legal aid work altogether and over 80% of non-profit providers will be forced to leave the system². Criminal legal aid will also face cuts amounting to £220m by 2017/18. Many have voiced concerns that legal aid restructuring will result in 'advice deserts' with large segments of the population becoming the great-un-lawed; lacking in proper advice and unable to resolve their legal problems³ Another key concern is how to handle the rise of self-represented litigants who will shortly become ubiquitous throughout the courts. Situations will inevitably occur where these litigants will find it difficult to proceed on their own leading to strains on the justice system.

The government's avowed objective is to create an 'efficient, accessible system that provides better value for money'⁴. Many doubt the sincerity of these aspirations and indeed – austerity measures and budgetary necessity are the government's prime motivation. However the government is also committed to the ethos of the Big Society. This means encouraging people to settle their issues by making use of 'simpler, more informal remedies'⁵ with lawyer assistance only consulted when

¹ Ministry of Justice - Legal Aid Reform: Scope Changes - 15 November 2010
<http://webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/downloads/consultations/ia-scope-changes.pdf> (original estimate of 500,00 was revised upwards in 2011)

² Estimate by LAG – The access to justice charity - Social welfare law: what the public wants from civil legal aid
<http://www.lag.org.uk/files/94038/FileName/CivilLegalAidreportEd.Finalversion.pdf>

³ For example Owen Bowcott 'Legal aid cuts will create advice deserts' – The Guardian
<http://www.guardian.co.uk/law/2013/apr/01/legal-aid-cuts>

⁴ Jonathan Djanogly - quoted in 'Families 'hit by legal aid cuts', Law Society warns' – BBC -
<http://www.bbc.co.uk/news/uk-10900573>

⁵ Jonathan Djanogly Covering letter to 'Proposals for the reform of legal aid and of civil litigation funding and costs in England and Wales' <http://www.teesvalleylaw.org.uk/userfiles/File/CoveringLet.pdf>

appropriate. Another aim expressed in the 2010 Treasury review is that the 'reforms will also increase competition in the market and reform remuneration for providers to ensure the legal aid system is effective and affordable'⁶. These need not be vain hopes. A number of providers are introducing new systems of legal delivery which can address these concerns.

As has been noted – the effect of the legal aid cuts and other market pressures has been to make much of the law as practiced by high street firms unsustainable⁷. Firms face the impact of cuts but they also face a challenge from outside the profession. In addition to its plans for legal aid, the Coalition has given its backing to the liberalisation of the legal services sector begun under the previous government. Already this legislation has prompted significant innovation and competition in the legal sector through the activities of new entrants. New models of delivery have been developed and economies of scale have been brought to many areas of the law.

Encouraged by market liberalisation major brands such as Saga, the AA, RBS, the Co-op and MORE THAN have established legal operations and developed a diverse range of legal assistance products for their customers⁸. Some of these are based on sophisticated technology which drives down the cost of delivering law; legal portals and systems of workflow that allow clients to access information and solve their problems by consulting remotely with legal professionals; and contact centres staffed with qualified advisers and available on a 24 hour basis. Some of these organisations have set up legal 'one stop shops' for their customers; dedicated advice websites where they can find information relating to their problem and access legal services such as Wills and Powers of Attorney.

These services are usually provided at an affordable cost. Some are delivered as standalone legal products available on a pay as you go basis; some are even 'bundled' as add-ons to insurance policies. A growing number of legal services have been successfully commoditised and are being packaged and delivered to a mass-market audience for the first time. Many more will follow in the years to come and there is every indication that these institutions will substantially drive down price and increase competition within certain areas of the law thereby making certain services more affordable and available to a larger audience.

The legal profession has not been a bystander in this process of innovation. A growing number of law practices are increasingly adopting the same types of systems seen in the institutional space and are delivering 'unbundled services' to their clients - a concept developed by attorneys in the United States. It is likely that 'unbundling' represents the future of practice for many in the profession – particularly when servicing clients from lower to middle income groups who will be left out in the cold from legal aid cuts.

⁶ HM Treasury – Spending Review 2010 - http://cdn.hm-treasury.gov.uk/sr2010_complereport.pdf

⁷ See Roger Smith – 'Legal Aid: the cuts, the context and the challenge' <http://www.rogersmith.info/legal-aid-the-cuts-the-context-and-the-challenge/>

⁸ See Co-operative Legal Services - <http://www.co-operative.coop/legalservices/> More Than Legal - <http://www.morethanlegaldocs.com/morethan/> AA legal services <http://www.theaa.com/legal-services/legal-documents.html>

II. What are 'Unbundled Legal Services'?

There is a variety of different terminology for the use of unbundled legal services such as 'limited scope representation', 'disaggregated legal services' and 'discrete task representation'; but perhaps the most evocative description is 'law à la carte. The theory behind unbundling is similar to that of a restaurant, where each item on the menu will have a price associated with it and the customer can pick and choose which to order. In much the same way the unbundling of legal services emphasises giving clients choices over which parts of their matter are handled by a legal professional. In an 'unbundled' service a solicitor's role is broken up into a number of discrete legal tasks which can then be priced individually. These tasks may include such areas as initial advice, legal research, document drafting, review of documents, negotiation/mediation and court appearances⁹. The client can limit the scope of legal assistance by selecting from this menu of options only those required and by undertaking some of the tasks normally conducted by a lawyer. Rather than a disruptive change to the practice of law unbundling is really a way of thinking in terms of service packets; working out which tasks in a particular case can form a discrete element and therefore be priced up and packaged as a commodity¹⁰.

Examples of this type of unbundling from other industries include online retailers offering songs at a lower cost per purchase (instead of bundling through albums or singles); airlines offering stowed luggage and travel insurance as optional extras and newspapers allowing their readership to access a limited range of articles, purchase some on a pay as you go basis or upgrade to the full publication. In all these markets the key players introduced unbundling in order to adapt to changes in consumer behaviour and shifts in the global economy¹¹. Similarly, legal practitioners must provide solutions for an increasingly DIY orientated consumer and an environment in which there is less funding and less tolerance for the traditional delivery method and its practice of expensive hourly billing.

An example of unbundling from the legal space is the family law model operated by the Co-op. Aside from aspects such as size, market reach and branding, in many ways the Co-op offering doesn't differ markedly from a traditional law firm. The key difference is that the Co-op has been able to offer clients price certainty by developing a fixed fee tariff for each stage of the company's services. The company's offering now includes over 88 services broken up horizontally and vertically¹². The Co-op's 'DIY (self-help) divorce' – aimed at uncontested divorces – is priced up in a three tier structure. At the

⁹ For a fuller description of task associated with 'vertical unbundling' see Forrest S. Mosten 'Unbundled Legal Services Today—and Predictions for the Future' http://www.mostenmediation.com/books/articles/Unbundled_Legal_Services_Today_and_Predictions.pdf

¹⁰ Stephanie L. Kimbro 'Limited Scope Legal Services: Unbundling and the Self-Help Client' March 2012 p 17 – from interview with Jared Correia – Law Practice Management Advisor at LOMAP

¹¹ These examples are taken from Stephanie L. Kimbro 'Limited Scope Legal Services: Unbundling and the Self-Help Client' March 2012 p11

¹² See interview with Christina Blacklaws <http://legalvoice.org.uk/family/if-people-want-a-rottweiler-they-can-go-somewhere-else/>

most basic level the company simply sends a pack with the divorce forms with instructions for the petitioner on how to fill them out. For the next tier – the forms can be posted to the Co-op for a family lawyer to check for legality and consistency. In this way the ‘lawyer review’ of the documents constitutes a service packet which can be priced up and built into the tiered pricing. For the next level of service – the ‘DIY divorce (with check and help)’ the lawyer document review is offered alongside one hour of metered legal advice by phone or email. Again the Co-op strategy is to offer an advice component as a discrete legal task but puts a time restriction in place so as to reduce risk & limit internal costs. For more complex matters such as the financial proceedings the individual price structure is maintained. So for example the Co-op structure the voluntary disclosure¹³ and negotiating the financial settlement¹⁴ as an individual package costing a client a fixed fee of £1,500 plus VAT¹⁵. Additional appointments and hearings are also priced up individually.

From a firm’s perspective this type of limited engagement means that costs are reduced, thereby expanding a law firm’s potential market and raising the prospect of generating fee income; there is also the potential that a limited task such as an initial advice call can lead to a much larger engagement; for example a low price DIY service could easily act as a lead in to a managed service should matters prove too complex or if more advice and guidance is needed. Unbundling in this way also allows law firms and new entrants to the legal services market to price transparently for systemised services and offer more flexibility to clients for whom a full legal service approach is too ‘full featured’¹⁶.

From the client’s perspective – many of whom are underserved and priced out of the current legal market - a fixed structure of tasks and pricing reduces the friction and risk in selecting a solicitor. In an increasingly DIY society, clients accept that affordability is an acceptable trade-off for a more hands off approach between solicitor and client which doesn’t involve full service representation¹⁷. In terms of popularity amongst consumers, research from the American Bar Association¹⁸ shows that less than 70% of those interviewed were familiar with unbundling. However, when the concept was explained to them, a third of the respondents reported they were very likely to talk to a lawyer about unbundling if they had a personal legal matter, and another third reported they were somewhat likely. Sixty-two per cent of the respondents indicated that it is very or somewhat important that a lawyer provides an

¹³ Opening documents, initial legal advice and information, open communication with other party, preparation of form E, exchange of form Es

¹⁴ Advice on other side’s form E, advice on an appropriate financial outcome, produce offer to settle, advice on offer received, consent order

¹⁵ Brethertons and the National Family Law Service offer a similar service for £1,450 plus VAT

¹⁶ Richard Granat interviewed in Stephanie L. Kimbro ‘Limited Scope Legal Services: Unbundling and the Self-Help Client’ March 2012 p83

¹⁷ Stephanie Kimbro ‘Serving the DIY Client: A Guide to Unbundling Legal Services for the Private Practitioner’ <http://virtuallawpractice.org/wp-content/uploads/2012/03/Serving-the-DIY-Client-Ebook-4.7.12.pdf>

¹⁸ See American Bar Association Standing Committee on the Delivery of Legal Services – ‘Perspectives on Finding Personal Legal Services’ <http://www.in.gov/judiciary/probono/files/survey-report.pdf>

option for unbundled services when they are deciding to obtain a particular lawyer. Unsurprisingly interest was strongest amongst younger demographics.

III. Technology and unbundling

The ‘unbundling’ of legal services is not a new concept and has been around for decades. The first book on the subject¹⁹ was authored by the ‘father of unbundling’ Forrest S. Mosten thirteen years ago and the principles of limited scope representation’ have had many advocates over the intervening period. Yet in many ways ‘unbundling’ has only now come of age as a method of delivery.

To understand why one only has to look at the changes that have taken root since Mosten’s tome was published and the first unbundling conference was held in the United States. In 2000 there were a mere 361 million internet users worldwide²⁰ – in 2013 that number has risen to a staggering 2.4 billion. In 2000 most home internet access consisted of slow dial up connections built around desktops; only 36% of internet users bought products online and a mere 60% went online daily. Since then internet speeds have risen dramatically, wireless and mobile use has become ubiquitous, social networking and cloud computing have become standard and internet adoption in developed countries is running at upward of 75%; in 2012 in the UK alone some 33 million adults went online on a daily basis²¹. The digital revolution – a phenomenon heralded as a ‘third industrial revolution’ - has transformed markets, bridging the gaps between customers and businesses, creating new industries and draining commerce from high streets. Consumers are spending an increasing proportion of their economic and social lives on the web. Consumers are now actively going online to find legal services on the internet which are convenient and affordable²². The obvious implication is that the delivery of legal services will be transformed; a fact that is sometimes lost on the profession.

The emergence of this digital landscape also means that the concept of unbundling can be taken much further and with far greater geographical reach than was previously possible. Legal professionals now have a greater capacity to deliver exactly what the market is demanding; a larger quantity of professional services at less cost. Lawyers are still regarded as trusted custodians of knowledge among the public. The points of friction are accessibility, convenience and price. Firms can address these concerns by delivering ‘unbundled’ components of their professional services differently and more efficiently.

¹⁹ Forrest S. Mosten - Unbundling legal services: a guide to delivering legal services a la carte (2000)

²⁰ Statistics taken from Pew internet <http://www.pymnts.com/assets/Uploads/Kristen-Purcell-PEW.pdf>

²¹ UK Office for National Statistics - Part of Internet Access - Households and Individuals, 2012 Part 2 Release - <http://www.ons.gov.uk/ons/rel/rdit2/internet-access---households-and-individuals/2012-part-2/stb-ia-2012part2.html#tab-Key-points>

²² A survey conducted in 2009 by TLA found that 30% of the general public had already looked online for legal advice and ‘this option is likely to become more popular as ‘the internet generation’ (also known as generation Y grows older and encounters more legal issues’. Generation y consumers interviewed in a separate 2009 study by CLT said that they ‘valued ease of convenience, cost of service and speed of delivery over factors associated with traditional providers such as face to face contact and the ability to access local offices’.

A greater degree of unbundling is now possible due to the development of third party legal technology platforms which operate on a cloud-based, 'software as a service' (SAAS) model²³ Law firms of any size can deploy web-based applications in order to automate the unbundling process and generate greater efficiencies than were previously possible. Many of these systems have been designed to be cost effective and cater for a variety of budgets²⁴. These allow law firms can adapt their business model without having to spend enormous sums of money on research and development.

Perhaps the most important technology with respect to unbundling is document assembly and automation. An example of these types of technologies is our system Rapidocs.²⁵ In the traditional method of delivering documents solicitors would have to take instructions from clients in person, pull up a precedent and cut and paste the relevant clauses into a suitable document or form. By contrast, a document automation system can present users with an interactive question and answer session through a web browser, which is linked to an automated document or form. A complex document or such as a Will could be drafted in many different ways depending on the client's circumstances; thus making the delivery of a systematised service difficult. However - with the application of automation technology and the input of a specialised legal team for content development and maintenance - a document can be programmed which contains multiple possible iterations of a Will. The document automation system can then capture data from the client and determine the right language and clauses to make up the final draft through pre-programmed logic.

A practical example of this is the remote servicing of clients over the web. Using document automation technology offered through our DirectLaw platform Stephenson's Solicitors in N W England who have integrated online questionnaires into their website which enable clients to instruct them at their own convenience²⁶. These present the user with the same questions a solicitor would ask during a client interview and capture their information. The system then uses pre-programmed intelligence to generate a detailed first draft of a legal document whose language and clauses reflect the information entered by the client. What this form of document automation provides is a 'document that can think'; one which can produce a highly detailed first draft of a legal agreement which has been individually tailored for the client to which the solicitor can later make amendments and revisions.

Automated drafting is highly significant for unbundling because it allows lawyers to charge less for the drafting of documents while still maintaining profit margins.²⁷ By building this technology into websites firms can be effectively instructed online rather than via face to face meetings with clients. Because

²³ Stephanie Kimbro – Limited Scope Legal Services – Unbundling and the self-help client – c7 'Using Technology to unbundle legal services p76

²⁴ Ibid – P75

²⁵ Other examples include Hotdocs, DealBuilder Contract Express and Exari

²⁶ See http://www.stephensons.co.uk/site/individuals/srvwealth/buy_will_online/online_wills/

²⁷ Richard Granat interviewed in Stephanie L. Kimbro 'Limited Scope Legal Services: Unbundling and the Self-Help Client' March 2012 p83

the document automation system drafts the bulk of the legal document firms can also take advantage of considerable internal cost savings. Expensive lawyer time can be freed up in order to concentrate on the more highly bespoke elements and delivering the individual expertise which is critical to a firm's market credibility. Firms can lay the groundwork for an unbundled pricing structure by limiting the time spent on discrete legal tasks and preserving margin.

This application of this technology through the web also addresses the demands of consumers for greater accessibility, speed and convenience. Effectively the internet becomes an extension of the law firm's office, a means of interaction between the solicitor and those clients who would prefer to access services remotely. As well as extending the range of the lawyer's professional service the process is made more much more efficient. The same technology described can be used to enhance the traditional meetings between solicitors and clients. For example, the same firm Stephenson's – for certain meetings with clients - conduct a face to face interview, entering the client's information directly into the Rapidocs document automation system. This means retaining the same process as before but simply doing things quicker and more efficiently.

As well as document preparation, cloud based technologies are beginning to revolutionise practice management. In the United States and Canada a market has emerged for solutions that provide sole practitioners and small law firms with collaborative and secure ways to manage their practice and interact with clients. These organisations such as Clio, Mycase, Rocketmatter and Total Attorneys help level the playing field for smaller firms and serve clients better by providing a user friendly suite of applications at an affordable rate. Total Attorneys for example has an extremely aggressive opening price point of only \$1 a month. Typical services feature a dashboard view allowing lawyers access to web apps dealing with client information, time tracking, calendaring, document management and billing. In the UK Peppermint is offering similar technology and doubtless more services will be released as the market matures. These tools can streamline the process of working with unbundled clients and allow more possibilities for remote delivery²⁸. Firms with limited support staff will become less and less burdened with the administrative side of their business and can concentrate on serving their clients in higher end bespoke matters.

The end result of this evolution of these technologies is the ability to provide comprehensive legal portal under a unified platform. What these technologies allow is cloud based systems where clients can interact with legal professionals and have their services delivered at their own convenience via the internet. These systems can ensure impressive margins on legal services while maintaining a high level of customer care and a superb service. This has exciting implications for major brands seeking to enter the legal space and law firms seeking to maintain or increase their market share. It is now possible to unbundle and commoditise a variety of legal services and reach out to a mass-market audience. The unbundling process opens up a variety of possibilities for the legal profession. In recent year the US and UK has even seen the emergence of entire web based practices focused on

²⁸ Stephanie Kimbro – Limited Scope Legal Services – Unbundling and the self-help client – c7 'Using Technology to unbundle legal services p88

delivering unbundled legal services online. These offer a more cost effective and affordable alternative to the traditional law firm model.

IV. How might unbundled services help legal aid providers and advice centres?

The challenge facing legal aid in England and Wales is how to maintain access to justice for low to medium income people despite a substantially lower level of funding. Currently the system faces a decline in the number of legal aid providers and a simultaneous shrinking of advice networks such as Citizens Advice Bureaus and Shelter offices. Many individuals will now be unable to afford a fully solicitor managed service for their legal matter and many will find it much more difficult to access face-to-face advice.

The profession therefore faces a choice between continuing to provide a full casework level service to an ever diminishing audience of clients who can actually afford it, or finding an alternative model for serving low to middle income clients. The first approach will inevitably lead to an inequitable distribution of legal resources. Unbundling offers the best prospect for the second approach. This will require innovation but could ultimately expand the market by enticing the latent demand of those who do not currently access legal services for reasons of uncertainty, risk and cost.

Such services can be lawfully undertaken within the current regulatory framework of England and Wales; all that is required is that the provider be clear with the client on what they will do and what the client will do²⁹. Such an approach if conducted correctly would not diminish the professional integrity of lawyers or expose them to high levels of risk. Instead lawyers can look to innovate and deliver affordable services that utilises their expertise as advisers and problem solvers throughout the entire process.

A relevant example is the United States where unbundling is a tried and tested method of legal service delivery. There unbundling has been identified by State Bar Associations as providing a solution to the problem of lower to middle income access to the legal system. In the US only an estimated 20% of the legal needs of the poor can be addressed by legal aid organisations. This has led to an ethos of 'limited service' where lawyers and paralegals focus on guiding people to represent themselves. States operate legal aid websites for low income individuals which include written information and videos. These are often linked to guided interviews and templates which self-represented individuals can make use of for their legal needs. Those who require more guidance can make use of helplines or online 'live chat' sessions³⁰. Unbundled services have grown out of the family law field where they were first applied successfully and have been widely popularised among attorneys. Such services, built around limited engagement and fixed pricing are becoming mainstream, a process also driven by the popularity of DIY legal document providers like LegalZoom and RocketLawyer.

²⁹ There is nothing to prevent "Limited Engagement" in the SRA Code of Conduct subject to Chapter 1 outcomes.

³⁰ Stephanie L. Kimbro' Limited Scope Legal Services: Unbundling and the Self-Help Client' March 2012

The US experience demonstrates a plausible alternative for both advice centres in the UK and law firms focussed on clients from the lower to middle income groups. Both these providers can make use of widely available and affordable technology to improve their outreach and assistance. Law firms can develop methods of legal delivery which are more efficient, require fewer overheads and involve a collaborative approach with clients rather than full casework management. Such services can be more affordable, less intimidating and offer clients greater control.

V. Predictions for unbundled legal services

The cloud based technologies described in this paper have created new possibilities for unbundling and have enabled innovations which are beginning to transform the legal marketplace. As a result the UK's consumers now have access to an unprecedented range of options when it comes to purchasing and accessing legal services. A consumer requiring a Will could for example purchase a DIY, digital only service from a leading high street brand at a low cost. Should they wish to do so, they could have the document sent securely to a solicitor to review for an additional fee. If they prefer the expertise and reputation of a firm of solicitors they can begin the process via a firm's site at an agreed fixed price. Even at the lowest service level a high quality product can be delivered which meets the needs of most individuals. These types of technologies which enable legal services to be "unbundled" are not limited only to non-contentious legal issues but are suitable for many types of contentious legal issues where a citizen could represent themselves for all or part of a legal process.

The prognosis for the surviving edifice of legal aid is bleak; the government effectively 'washing its hands of responsibility for legal advice over whole range of matters'³¹. Yet a market based response to the coming shortfall in legal assistance is possible if unbundling can become standard amongst legal practitioners. The technologies now well established in the legal marketplace will enable citizens to take responsibility for their own matters yet be supported with targeted advice and information should they need it. It will also bring solicitor managed services to an increasingly wide segment of the public.

In the United States it has been predicted that 'due to consumer education and demand, by 2032, law firms of all sizes will be proactively offering unbundled services in all areas of law and to clients of all demographics'³² In the UK it seems inevitable that due to market pressures and innovation both within and from outside the profession, fixed price 'unbundled' legal services will become the dominant pattern. The demands and expectations of generation Y will result in Solicitor client interaction via the web becoming ubiquitous. The challenge for firms is in providing a response to these market changes. Within the profession itself there is a shortage of innovators even though cloud based tools are available for them to begin the process of change. However there are also barriers, many of them structural in nature. The typical firm with its partnership model and tendency towards

³¹ Roger Smith – 'Legal Aid: the cuts, the context and the challenge' <http://www.rogersmith.info/legal-aid-the-cuts-the-context-and-the-challenge/>

³² Forrest S. Mosten 'Unbundled Legal Services Today—and Predictions for the Future' http://www.mostenmediation.com/books/articles/Unbundled_Legal_Services_Today_and_Predictions.pdf

competing interests is less conducive to co-coordinating actions across all departments. This is a formidable but not insurmountable challenge and overcoming it will require taking a 'blank sheet of paper' approach to running law firms; taking an 'unbundled' approach to the process of providing services and looking at ways efficiencies can be produced and client services improved.