

# the Law

Winter 2018-19

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The Law Society

*Armstrong Watson's specialist publication for the legal profession*

## Entrepreneur's Relief -

Impact of Autumn Budget 2018

## Funding for the Legal Sector

## Structuring a company -

to maintain the flexibility of a partnership

## How to protect a modern Law Firm

## An interview with...

Alex Holt, Director of Business Development at The Cashroom



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# Welcome



Welcome to the Winter 2018/19 edition of **The LAW**, the specialist publication for the legal profession from the legal sector team at Armstrong Watson.

Specialists are available from all of our 16 offices, to provide pro-active support and advice to lawyers in compliance and business improvement matters. This publication is designed to allow us to share our collective experience in acting for lawyers throughout the UK.

Recent topics that we have shared information with our clients on include **Making Tax Digital** (MTD) and **VAT on disbursements** following the Brabners case. Both of these remain hot topics:

- MTD is very much on the horizon and I would urge you to check that your software will be able to deal with it – don't assume it will!
- We're finding more HMRC VAT enquiries as a result of the Brabners case and we have had success in reducing the amounts firms have been asked to pay – get in touch if you are contacted by HMRC.

We are also looking forward to the **new SRA Accounts Rules 2018**, which are due to come into effect in 2019. We are running a series of formal public training courses on the new rules and are also being engaged by firms for internal courses for their finance teams and fee earners. Please contact me if you would like to be included.

As ever, in this edition we focus on ways to improve your business and your advice to your clients, including:

- Funding for law firms
- Law firms operating as companies
- The new entrepreneurs relief requirements
- How to protect law firm owners

To find out more on any of the above, including how we can work with you to help you and your clients, please do get in touch with me.



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# Funding for the Legal Sector

## How we can help

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Cash flow is an ever important subject for all businesses in the UK; the legal sector is not immune to this and there is an increasing number of ways that firms are able to raise funds.

At Armstrong Watson, as part of our commitment to our clients needs, we have a facility to access over 100 different funders offering a much wider number of options many of which will be of interest to the legal sector.

Just a few of the available alternative forms of funding are:

### Working Capital Loans

As the name suggests this is a more traditional loan typically available on an unsecured basis and repayable up to 5 years.

Many 'peer to peer' lenders like offering working capital loans to the legal sector.

These loans commonly allow early settlement without any penalties. They can be used for a variety of purposes from a specific asset purchase to supporting day to day cash flow.

Normally interest rates are fixed for the duration of the loan which gives certainty over monthly repayments.

### Revolving credit limit

These types of loans operate in a very similar way to a more traditional overdraft.

Available on an unsecured basis, they provide a rolling credit limit, usually over a 12 month period. Whilst interest rates are higher than on a Working Capital Loan, they are only charged on monies actually drawn down for the borrowing period.

These types of facilities allow more flexibility if shorter term funds are required, or if there is a need to bridge a specific gap.



### Invoice finance

This is normally used to fund working capital in an ongoing scenario, where funds are raised specifically against outstanding invoices issued to debtors. This can be used as an alternative to an overdraft and the amount available to borrow is directly linked to the amount owed to the firm by its debtors.

This type of lending can also be looked at on a 'spot' basis. This is where specific invoices rather than the whole ledger are funded. Spot funding is more expensive but is something to consider in order to bridge a short term gap.

There are lenders who will also look at loans secured against the outstanding debtors ledger. These are repayable over a set period but this option utilises the strength of the debtor book against which to raise funds.

### Asset finance

Often used as the way to purchase specific assets to allow any business to expand. This type of funding can come in various forms;

In essence the difference between leasing and hire purchase agreements are that leasing is essentially renting/hiring equipment whilst hire purchase provides the option to buy the equipment once all repayments have been made.

Finance Lease: This is essentially renting the asset in question for a specific period without owning it. This is useful if the asset in question has a certain economic lifecycle which allows for it to be updated without the hassle of being left with an outdated asset. On a finance lease the whole value of the asset is repaid over an agreed period. At the end of the term the equipment can continue to be leased for a 'peppercorn' rental.

Operating Lease: Similar to contract hire, the lessee is paying a rental for the use of the equipment for the period of the agreement. This will not necessarily be linked to the whole value of the asset.

Hire Purchase: This works in a similar way to a Finance Lease, as the asset being financed is not owned until all payments under the agreement have been made, but the asset does then become your property at that point.

Contract Hire: Often used for accessing new vehicles. Payments are calculated based on the purchase price and the estimated residual value of the vehicle at the end of the term dependent on the estimated mileage. Essentially interest is charged on the difference between the two figures.

### Property finance

In addition to the high street lenders, there are a host of second tier funders who may be more flexible over the maximum advance; loan to value; or maximum term available for a Commercial Mortgage.

The buy to let market is still very buoyant and loan to value percentages have increased over the last 12 months.

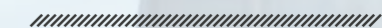
If the firm has a shorter term need then they may want to consider a Bridging Loan against property. These loans are generally more expensive but much quicker to arrange with maximum terms of up to 3 years.

### Other specific legal sector sources of funding

The above are just a few of the options open to the legal sector if they are looking at raising funds, other areas where this is possible also include:

- Tax Loans
- VAT Loans
- Practice Loans
- Case Acquisition
- Disbursement funding
- PI settlement funding

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# Entrepreneur's relief - Impact of Autumn Budget 2018

Whilst the now customary fear that this may be the year that the currently generous entrepreneur's relief regime would be removed proved once again to be unfounded, the Budget of 29 October 2018 has introduced key changes which may well have a significant impact on the number of shareholders benefitting from the relief. This includes those that operate their law firms as limited companies, although this article is written to also cover non-law firm companies in order to help lawyers advise their clients.

In summary, the two key changes announced were:

- An extension of the qualifying holding period that must be satisfied in order to benefit from the relief from one year to two years (introduced for disposals on or after 6 April 2019); and
- A tightening of the rules governing the share rights an individual must benefit from before they qualify (introduced with effect from 29 October 2018) requiring the claimant to have a five percent interest in both the distributable profits and the net assets of the company.

Both of these points will be relevant to owners of law firm limited companies that are planning to retire in the coming years.

## Qualifying period

The extension of the qualifying holding period from one year to two years will mean that shareholders need to consider their position at least two years in advance of any potential transaction to ensure their position is protected.

In practice we are already seeing this change impacting contemplated transactions, with effected shareholders considering whether a disposal should be deferred until such time as the new requirements for the relief can be satisfied.

Going forward the change will also mean that careful advance planning, well in advance of a contemplated transaction, will become more important. For example, it has not been unusual for business owners to consider the transfer of a five percent shareholding to a spouse (who would also be appointed as a company director) 12 months in advance of a disposal to access an additional £10m entrepreneur's relief lifetime allowance. From the 29 October 2018 such planning would need to ensure that the spouse satisfied the two year holding period in order to benefit from the relief – a significant extension for the period within which pre-exit planning needs to be considered.

The change is also likely to mean that advisors face increased pressure to highlight potential threats to the availability of the relief early, effectively flagging the planning possibilities on a rolling real time basis such that clients' tax positions are protected.

## Share rights

The tightening of the rules governing the share rights to which an individual must be entitled will have further wide ranging implications.

Previously, in order to qualify for entrepreneur's relief, an individual must have held shares which represented five percent of the ordinary share capital, tested by nominal value of shares, and which entitled them to five percent of the voting rights. From 29 October 2018, the shares must also entitle the holder to five percent of the company's distributable profits and five percent of the assets available to equity holders on a winding up.

This change ensures a shareholder must benefit from a genuine economic entitlement to five percent of a company in order to qualify for entrepreneur's relief, with the intention of the change meaning it is only claimed where an individual has a true material stake in business, aiming to limit claims to those who are within the spirit of the relief.

The new legislation means that shareholders will need to continually monitor their position to ensure they qualify for entrepreneur's relief. In particular, special consideration will need to be given to any companies which have issued preference shares or which have incentivised key management with 'growth shares'. Furthermore, certain structures involving the use of ordinary shares carrying only limited rights but facilitating an entrepreneur's relief claim will no longer be effective, potentially impacting a number of management incentivisation arrangements commonly used in private equity backed transactions.

## Dilution protection

The draft legislation has however fortunately confirmed that proposals to protect an individual's Entrepreneurs' Relief entitlement up to the point they are diluted below the five percent qualifying requirement will be introduced into law from 6 April 2019. This will be a welcome change for many, particularly given the expectation that elections to 'bank' entrepreneur's relief as at the date of dilution should also allow the resultant tax liability to be deferred until the date of ultimate disposal.



## Key thoughts

Whilst it is clearly good news that the generous entrepreneur's relief regime has survived the Autumn Budget, the impact of the additional tests that have been introduced mean that it will be essential that equity ownership is reviewed well in advance of a transaction to understand whether shareholders can expect to benefit from a 10% rate of CGT on exit. Clients potentially impacted by the changes would be well advised to take early action to improve their position.

In addition, we anticipate that the changes will further increase the attractiveness of shares received through an Enterprise Management Incentive option-plan (which must now be held for 24 months but are not subject to the additional restrictions relating to five percent of economic share rights).



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# Structuring a company to maintain the flexibility of a partnership



**The structure of choice for many law firms has always been the traditional partnership model. The main reason for choosing the partnership model is the flexibility that a partnership offers. It is generally easier to form, manage and run a partnership than other business structures which tend to be more highly regulated.**

The main drawback to the partnership model is unlimited liability. As the partnership has no separate legal identity, the partners are personally liable for any debts and losses incurred, meaning that personal assets are at risk. In addition, the partners are jointly and severally liable, and a partner may find themselves in a position where if your fellow partners are unable to settle their share of the partnership debts, you may become responsible for doing so.

The most obvious solution to limiting liability is to convert to an LLP, however, an LLP (in the majority of cases and subject to the salaried partner rules) is tax transparent. Tax savings can be made when fully incorporating to become a limited company, but many perceive a limited company to be too inflexible to be suitable for a law firm.

Here we discuss the steps that can be taken in appropriate circumstances to operate your law firm as a limited company whilst maintaining some of the flexibility of a partnership.

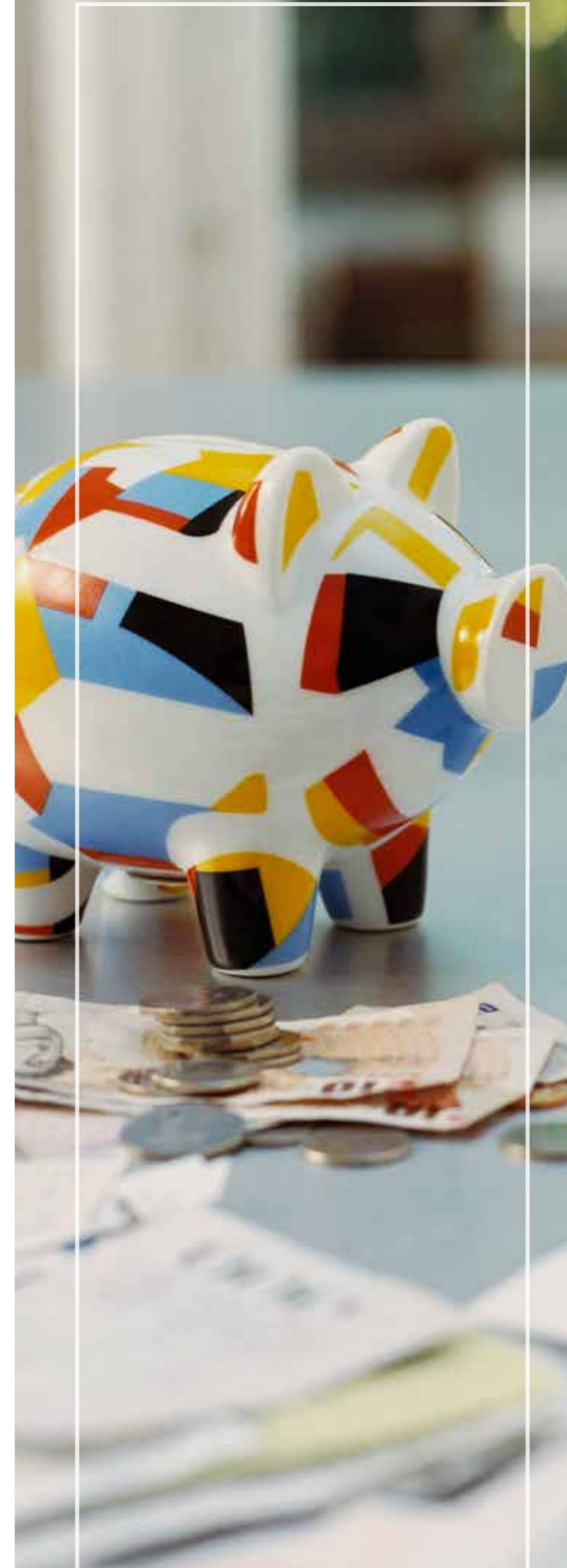
When operating through a limited company, the key to maintaining the flexibility that is required is the share structure of the company and the drafting of the accompanying shareholders agreement and articles of association.

## Share structure

When forming your limited company from the outset, one option is to make use of different classes of shares. Each director/shareholder can then be allotted their own individual class of shares.

Although as directors, each individual will have legal duties that they must adhere to, the extent of their influence within the company will be governed to some extent by the rights of their class of share, which will be defined in the shareholders' agreement and the Articles of Association. During the initial drafting of these documents, consideration should be given as to which classes of shares (or which shareholders) will vote on which business decisions.

The shareholders' agreement and the Articles of Association are the two key governance documents which will determine how the law firm is run, and it is vital to take independent legal and accountancy advice when drawing up these documents. Particular care should be taken in the following areas to ensure some of the flexibility of the partnership model is retained:



## Profit allocation and remuneration

The partnership agreement will generally determine the profit sharing ratio of a law firm. In a limited company it will be the Articles of Association usually supplemented by a shareholders' agreement.

A partnership will often have a pre-determined profit sharing ratio. In a limited company structure profit sharing would be determined by salary level and dividend entitlement according to the Articles of Association and a shareholders' agreement which might state that prior to the start of each financial year, the directors of the company will decide and document how the profits of the company are allocated between the classes of shares.

The shareholders' agreement might include a clause which allows each individual shareholder to decide how the profit share allocated to their individual class of share is extracted from the company. Profit might be extracted in the form of salary/dividends/pension contributions/interest paid on any director's loan accounts owed by the company. Clauses can also be included to allow an individual to choose not to draw any remuneration from the company in a given year, but to leave their share of the profits in the company until a later date.

These clauses allow each shareholder to make decisions based on their own personal circumstances for each year, and can provide more flexibility than a partnership structure. The decision regarding remuneration must of course be timely, and as with the profit sharing ratio, the agreement should include a default position should the individual not make an active decision.

### Incoming director/shareholders:

Potential flexibility issues arise around changes in director/shareholders within a limited company law firm, as these changes involve share transactions and the associated legal and tax issues.

New director/shareholders within law firms are, in the majority of cases, likely to be already employed within the firm. Bringing those employees into the management, and specifically, the ownership of the firm will mean issuing them with a shareholding. Issuing shares to employees introduces the employment related security legislation which firms need to be mindful of.

Although the employment related securities legislation and the market value of any shares does need to be considered on each issue of new shares, in many law firm companies, the true value of those newly issued shares might be negligible.

### Outgoing director/shareholders and share valuations:

As with incoming director/shareholders, when a director/shareholder exits the company, this will again involve share transactions and the associated taxation and legislation.

When exiting a company, a director/shareholder is likely to have two separate balances due to them, firstly their director's loan account, and secondly the value of their shares.

The director's loan account is taxed income which can be repaid to the director/shareholder over a period of time and as agreed between the company and the outgoing director/shareholder, very much in the same way as a capital account in a partnership structure.

During the lifetime of a corporate law firm, there will be times when director/shareholders want to exit the business, and at that point in time, they will want to be repaid what they are owed from the business, part of which is the value of their shares. The mechanism for valuing shares needs to be determined from the outset.

On the sale of any shares, the ultimate price will be the value that a third party is willing to pay for the shares. In the majority of exits from law firms, it is unlikely that the shares will be sold to a third party acquirer as the shares are being sold to allow the director/shareholder to exit the practice as they would have in a retirement from a partnership. Any restrictions on sales of individual classes of shares to third parties should be included in the shareholders' agreement.

In a company structure, for the transaction to mirror a partnership exit, the intention in the majority of the exits, will be for the law firm to repurchase the shares from the exiting director/shareholder at a value (which when added to the value of any loan account is essentially the equivalent of a partnership capital account) using a pre-determined mechanism in the shareholders agreement, and for those shares to then be cancelled.



It is possible, as part of the flexible remuneration planning and documenting relative shares of reserves year on year, to create a valuation mechanism that matches what would have been paid in a capital payment from a partnership/LLP. Whatever route is determined, the valuation mechanism should be detailed in the shareholders' agreement.

Providing certain conditions are met (see the article in this publication from Tom Roseff for more details), the price paid for the value of the shares would be classed as a capital transaction, and be taxed as a capital gain for the exiting director/shareholder, therefore resulting in the transaction being taxed at a lower rate than if the undrawn profits were extracted as income.

One of the requirements for a company purchase of own shares to be classed as a capital transaction, is that the consideration needs to be paid on completion of the purchase - which may remove some of the flexibility of repayment terms to exiting partners - however, it is possible for the shares to be purchased in multiple tranches, and to still obtain capital treatment, although this is more complex. Firms can explore other options regarding repayment including funding or finance.

As can be seen from the above, it is possible with the correct advice and understanding of share transactions, as well as the careful drafting from the outset of the key legal governance documents, for a limited company structure to maintain some of the flexibility of a partnership. It is vital to take professional advice from the inception of the company to ensure the structure is as intended, and any changes in personnel are reflected in the governance documents, which should also be the case in a partnership deed or agreement.

Please contact me if you require any support with this for your own firm, or if advising your clients.



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# How to protect a modern Law Firm

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**This last decade has seen competition increased and downward pressure on prices in many areas of the law. As a result, many law firms are working tirelessly to ensure their own long term future. With technology and self help via the internet ever more prevalent, and the costs of running a firm increasing through various mediums such as wages, business rates and tax, the emphasis is on how to 'future proof' your firm.**

Broadly, this 'future proofing' has taken three specific routes:

## 1. Company Structure

Historically many law firms have operated as partnerships, as is the case with many other professional services firms, such as accountants. The search for future financial security and prosperity has led many to seek advice on the structure of their firm, including both Limited Liability Partnerships and Limited Companies. There can be many benefits of incorporation, ranging from succession planning, remuneration planning and tax planning.

Once it has been established that such a change is beneficial to your specific business and your needs, it is vital that the 'new' company undertakes a further review, in this instance of its protection needs.

Protection usually means insurance in one form or another, such as life assurance, Critical Illness cover, income protection and private medical insurance (although it can have broader definitions).

Within this review there are two specific considerations:

1. Do you have any insurance in place? (many will not).
2. If you do, is it still structured correctly?

The second question refers specifically to the fact that if you change the structure of your business, you must change the policy. As an example, if you have Partnership Protection but re-structure to become a Limited Company, the new company is neither the owner nor the beneficiary of the policy.

A further example; if a shareholder in a firm were to die and no instructions were in place, their beneficiary would inherit their shares, but if you are not SRA registered as an ABS, and the beneficiary is not a

solicitor they can not retain the share, so would need to be compensated, or to find an alternative buyer who may not be in your plans as a business partner. Some recent research highlighted that the protection need is large, as is the need for the correct tax, trust and shareholder agreement advice to compliment it. Legal & General's 'State of the Nation' protection report states that:

- Over 50% of businesses have left no instructions as to what happens to company shares on death;
- Average business debt is £176,000;
- Of which 51% is secured by a personal guarantee or a charge against personal assets; and
- 26% were not aware that a Director's Loan Account needs to be repaid on death.

## 2. Niche sector specialisms

Another route to future proof a legal firm is to specialise in niche or smaller areas of expertise, or at least have key departments and individuals that do. Examples would be the gaming industry or sports related disputes.

This is often driven by key individuals who build up a reputation and client pool from becoming renowned in their area of expertise. Such specialisms can involve a lot of travel and expense and the work is often in the form of large cases that continue over many months. The risk here to your firm is the sheer reliance on the individual who is pivotal to that sector specialism, that relationship and ultimately that profit. If that individual were to become ill, suffer a critical illness or die how does the firm cover that financial gap?

In the Legal & General Survey -

- 39% of businesses stated the death or critical illness of a key employee would have the biggest impact on their business; and
- 53% of businesses said they would cease trading in under a year if they lost an owner or key person.

## 3. Stand out as the best employer

A further consideration is staff retention. One of the ways of doing so is considering how the staff themselves, including directors/partners and where applicable, their family members, can be protected.

- Private Medical Insurance;
- Income protection (all incomes continue to be paid); and
- Death in Service

All are examples of policies that could be offered to protect both the firm and its staff.

The same Legal & General Survey identified that 70% of business owners had not heard of 'Relevant Life Plans' – a life insurance policy for directors of Limited Companies that can be paid by the company to provide a tax free lump sum to their family on death.

## Summary

We often spend so much time working in our business that we fail to spend enough time working on our business. A strong and progressive law firm will always be looking for angles to improve their business, their profit and the experience for their staff and clients.

The key is to ensure that whilst the focus is on obtaining growth and profit, equal attention is paid to issues that could significantly undermine such progress.



## Here are some key questions to ask

- Do we have our key fee earners or staff insured to replace the income they generate for the firm in the event that they die or become seriously ill?
- Do we have insurance in place to repay the firm's debt (including Directors Loan Accounts) in the event of death or illness?
- Do we have funds or policies in place to pay out the value of partnership capital accounts and/or the value of shareholders shares in the event of death? Not only to pay what is owed to the family, but to retain control of the business?
- Do we have an up to date shareholders' agreement or partnership agreement in place specifically detailing what happens on death?

## If you do have policies:

Are the policies currently owned by the correct legal entity (company, individual, partnership)?

Do the policies provide sufficient capital or income in the event of a claim? When was this last reviewed?

Armstrong Watson Financial Planning works alongside Armstrong Watson's specialist Legal Sector team and recognises the unique challenges facing law firms and helps provide rounded solutions to the potential problems highlighted above.

Please contact me for impartial, independent advice.



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# An interview with...

An interview with Alex Holt, Director of Business Development at The Cashroom, a UK wide legal sector specialist cashing and bookkeeping business

## 1. What do you see as the key developments in the legal profession right now?

The biggest issues in the legal profession in my view relate to the constantly changing landscape in which firms operate, and how they respond to such shifts.

Everyone knows that the last 25 years have seen unprecedented and accelerating change in all walks of life. In the legal sector specifically, regulatory changes have been frequent. Some have been particular to the practice of law, such as Clementi, Jackson, the overhaul of the SRA regulations etc. Some have been broader in commercial effect, but have still had a huge impact, such as GDPR and AML regulation.

The expanded scope of the 'non-reserved' activities has led to some very large and extremely commercial entities paying ever closer attention to the consumers of services who were traditionally solely the market for lawyers. Take for example employment law, where entities such as Citation and Peninsular have grown so quickly and taken large chunks of the legal work available.

There have been other changes to cope with. The advent and development of the internet; email communication with clients; cyber security risks.

All of these things have one thing in common - they affect the status quo. They create a need for change, and we all know that lawyers in the past have not always responded well to change.

But the better firms and businesses have responded with an increasing willingness to consider new ways of working. To embrace the opportunities presented by the ability to outsource issues, and focus on their core strengths. They've looked at new technology as an enabler, rather than a headache.

Inertia is no longer seen as an option.

## 2. How can law firms help their fee earners to make the best use of their time?

Law firms need to free up their fee earners to focus on the right things.

The starting point should be a proper understanding of the process that they are looking to achieve, and at all times considering what that means for the client.

How many firms have a clear grasp of every element of their end-to-end process? Without that granular understanding, surely any approach to pricing or resource management is guesswork.

It can be time consuming initially to carry out a process review, however the benefits can be huge and immediate.

From a chargeable time perspective, allowing the right level of fee earner to deal with the right task is key. You don't want a partner dealing with administrative file tasks. It's a waste of their time, and an element on the bill which will surely (and quite rightly) be challenged by a client. A junior fee earner may need technology support to carry out repetitive but crucial tasks. It's all about efficiency.

The internal facing activities for fee earners can be crucially important to the smooth running of a law firm too - billing promptly; recording time accurately; managing credit control issues. All of these require fee earner input and yet are seen as a horrible chore. We regularly deal with firms where the fee earners balk at matter management, but that is often because the processes or technology aren't in place to support them. These things can be made painless and quick with the right process and technology implementation. Consider the culture of the business. Do staff understand where the firm is heading? Do they appreciate the importance of what they do? Are you motivating them in the right way?

Utopia is surely maximising the time spent by happy engaged fee earners on earning fees, without those fees subsequently having to be written off. Having solid, accurate data from enthusiastic, well supported fee earners will help with fee generation, management information, and client satisfaction.

What's not to like?

## 3. What technology developments are you seeing in the legal profession?

After a slow and cautious start, law firms are beginning to accept certain tech advances such as cloud based data handling, web presence and CRM systems. It helps that many of the technological advances are coming down in price and becoming more user friendly.

A big change is the availability of cost effective, straightforward systems for practice, data and case management. In the last seven or eight years, more and more systems have entered the market. The choice has grown, as have a number of different level systems to suit all needs. Data transfer is no longer as risky or expensive, meaning that if a system change does not bring about the desired results and functionality it is much simpler for a firm to change tack. They are no longer tied in by cost (many systems now have much shorter minimum contracts) and complexity of transition. Many of the systems are inexpensive, particularly when compared with 'the old days', and when assessing the benefits brought to a firm by having them.

The systems and the data available from them have made a huge difference for the management of firms. Provided data is accurately inputted, a management team will be armed with crucial, clear information on WIP, cash flow, performance etc. How on earth do firms manage their businesses without it?

In the end, a good way to consider tech developments is from the point of view of the client. Will they see a benefit?

The firm should gain better efficiency from case management, with commensurate cost savings and improved speed for the client. Data and CRM systems will mean that the clients' interests are fully understood, and offerings of services specific to the client's needs can be tailored. Communication methodology should be embraced. From the ability to sign documents electronically, to the use of apps to communicate key information throughout the lifecycle of a matter, the modern day client has evolved. They expect speed of communication and clarity, and without the kind of systems I've mentioned, a firm simply won't be able to provide those things cost effectively.

Efficiencies will also relate to the systems and processes enabling the right person to deal with the right task, playing to the strengths of their internal resource, and spotting areas where external outsourced expertise may be a better solution.

## 4. What are your top tips for law firms?

- Embrace technology and talk to others in your sector or region about what they are using. If your rival firms won't share ideas (though most are more than happy to do so in my experience) join networking groups and just ask people like me who have a weird fascination with the evolving landscape for lawyers!
- Use specialists to do the things your firm needs, but in which it is not expert. Compliance, tax and structure advice, and cashing are all things which the modern law firm needs, so ask an expert and outsource the headache. You'll find that cost savings and a better risk profile are built into most of those outsourced solutions.
- See the opportunities in change and build that attitude into the culture of your business. Price transparency may be new and possibly irritating, but understand that a huge part of your target market is used to buying services online, so learn from those who do it well. Have client testimonials and reviews accompanying your pricing. Technology implementation and pricing should always have quality service and value for the client at their heart
- And finally, try to enjoy the challenges. The running of a business is never 'finished'. You can always strive to provide a better service, to gain more clients, to motivate your staff. If those things don't excite and enthuse you then maybe the tech advance for you is a Playstation?



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