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Barristers' clerks — master, servant or entrepreneur?

The Legal Services Bill could be about to change a rather complex relationship

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Clerks are the entrepreneurs of the Bar. It was Peter McLeish, Machiavellian senior clerk in the Channel 4 drama *North Square*, who introduced the complex relationship between barrister and senior clerk to a wider audience. It showed that although strictly employed by the barristers, the reality is that the senior clerk runs chambers and often calls the shots. This relationship, with its roots in the contradictions of the English class system, is as much a part of the mystique of the Bar as wigs and gowns.

But the forthcoming Legal Services Bill will herald a new era in that relationship, allowing lawyers and certain non-lawyers to work in business together under licence. What, then, is their role at present? Above all else, what characterises the senior clerk is the multiplicity of his roles. In 1823, Charles Lamb, writing of his father who had been a clerk, said: "He was at once (Mr Salt, KC's) clerk, his good servant dresser, his friend, his 'flapper', his guide, stopwatch, auditor, treasurer. (Mr Salt, KC) did nothing without consulting (him), or failed in anything without expecting and fearing his admonishing. He put himself almost too much in his hands, had they not been the purest in the world. He resigned his title almost to respect as a master, if (his clerk) could ever have forgotten for a moment that he was his servant."

Today the senior clerk's role resembles that of a chief executive of a multimillion-pound company. But this does not do it justice. He is head of personnel, in charge of day-to-day disciplining of stray counsel. He is head of marketing and public relations; and careers adviser at large, both helping the successful and sensitively managing the expectations of those who flounder. Added to this, he is agent, broker and head of administration and credit control. In recent years several clerks and former clerks have also been instrumental in pioneering Bar-related services such as online clerking, from Stephen Ward, at Clerksroom, and Andrew Hutchins, at BarristerWeb, to Martin Poulter, at Chambers People.

Yet unlike other businesses, most chambers still do not have different employees for each task — probably because historically, barristers individually employed their clerk, and in return he catered for their specific needs. And unlike a normal business with defined employment structures, chambers consist of self-employed professionals, each vigorously guarding their independence. Arguably, only someone with authority over all aspects of a barrister's professional life could keep control — the reason, perhaps, why clerks have withstood the threat posed by practice managers and specialist administrators.

Yet despite the obvious authority of the senior clerk, many still perpetuate vestiges of the old system. Barristers are often addressed as "Sir" or "Mr Blogs" while clerks are addressed by their first name. This is caricatured in a story recounted by John Flood, Professor of Law and Sociology at the University of Westminster, of a senior clerk telling his junior: "When I call a barrister by his first name, you call him 'Mr Smith'. When I call him 'Mr Smith', you call him 'Sir'. When I call him 'Sir', you don't speak to him." So, too, clerks are often told to knock before entering barristers' rooms, a rule not applied to fellow barristers — small details that some clerks argue help to retain a division of labour that assists them when it comes to discipline.

But with the wages of top senior clerks reportedly as high as £350,000 a year, and the fact that often there is little difference between the social backgrounds of the two groups, any remaining veil of deference is at most nominal or a legacy of the past. It remains to be seen how the alternative business structures will affect the Bar. But it seems highly likely that clerks will be among those taking the business risks — and ultimately reaping the rewards.

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