

The modern clerk in a modern Bar

Being a clerk in today's Bar is very different to the life of Billy Lamb in "Silk". Paul Martenstyn explores how clerks' roles and skill sets are evolving

"A barrister's clerk? What exactly do they do?"

It's a question I've been asked regularly since I first started clerking in the mid 1990s. Since the escapades of the fictional Senior Clerk Billy Lamb were brought to the small screen in the BBC1 drama series *Silk*, the question has recently changed to "Are all barrister's clerks like that?!" Thankfully in my experience they are not, and by some way.

The people in the middle pulling strings

It is sometimes difficult to pin point exactly what clerks do because what is expected in our role can be so diverse – a commercial set of chambers like Fountain Court has a very different business model to a criminal set which relies on publicly funded work. Both have different expectations from their clerks. We have always been described as the people in the middle pulling the strings in an agency/sales type role but on a daily basis we have to be many things to many people. The tendency has been to describe our role as an agent responsible for looking after his or her barristers, from practice management and development to fee negotiation. Any successful clerk will also tell you that there is an element of having to be sensitive to the "politics" of chambers, given the diversity of views and approaches that naturally comes with dozens of well-educated and self-employed professionals who are paid to provide opinions on what can seem like everything under the sun. In the not-too-distant past it was commonplace for the clerking team to have control of chambers' accounts, IT functions and pretty much every section of chambers' management. In today's market most larger chambers will have, in parallel to the clerks' room, a separate marketing department, onsite IT functions, HR, accounts team and (sometimes) a Chief Executive or Chambers Director. Since the main commercial chambers are now run as multi-million pound businesses (sometimes with international offices), this gives the clerking team time to focus on what it does best, which has at its core practice management.

Clerks as a "profession"

Clerks are yet to be formally recognised as a "profession" but this is something the Institute of Barristers Clerks (IBC) is lobbying for, particularly as education takes on an increasingly important role. Since the start of my career I have seen many changes within clerking as the role has evolved. It used to be the tradition for clerks

to start their career straight from the school at the bottom of the ladder and work their way up to the top. For many clerks this is still what happens today.

However there are an increasing number of graduates entering clerking. It is also now common for clerks to gain vocational qualifications, for example with the IBC providing a formal BTEC qualification for junior clerks. There are also those who have obtained a professional qualification from outside of the profession, whilst building a career within. This was a route I chose to follow in 2006 because I had always wanted to attain qualifications post-A levels. The Chartered Institute of Marketing offered me an opportunity to do so. I was fortunate enough to become the first barrister's clerk to gain CIM qualification and spoke about it at an IBC training event in 2008. A number of clerks have followed suit including two of Fountain Court's clerks, which I believe can only be positive for our profession. It required an awful lot of effort to study on top of what is already a demanding full-time role but I believe that the rewards for both the individual (clerk) and collective (chambers) are significant. Marketing is of central importance to a clerk's daily role in modern practice and by definition that does not just mean "business development". What this qualification gave me was insight and understanding as to how to approach many challenges of the job and also how to identify and cultivate opportunities. It also allows you, as a clerk, to contribute to something which is central to any chambers' future: devising a strategy for the present, medium- and long-term. Of course this route requires investment from chambers in their clerks, which is something a number of chambers are yet to be convinced about.

"Practice managers"

The increased role of education is already producing visible effects. Some chambers have decided to abolish the term "clerk" and instead use titles like "practice manager." In Fountain Court we have "team leaders" and their assistants, under the leadership of our Director of Clerking, Alex Taylor. Of course, a change in title does not ultimately change the fundamental role, even one that is constantly evolving. At Fountain Court there is no doubt that certain elements of the traditional "clerking role" still focus on longstanding functions like listing and fixing cases, diary management, fee negotiations and general practice management. However, on a more fundamental level, the clerks look at



themselves as “trading clerks”, trading a variety of services to our market with a strong (and most importantly professional) sales element at the core.

Impact of the LSA and direct access

What chambers expect from clerking teams today and in the future will also change especially in light of the Legal Services Act 2007. In addition to the LSA, recent changes to allow direct access by clients to barristers bring yet more opportunities and challenges both to chambers and to those who represent chambers’ primary point of contact with the outside world – affecting how they conduct their business. Many believe that the current combination of tradition and innovation is the best way forward for the role of clerks in the modern legal profession. For many chambers which will hope to utilise ProcureCos or similar models, this is a new environment with fresh challenges. The business model and structure of some chambers will undoubtedly need

to adapt, especially with criminal legal aid practitioners being able to contract directly with the Legal Services Commission for long term contracts. For larger commercial sets of chambers, the future impact of the LSA is less certain, in part because the commoditisation of services provided in that sector of the Bar is perhaps less likely.

Making client relationships work

Against this evolving background, the question of branding, and what chambers stand for, comes into play and again this is an area in which clerks have a critically important role. The fact that a brand can influence a client’s purchasing decision has come as a revelation in certain areas of the legal profession. The same can be said of the notion that “people buy people”. One challenge that all chambers face is offering their professional and lay clients a deeper understanding of what they are trying to be, the relationships they want to build and the services they can offer. This is where the best clerks can add real value if they have the right level of knowledge of members’ practices and chambers’ clients. I have stopped counting the number of Client Relationship Meetings I have had with solicitors (from small, closely-held partnerships to Magic Circle firms) where the message has come out loud and clear: from their perspective the relationship is key. Relationship marketing is absolutely essential and a key component in our role as clerks, but understanding why we are doing this and the message we are communicating is something different.

PROFESSION

Chambers

I've been very fortunate to have worked with some of the most successful clerks and barristers in the profession who have instinctively recognised this and continue to do so both domestically and internationally.

"For a litigation solicitor to be able to service his clients' needs, it is imperative that he has good relations with counsel's clerks. We often need to find the right counsel at short notice and it is vital that we can trust the clerks' judgment. Likewise, we sometimes need an "honest conversation" which is only really possible when you have established a close and trusting relationship. A good clerk is as much part of a team on a case as any other member of that team"

Head of Litigation, City firm.

Linking client, clerk and barrister

Spotting work streams and focusing on new emerging areas requires high level communication amongst the members of chambers and clerking teams if chambers are to identify and capitalise on opportunities as efficiently as possible. With client target audiences becoming increasingly diverse and disparate, all chambers need to have efficient, modern and integrated information and communications systems in place. Social media formats such as LinkedIn, Twitter and other B2B communications already play a big part in many sectors – I doubt we will see QCs tweeting from court but it is yet to be seen how chambers and their clerks will embrace these changes. Nevertheless, how we communicate with clients in the future is directly related to the service that barristers and clerks will be able to supply.



In the concluding episode of *Silk*, Senior Clerk Billy Lamb bribes court officials so that his star barrister Martha Costello can do back-to-back cases for a favoured solicitor; by contrast the synergy between client, barrister and modern clerk is of an altogether more complex, and legal, variety. ●



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