

Solving the problems with Direct Access

By **Jonathan Maskew**, Business Development Manager, Clerksroom Direct

The market for legal services is significant with the spend on lawyers (Barristers and Solicitors) in England & Wales around £32bn last year with £3bn being spent on Barristers and £29bn on Solicitors.

For all those providing a route for legal advice, representation and guidance to those who need a solution for their legal dispute it is proving to be an exciting time of opportunity especially for those who have the awareness, vision and passion to improve service delivery.

The route of direct instruction offers a significant opportunity but it remains both fraught with potential issues and competitive in so many ways with clients wanting certainty and predictability with regards to cost and in many circumstances where they are inclined and increasingly able to undertake parts of the process themselves with supporting unbundled services.

Clients have become the driving force, seeking far greater efficiency, transparency and affordable legal services and so the nightmare continues for many chambers and asking **“but how do we compete?”**

Working on the knowledge that most people are not aware they can go directly to a Barrister for advice and or representation and that going direct to a Barrister is often 30% cheaper than going via a solicitor, given the choice what would you choose?

On average, Solicitor and Barrister –v- Barrister for a court case is a pretty simple thing to explain but clients are often not given the choice. For most, the choice would become easier if they knew they could go direct, that it was likely to be 30% cheaper and make the decision for a “alone” Barrister to represent them.

Brand Barrister may well be a solution with a collective vision to deliver their services directly and provide the choice.

It is staggering that most people on the planet would recognise a Barrister wearing a wig and gown and would be able to easily identify the solicitor and the Barrister if shown two images. Barristers have never capitalised on this worldwide, instantly recognisable global brand.

Since the rule change which allows members of the public to instruct a Barrister directly, almost 6000 of 12000 or so Barristers in England and Wales have undertaken the training to deliver their services in this manner.

The other 50% have probably refrained from undertaking the training as they see the difficulties of the route working with the public, such as speaking to them, low conversion rate, asking for money up front, compliance with ID checks and Money Laundering checks.

So what are the problems you face in Chambers?

So what exactly are the problems you currently face in chambers in taking this opportunity to the next level and how are you adapting or improving your service to offer a solution? We would invite you to let us know and participate so that all those involved can benefit and ultimately improve the levels of service for the increasing numbers of clients attracted to this competitive route for the very best legal advice and representation.

Experience tells us that the hidden cost faced by barristers and chambers is the actual time it takes to deal with enquiries and to actually convert them into paying clients, furthermore, often the measurement of the hidden costs is simply an on-going problem without real solution.

The resources issue is and remains a problem and how are your chambers seeking to provide a solution, what is the cost, who measures it and how?

In many circumstances it is difficult to provide the answers, but working together to provide a solution must be an aim.

Would you like to have a free to use service in the middle between client and chambers, taking the pain out of the process that provided administrative support for Barristers and chambers and if so what would it look like and how would it work for you?

Would you want an outsourced facility to take enquiries directing potential clients to the right barristers, obtaining the papers for you, an automated process and system that undertakes the ID checks, money laundering and all the regulatory compliance, whereby it would orchestrate credit card, debit card or BACS payment for the pre-payment of the Barristers fees, would you then feel much more comfortable in taking a great share of instructions directly?



So many questions for chambers to answer, however, a combined solution service could obtain a quote from a Barrister and the client could receive the quote electronically and it would be provide a fixed cost so that they have cost predictability, clarity and certainty with fees.

Furthermore, would you want a service that would perhaps look at ways to increase the volume of work provided for barristers by seeking collaborative marketing partners who are invited to join? Would it also be a good idea where such collaborative marketing partners provide clients who subsequently convert into paid work and where they too can be rewarded for this on a commercial basis and share the administration fees on a 50%/50% split, providing a real “WIN –WIN” for all involved



There has always been a strong desire for chambers to adopt smarter ways of working but the traditional chambers model has not adapted to the route of sharing marketing costs and the possibility of lead generation for obvious reasons. However, it could well be the perfect time to consider something different, where the smarter use of technology will allow this to happen and harness the collective buying power of Brand Barrister.



A solution driven platform could add further efficiencies such as operating HMRC self-bill reduces the burden of unnecessary paperwork or invoices and could provide full access to the reporting module that shows the leads coming through, the status, spend and monies due to the marketing partners and barristers receiving instructions, is this something you would consider to support you?

Such a vision whereby clients could have total access to the UK marketplace of 6,000 Barristers at 210 locations in main cities and town throughout England & Wales and able to provide a Barrister for any court centre in England & Wales would place BRAND BARRISTER to take a greater share of the £32bn legal spend.

The proposition and solution offered needs to remain simple, to be a fixed and predictable fee with the least amount of variables as is possible.

Broken down, it may look like this;

- 1 Client click on Hearing or Advice
- 2 The date and court are confirmed if a hearing
- 3 Client provides basic contact details, or logs in via LinkedIn or Facebook
- 4 Account created on our system, email verification, client given login
- 5 Papers uploaded
- 6 Client says they want quotes and can see profiles and request quotes or they propose a fee and offer to Barristers.
- 7 Quotes sent/accepted. Link to payment online credit or debit card payment portal and monies taken.
- 8 Client works with Barrister, payment made to introducer.
- 9 If repeat work, automatically tracked to introducer and further payment made.

This is not a vision of the future, an innovative solution is emerging and invites you to take part.

For further information then please visit the Clerksroom Direct website;

www.clerksroomdirect.com

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If you would like to comment on any of the questions above or require further details then please contact Jonathan via email ;

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Clerksroom Direct appeared in Episode 3, Disruptive Pitch TV and won, they now appear at the Live final at Business Expo at Excel in March 2017

DISTRUPTIVE PITCH - SERIES 1 - EPISODE 3



<https://youtube.com/watch?v=QEVeLay7768>



Nigel Poole QC, a leading clinical negligence barrister at Kings Chambers, explores the implications of the Department of Health's proposal to cap legal fees payable by the NHS.

The Department of Health's proposals for fixed recoverable fees in clinical negligence claims for damages up to £25,000 have been met with a sigh of relief by some in the legal profession: they could have been so much worse.

Neil Sugarman of the Association of Personal Injury Lawyers gave a "cautious welcome" to the proposals and said that "a fixed fee regime for more straightforward cases could be workable."

The legal profession is in danger of missing the point.

The fact that the proposals are less draconian than feared does not make them acceptable. The fact that they are workable for the profession does not make them just for patients and their families.

Fixed recoverable costs certainly have an important role in the funding of litigation. The hourly rate system of charging rewards the inexperienced and inefficient above those who are able to do the same work at a higher standard and in less time. But a fixed recoverable costs regime has to be fair, it has to reflect the particular features of each area of litigation, and it has to allow proper access to justice.

The Department of Health's proposals single out clinical negligence litigation for harsh treatment and will restrict the ability of patients and their families to hold the NHS to account in some of the most serious cases.

There are four main objections to the proposals:

- They will have a significant, adverse impact on bereaved families.
- The fixed costs proposed ignore the particular features of clinical negligence litigation.
- It should not be the role of the Department of Health to restrict the recoverable costs of those making claims against it.
- The proposals are ill-timed given

the ongoing investigations by Sir Rupert Jackson and by the National Audit Office.

The Impact on the Bereaved

Jeremy Hunt has accused "unscrupulous" law firms of "creaming off" unreasonable costs. He appears to disregard the fact that a claim for costs is not the same as an award of costs, that recoverable costs include items such as court fees and VAT that flow back to the government, and that claimant's lawyers, unlike defendant lawyers, do not get paid a penny for those cases that do not result in an award of damages.

There is an even more fundamental misunderstanding at the heart of some of the allegations that costs are disproportionate to damages. General damages for personal injury are based on convention. They are intentionally set at a low level so that no-one would swap the injury for the compensation.

A broken arm, unlike a written-off car, does not have an objective monetary value. Comparing general damages for an injury with the legal costs of the claim is not comparing like with like. And the comparison is even more inapposite for fatal claims.

The government sets the level of damages for bereavement, currently at £12,980. No-one suggests that £12,980 is fair compensation for, say, the death of a child. Asking whether legal costs are higher than the bereavement award is the wrong question. Ask instead whether the legal costs are proportionate in a disputed claim about an avoidable death.

The NHS is a cherished institution but mistakes are made, sometimes negligent and sometimes fatal. Total recoverable damages for the death of a child under 18, an elderly patient or anyone who has no dependants, will often fall below £25,000. Are their deaths less worthy of full investigation than others? Under these proposals many bereaved families will have much greater difficulty in holding the

NHS to account.

There is no entitlement to public funding for bereaved families at Inquests into the deaths of NHS patients. The government will fund legal representation for the hospitals concerned, but not for patients' families.

Sometimes lawyers will agree to act for families at Inquests if there is a prospect of recovering at least some of their costs in subsequent civil litigation but, under these proposals, that prospect will be removed. There is no provision for Inquest representation. The proposed cap on pre-action costs is £3,000 whether the claim is for a missed diagnosis of a scaphoid fracture or the death of a child.

The Particular Features of Clinical Negligence Litigation

Clinical negligence is difficult and expensive to prove. The Courts apply the so-called Bolam test. A doctor is not negligent if he or she has acted in accordance with a responsible body of professional opinion, even if the majority of their peers would have acted differently.

A claimant must rely on expert evidence to prove negligence. Likewise with the issue of causation. By definition, claimants were injured or ill before the clinical negligence occurred. Thus, they have to prove that their outcome is worse than it would have been without the alleged negligence.

Even experienced clinical negligence lawyers cannot know the merits of a claim until they have obtained expert reports, scrutinised them and tested them in conference. Even then, they would need to see the other party's expert evidence before they can take a firm view of whether the claim would be likely to succeed at trial.

The NHS Litigation Authority ("NHSLA") – the body responsible for defending claims against the NHS – clearly thinks that way too. It will often insist on seeing a claimant's expert