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All for one or one for all?

Jeremy Robson analyses the threat to consumers and the profession as the distinction between barristers and solicitors remains unclear



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For the litigant in 13th-century England, managing one's legal matters was a tricky affair. The courts were itinerant, following the King around the country, and for those who did manage to gain an audience, proceedings were conducted in French.

Those who sought redress in the court of the King could employ two different professionals: the 'forespeaker', who could speak on his client's behalf, and the 'procurator', who acted as an agent and could enter his client into binding agreements.

As these two professions progressed alongside one another, each role remained distinct while their specialist skills were refined and enhanced. Although some offspring of these professions, such as 'the Serjeant at Law', flourished and then died, for many years their functions remained alive in the respective roles of 'barrister' and

'solicitor', each offering a unique service to their client. When asked the perennial dinner party question of 'what is the difference between a barrister and a solicitor?', lawyers were able to give a simple and succinct answer.

A fused profession?

But in 2016, the answer to that question cannot be given so easily. Solicitors have, since 1990, been able to conduct advocacy in the higher courts, which many have chosen to do. Some have been driven by a wish to be able to stay with a case at every stage, and some by financial incentives and the need to maintain an income as publicly funded work decreases. Barristers have been able to expand their clientele by accepting instructions directly from the client and trading upon their expertise to offer a service to clients that removes the need for solicitors.

Alternative business structures have developed, allowing barristers and solicitors to work alongside each other in non-legal entities.

It may well be that the professions have not yet fused but the distinction between them has become increasingly blurred, both through the overlap in specialisms and the emergence of other forms of regulated and unregulated legal professionals. The relationship between the Bar and solicitors has reached a curious position where both professions are competitors, but competitors who need their rivals to succeed.

There remains, however, much

resistance to the notion of fusion between the professions. When asked at recent conference organised by the UK Law Students' Association whether the professions should fuse, the current chair of the Bar, Chantal-Aimée Doerries QC's response was an emphatic 'no', warning that it would result in the loss of independent advocates and jeopardise the reputation of the legal profession of England and Wales.

For those who argue for a fused profession, the current model is confusing and costly. Critics of the current position argue that it duplicates costs to the client and operates in an anti-competitive way. They point out that in most common law jurisdictions fused professions exist, and exist successfully.

Perhaps ironically, as the nature of the work that the professions undertake merges, the routes by which they must be qualified appears to be diverging. The Solicitors Regulatory Authority appears, in the face of unanimous criticism, to be actively championing a model where solicitors are simply required to pass an entry test to gain access to the profession, while the Bar Standards Board, although consulting on reform to its training programme, is unlikely to be taking such a radical path and will still demand graduate entry and intensive training prior to qualification.

Specialist skills

So, what does the public need? It needs the highest quality

service at the most affordable price. The consumer in search of a lawyer needs to be able to differentiate easily between the strengths and weaknesses of differing legal service providers in the field in which their assistance is needed and to know that the quality of the practitioner employed is assured by their qualification.

Advocacy is a specialist skill, requiring in-depth training and constant support and development. It is also crucial to that cornerstone of our democracy, the rule of law. The past 25 years have shown that it does not need to be the exclusive preserve of the self-employed barrister and that advocates, if properly regulated, supported, and trained, can maintain their independence regardless of their job title.

Advocates need to be able to trade on their 'brand', namely analytical and presentational skills of the highest quality. The routes by which they achieve this and the organisations they work in can, and should, be diverse, but the quality of their training and the way in which they are regulated should not. If legal entities make it impossible for the consumer to be able to discern clearly what their strengths and weaknesses are, it will be simply become a 'race to the bottom' determined solely by price – to the detriment of both the consumer and the professions.

Perhaps the needs of the litigant today are not so different to those of 900 years ago. **SJ**