

## “What’s in a name – is the title of solicitor still relevant?”

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### 1. Introduction

The role of the lawyer has existed since time immemorial. The esteemed English philosopher and jurist Jeremy Bentham postulated<sup>1</sup> that “*lawyers are the only persons in whom ignorance of the law is not punished*”; lawyers have endured as the trusted advisors of individuals and the arbiters of law and justice throughout time. Conversely, the title of solicitor in its current form is, in relative terms, a more recent construct, coming into being in modern terms as a confluence of the archaic roles of proctor and attorney, which were extinguished by the Judicature Act 1873 and merged into the title of solicitor as it is known today.

However, the question of the relevance of the title of solicitor is a question that has persisted and arisen at various legislative junctures, most notably stemming from the Royal Commission on Legal Services, appointed in 1976 and helmed by Sir Henry Benson, to investigate the title of solicitor in the context of the legal profession in its entirety<sup>2</sup>.

This commission, which delivered its report in October 1979<sup>3</sup>, evaluated the role of solicitors (and barristers) and favoured the maintenance of a “split” in the professions, recommending that solicitors kept their traditional roles of conveyancing and litigation but advising against advocacy conducted by solicitors, to “secure the proper quality of justice” with resulting legislation reflecting this.

In the decades since Sir Benson’s report was delivered, the legal landscape in the United Kingdom (UK) has changed significantly. The UK has enjoyed a position of prominence in the legal sector, forming an estimated 6.5% of the global legal market, with growth predicted to continue through to 2022<sup>4</sup>. It is inevitable therefore, that this sustained development will influence the legal profession and, in turn, the relevance solicitors hold and will hold in the context of the market and its future.

This essay will therefore consider the relevancy of the title of solicitor in the context of the UK legal framework, with emphasis on the current status of the title and impending changes being introduced within the profession.

### 2. Current Status of Solicitors in the Context of the Profession

The position in the context of the title of solicitor as it stands today, was brought about following the advent of the Legal Services Act 2007. This Act actualised the status of various limbs of the profession, enabling lawyers holding titles other than those of the traditional “solicitor” or “barrister” to provide such specialised legal services to the public as had previously been the reserve of those holding the traditional titles. The result has led to a barrage of options which confront clients when choosing legal services<sup>5</sup>, creating the potential for difficulties when clients seek to purchase legal services.

The Act enables those titled “Legal Executive” to provide “reserved activities”, being key services such as conveyancing and litigation when appropriately authorised. In actuality, the only key distinguishing factor in law is that whilst legal executives train and specialise in one

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<sup>1</sup> An Introduction to the Principles of Morals and Legislation, J. Bentham, 1789

<sup>2</sup> The Making of the English Legal Profession, Richard L. Abel, 1998

<sup>3</sup> <https://api.parliament.uk/historic-hansard/lords/1979/oct/30/royal-commission-on-legal-services>

<sup>4</sup> <https://www.businesswire.com/news/home/20190304005549/en/UK-Legal-Services-Market-Trends-Report-2019>

<sup>5</sup> Legal Services Market Study, Interim Report, CMA, paragraph 1.13

area and must seek authorisation<sup>6</sup> before practising reserved activities, a solicitor is authorised to provide such reserved activities upon admission to the roll. It is arguable therefore that legal executives in particular pose a notable threat to the relevancy and distinction of the solicitor title. This is also apparent through the representative body, the Law Society's "solicitor brand" campaign<sup>7</sup> which seeks to promote the use of a solicitor. However, the issue is also compounded by the representative body of legal executives, the Chartered Institute of Legal Executives' lobbying in 2019 for the legal parity and increased recognition of legal executives against solicitors<sup>8</sup>.

Notwithstanding this, striking at the heart of the question at hand, the historic weight and apparent prestige of the solicitor title still appears to persist in the consumer psyche. At the beginning of this decade, the regulatory body the Solicitors Regulation Authority (SRA) commissioned a report into consumer attitudes towards solicitors<sup>9</sup>, in which the relevancy of the solicitor title was found to be patently in existence. The report stated that clients did not "*generally find it easy to decide which providers of legal services have the required experience and qualifications*"<sup>10</sup>. The report continued to find that having a name with 'solicitor' in the title was seen as "*an indication of a reliable provider and consumers had confidence in the ability of solicitors to provide legal services*". In addition, consumers were found to "*know less about other types of legal professionals apart from solicitors*".

The reality may in fact be more nuanced, particularly in more homogenised and commoditised practice areas such as residential conveyancing. The service received by clients is arguably indistinguishable between the various types of lawyer now in existence, although it remains to be seen whether this extends to more specialised areas.

In order to further consider the question, the solicitor title should be considered in the wider context of legal services as a whole. The way in which clients access legal services is continuing to change. Richard Susskind suggests<sup>11</sup>, perhaps to the extreme, that future lawyers will operate in more numerous, but clearly defined roles, with the title of solicitor being an archaic "20<sup>th</sup> century" concept. As noted above, modern structures are challenging this and lines are continuing to blur within the profession.

### 3. Changes to the Profession and the Future of Solicitors

The traditional title of solicitor is further being challenged by a resurgence in entrants to the profession. So-called "challenger" firms which, for example, employ lawyers on a self-employed basis are disrupting existing models with positive results<sup>12</sup>. Such firms are creating opportunities for clients to circumvent established solicitor-client relationships, which have also been considered in the context of being "expensive" or "time consuming"<sup>13</sup>, to provide services in a manner in which solicitors are not widely known to offer.

This disruption is further echoed by the re-entry of the so-called "Big 4" accountancy firms into the legal profession. The provision of such services by accountants, who are also commonly

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<sup>6</sup> [https://www.cilex.org.uk/membership/practice\\_advice/practice\\_rights](https://www.cilex.org.uk/membership/practice_advice/practice_rights)

<sup>7</sup> <https://www.lawsociety.org.uk/policy-campaigns/campaigns/solicitor-brand-campaign/>

<sup>8</sup> <https://www.lawgazette.co.uk/news/professional-snobbery-legal-executives-demand-parity-with-solicitors/5068822.article>

<sup>9</sup> <https://www.sra.org.uk/sra/how-we-work/consumer-research/summaries/purchase-of-legal-services/>

<sup>10</sup> Consumer attitudes towards the purchase of legal services – An overview of SRA research findings – February 2011 – page 6

<sup>11</sup> Tomorrow's Lawyers: An Introduction To Your Future 2 by Richard Susskind 2<sup>nd</sup> Ed. 2017

<sup>12</sup> <https://www.lawgazette.co.uk/news/challenger-firm-keystone-reports-profits-up-57/5070213.article>

<sup>13</sup> Competition and Markets Authority – Legal Services Market Study: Interim Report, July 2016

regarded as key and trusted advisors<sup>14</sup>, poses a highly advanced threat to the title of solicitor. In taking the other side of the argument however, it may be stated that the impact of accountants when considering the relevancy of solicitors is likely to be limited, flowing from the legacy of the Arthur Andersen debacle and the collapse of Enron Corporation<sup>15</sup>; accountants providing audit advice to clients are highly susceptible to being “conflicted out” of providing legal advice to those same clients. In any such event, the provision of legal services by the “Big 4” is likely to present a continued threat to the relevancy of the solicitor title within the mid-tier of the market where efficiency and price can be deciding factors. This drive for efficiency and the delivery of legal services by non-traditional lawyers is further evidenced by Ernst & Young’s acquisition of Riverview Law<sup>16</sup>, an alternative legal services provider.

As yet, the leading entities within the UK legal market remain solicitor firms<sup>17</sup>, which account for billions of pounds in revenue annually. It is therefore arguable by virtue of this fact alone, that the relevancy of the solicitor title is at least cemented in the short to medium term.

Considering change further, it could be said that the most notable changes which will affect the solicitor title have been initiated by the regulator itself. On 25 November 2019, the SRA introduced a new set of rules for solicitors<sup>18</sup>, termed “SRA Standards and Regulations”.

Despite protestations from the profession, it could be argued that the new rules may in fact underline both the title and the role of a solicitor and mark its adaptability and relevancy. The new rules introduce the concept of freelance solicitors, providing the ability of those holding the title to work in unregulated entities for the first time under SRA rule. This change will have an as yet unquantifiable and unknown impact on the legal landscape.

One may, in fact, suppose that as a direct result of the new rules, solicitors may obtain more relevance in a modern context, particularly when contrasted with the title of barrister. This is evidenced through the fact that so-called freelance solicitors will be able to conduct litigation whilst working in unregulated entities, challenging “direct access” barristers<sup>19</sup> who are at present, limited and could now appear less cost effective and less relevant when clients are considering legal services.

Whilst the full effect of these rules on the market, positive or negative, remains to be seen, it is clear that they provide the solicitor title with welcome adaptability and marketability at a time of change in the profession.

#### 4. Conclusion

The question of the relevancy of the title of solicitor has persisted since its creation. In view of other common law jurisdictions where a fused profession has materialised, the distinct title of solicitor endures within the UK, and it is clear for the reasons set out above that those holding the title of solicitor play and will continue to play a defined role within the legal profession.

By contrast, it is also clear that the relevancy of the solicitor title has eroded, flowing from the advent of legislative change creating additional competition within the market and other forms

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<sup>14</sup> <https://www.icaew.com/technical/practice-resources/digital-practice/tomorrows-practice/state-of-play>

<sup>15</sup> <https://www.nytimes.com/2002/01/16/business/enron-s-collapse-overview-arthur-andersen-fires-executive-for-enron-orders.html>

<sup>16</sup> <https://www.forbes.com/sites/markcohen1/2018/08/10/ey-acquires-riverview-law-a-different-perspective/#735be61f1950>

<sup>17</sup> <https://www.thetimes.co.uk/article/best-law-firms-2020-9kh6q236r>

<sup>18</sup> <https://www.lawsociety.org.uk/support-services/advice/articles/sra-standards-and-regulations/>

<sup>19</sup> <https://www.lawgazette.co.uk/practice-points/freelance-solicitors-a-threat-to-the-direct-access-bar/5101451.article>

of lawyers becoming able to enjoy legal rights and powers which were previously the preserve of solicitors.

In consideration of the points set out above, the title of solicitor is a relevant concept. Clients and consumers at all levels of sophistication still turn to solicitors as trusted advisors and the profession is driven by the adaptability of the title to legal services in a modern context.

In light of this and leading on from the question at hand is the further question of how, at the turn of this decade, the title and role of solicitor will continue to evolve and maintain its relevancy, in order to stand the test of time in the decades to come.

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**(1717 words, excluding subheadings and footnotes)**