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LawSync: navigating the 'blue oceans' within the 'emerging' legal services markets

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LawSync: navigating the ‘blue oceans’ within the ‘emerging’ legal services markets

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Abstract

Change, it is said, is the only constant. Whilst it cannot be avoided, the worlds of legal education and legal services have arguably enjoyed an extended period where the impact of change has been comparatively minimal. Today, these worlds face significant changes due to a combination of market and regulatory forces. True, such changes are likely to be accompanied by challenges but with these challenges come opportunities. There is no reason why Law Schools and Law students cannot help to shape these changes and benefit from them. LawSync™ is a project that seeks to enable such influence and attract such benefits at Sheffield Hallam University. See <http://www.lawsync.com> and <http://twitter.com/lawsync> for more details.

All websites referred to were available as of 05/07/2012

Biographies

Pete Smith is an Information Adviser for the disciplines of Law, Criminology, Sociology, and Politics at Sheffield Hallam University. He co-writes a column on English legal and law library news for the *Canadian Law Library Review*. He is a founding member of the LawSync team and has a particular interest in legal education, the provision of legal information to the public, and information literacy for law students. Pete is a Chartered Member of the Chartered Institute of Library and Information Professionals (CILIP).

Richard Whittle is a Senior Lecturer at Sheffield Hallam University. He is the creator of LawSync and has been an expert advisor on disability law and policy since 1998. He has advised a variety of commercial, governmental and non-governmental organisations in this capacity and regularly presents training seminars to the judiciary on disability and equality issues at the Academy of European Law in Trier, Germany.

Peter Griffith is a Senior Lecturer at Sheffield Hallam University. He is a founding member of the LawSync team and has a particular research interest in religion and belief equality law.

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LawSync™: the background

Legal 365; Rocket Lawyer; Law Tech Camps; Co-op Law; Eddie Stobart entering the world of direct access barristers....The worlds of legal education and legal services are undoubtedly changing, and the pace of change is getting faster. From Alternative Business Structures to changes in funding for legal services, from online law firms to questions about the viability of law schools, challenges – and opportunities – are plentiful.

These changes will affect everyone involved in the legal system – solicitors, barristers, legal executives, customers and clients, and those who deliver the education and training of lawyers as well as the students of law themselves. With these changes in mind, we – an Information Adviser for Law and two Law lecturers from Sheffield Hallam University – set up a project to consider how our department (Department of Law, Criminology and Community Justice) could respond creatively to these changes.

We selected ‘LawSync’ as the name of the project because it reflects what we consider to be a need to bring together – synchronise – the demands and aspirations of all players including students, academics and information specialists, regulators and the variety of business and consumer interests in the legal services field.¹

To date, the LawSync team has taken a particular interest in three areas of change:

- shifts in the regulation of lawyers
- changing consumer expectations
- changes in the education and training of lawyers

Related to these are a number of processes, the most important of which are:

- the coming into force of the Legal Services Act 2007, and related developments in law firm structures
- the increasing use of technology by law firms, particularly online services
- the law degree, in light of the work of the Legal Education and Training Review, and changing expectations amongst students

By looking at these processes, the LawSync team are contributing to broader discussions around legal services and legal education; developing a teaching module that will enable students to respond to change innovatively and in a commercially relevant manner; and laying the foundations for a continuous professional development package.

The Legal Services Act 2007

The Legal Services Act 2007 (LSA 2007) took full effect as of October 2011. As well as revising the regulation of the legal profession and the procedures for complaints about legal services, the Act makes a number of changes relating to the provision of legal services, the best known being the ability to create ‘Alternative Business Structures’ (ABSs) – a fundamental change that affects how law firms can be set up and run in England and Wales.

In essence, ABSs allow for non-lawyer ownership of law firms, and for non-lawyers to be partners. As of 28th June 2012² eight licences have been granted under the LSA 2007 and a further 25 to 30 applications completed; there are a larger number being processed.³ The most noted of these licences was that given to Co-Operative Legal Services – the first entry of a non-law firm into legal services.

We suggest, however, that the most interesting of the licences granted thus far were those given to the small firms of John Welch and Stammers and Lawbridge Solicitors Ltd. We note these licences in particular because the market had been expecting the first ABSs to be large firms looking to exploit their existing brand power. While the ABS route may well be more popular among the larger firms, it is clear from these licences that other elements of the legal services market consider the flexibility provided by the LSA 2007 to be of benefit to them as well.

The entry of Eddie Stobart into legal services in the form of its service giving direct access to barristers,⁴ whilst not done under the auspices of the LSA 2007, demonstrates the range of players who could become involved in providing legal services. In this sense, the LSA 2007 does not open an entirely new route but instead further widens the channel through which an arguably much needed business and entrepreneurial dynamic can flow. In the light of the changing expectations of consumers of legal services and the increasingly rapid technological developments that accompany those expectations, Whittle describes the legal services market in

England and Wales as an ‘emerging’ market of sorts.⁵ He considers this observation equally applicable to other jurisdictions – with or without an LSA 2007 equivalent. In this sense, the LSA 2007 is seen as a facilitator of such change not a prerequisite for it. Moreover, given the market and regulatory effects of globalisation – especially in more integrated regions such as the European Union – he questions whether the LSA 2007 will in any event force similar changes in other jurisdictions⁶ and – to extend this point here – he questions whether the LSA 2007 itself will, in turn, be reshaped by those developments as an enhanced regional and ultimately global legal system and market for legal services takes shape.

From this emerging market (and indeed other such emerging markets in other legal systems), a new legal industry is likely to grow with a wider array of stakeholders than that of the legal services markets of the recent past. New service providers, new methods, new ideas, new (and greater) investment, new products, and a new approach to consumers will likely generate new custom and thus significant opportunities. Susskind contends that there is a significant ‘latent’ market in legal services – an unrealised consumer need of legal services – in the UK⁷ a contention that we do not doubt and which we believe is equally applicable in a number of jurisdictions.

True, these emerging markets and their accompanying ‘industry’ will present significant challenges to those lawyers and firms unwilling or unable to adapt to meet client and market needs within this new environment.⁸ However, the opportunities and benefits for those that can are likely to be plentiful. The LawSync team is looking forward to engaging with businesses to assist them in making the most of the exciting potential that is offered. Similarly, the developing ‘industry’ opens new doors from a student perspective. In the planned LawSync module, students will study the regulatory structures within which providers of legal services (‘orthodox’ and ‘new breed’ firms) work, and develop an understanding of how these structures shape the kind of firms they might work in – or create.

The module will highlight the new job opportunities and career pathways that the introduction of ABSs and other new legal service providers can offer for those whose progression in the legal services market may have otherwise been limited or non-existent. Likewise, we recognise that existing paths such as paralegal and legal executive might well become more attractive and

students themselves might wish to establish businesses within the legal industry with colleagues from other disciplines, mirroring the work of multi-professional service firms in areas such as finance. Our ambition in this context is to enable our students to take full advantage of the opportunities that will be presented by these changes.

Changing consumer expectations and the place of technology

New technologies are enabling service provision from any sector of the market to be more integrated, intuitive, adaptable, convenient, personalised and accessible to a more diverse consumer base. The existence of these technologies, the expectation of consumers generally and the relatively out-dated nature of many present day providers of legal services will likely result in consumer demands for a radically different set of legal products as well as service delivery and business models. For example, people are increasingly coming to expect that services will be delivered online where possible; they can arrange a loan, lobby their MP, or renew their library books on-line, so why not extend this ease of access (and often price advantage) to legal services?

There are of course a number of issues to be considered in this context. Not all legal services suit this mode of delivery. Additionally, even where this delivery model is appropriate, many legal transactions will involve the exchange of personal information, some very sensitive, and so there is the issue of security and privacy and ensuring the necessary safeguards are in place to meet the relevant data protection laws and professional regulations. For example, in her article on the problems of setting up multi-jurisdictional virtual law firms in the USA, Kimbro notes the issues around the storage of personal information⁹; this could involve two or more service providers, each with their own protocols and standards, and the subsequent difficulties in assessing the security of personal data and the quality of service.

Making use of technology in legal services is not merely a matter of adjusting processes for existing activity to take advantage of technological advances. New technology can also enable the creation of legal services that would not have otherwise been possible or commercially viable. An interesting example of the innovative use of technology in this context is that of EU Claim¹⁰. This service emanates from the air passenger rights at EU-level provided in Regulation 261/2004¹¹ which establishes common rules on compensation and assistance to air passengers.

EU Claim maintains historical flight data which it uses to advise customers whether they have a claim and to provide the necessary data and form of words to defeat the stock response of airlines: that the delay or cancellation arose out of extraordinary circumstances. ‘Extraordinary circumstances’ would allow the airlines to avoid paying compensation. What EU Claim provides is evidence that the circumstances are far from ‘extraordinary’ and that compensation is due. The service has a customer base throughout the 27 countries that currently make up the European Union. Its on-line delivery and no-win-no-fee business model coupled with the profits resulting from the economies of scale has resulted in a no-lose service that offers added value to a customer base who would have otherwise not sought to enforce their EU rights.

The enabling potential of new technology in the provision of new legal services is also significant for increasing access to justice and thereby promoting the rule of law – whether it be via the provision of new legal services with little or no cost to the consumer or the removal of barriers to existing services or the justice system itself. The LawSync team are particularly interested in this potential and will be encouraging students on the teaching module to explore and innovate in the light of it.

Throughout the LawSync teaching module we will be demonstrating such technologies, giving students hands on experience of them, encouraging experimentation with them and the various methodologies that might support the implementation of a legal service as well to critically reflect on their use in that service.

The Law Degree

At the undergraduate level, the principal qualification is the ‘Qualifying Law Degree’ (QLD). The content of this degree is shaped in large part by the Joint Academic Stage Board (JASB) which brings together representatives from academia, the Solicitors Regulation Authority, and the Bar Standards Board. QLDs must contain the seven ‘Foundation’ subjects to meet the JASB view that it is necessary for all professional lawyers to have an understanding of certain areas of the law. Students must also learn about the English legal system and receive instruction in legal skills. These elements must make up at least half of the degree, and at least two-thirds of a three year programme must consist of ‘legal subjects’.¹²

These requirements indicate that the professions believe that the purpose of the qualifying law degree is to provide a holistic understanding of English law by looking at its bases and to equip students for a variety of roles within the legal profession by covering a broad range of legal knowledge and skills. The extent to which the law degree should be designed in order to explicitly prepare students for legal practice is a matter of debate. There is particular concern in the academic community that the regulation of the law degree by the professions limits the scope for innovation and curriculum development.¹³ At its most radical, this concern has led to suggestions that the entire concept of a qualifying law degree could be abolished.¹⁴ That would provide universities with the flexibility to offer whatever content they considered appropriate for their students, without any oversight from the profession. Formal, regulated legal *training* would begin with the vocational / practical element of the qualification process. Without the QLD restrictions, universities could emphasise elements of the law degree that can be overlooked at present, including some elements that would arguably be of benefit to the professions. Law degrees can be criticised for an overemphasis on the doctrinal content of the foundation subjects to the exclusion of consideration of the role of law in society, questions of legal ethics and jurisprudence, analysis of the links between areas of law and practice, and other elements which are considered important aspects of 'liberal' higher education. As discussed below, universities are also under pressure to consider work-related skills far more explicitly, and prospective students are coming to expect a significant amount of practical and work-based activity during their studies. Universities face a complex challenge in designing a law degree which adequately responds to all of these concerns.

However removing the professional input into the content of the undergraduate law degree would not be without its problems. While it would free universities to design innovative and responsive courses, vocational stage providers would no longer have a clear idea of what students had studied in their law degree, causing complications in the design of the practical and profession-focussed training. While this is not an insurmountable issue, it is one that needs to be addressed. Retaining an agreed core for all law degrees at least means that vocational providers can make some assumptions as to what has been covered and what students will know.

But is such a QLD going to be sufficient for students in the future? Looking at the changes outlined in this article, it is important to ask whether the current qualifications are preparing

students for a legal services environment which no longer exists. One criticism of the JASB list of foundation subjects is that it is of most relevance to a student who will go on to be a High Street solicitor, who will work on a wide range of legal problems for a diverse client base. Even now it is questionable whether the majority of practicing lawyers require detailed knowledge of all of the foundation subjects or, indeed, whether the coverage of those subjects within an undergraduate degree is a sufficient basis for specialised legal practice in any one area. If the current structure provides what can at times be merely an introduction to highly complex areas of legal practice and, at the same time, has the potential to squeeze out alternative areas of study we must ask ourselves if we can make our courses more relevant to the consumers of, and stakeholders in, higher education.

Alongside this runs a growing concern with ‘employability’, particularly the ability of students to obtain graduate level employment. This focus is driven in part by the Key Information Set data to be compiled and published by the Higher Education Funding Council for England from September 2012. This will include the proportion of graduates in employment, the proportion of those in “managerial/professional jobs”, and salary data for the full-time employed.¹⁵

The availability of such information, and the effect it might have on student choices, inevitably puts pressure on universities to pay significant attention to the post-graduation prospects of students. This is a particular challenge for the undergraduate law degree as the availability of jobs in the traditional professions reduces. The challenge for the future is how to develop practical elements within a law degree which meet students’ expectations as to the kind of content and activity involved in studying law and universities’ requirements to provide work-related learning, while at the same time training students with skills which will be both relevant and sustainable post graduation.

These debates can be viewed against the background of the Legal Education and Training Review (LETR). The LETR was set up by three frontline regulators – the Solicitors Regulation Authority, the Bar Standards Board, and CILEX Professional Standards. Its remit is to “explore all stages of legal education and training, including the academic stage(s) of qualification, professional training and continuing professional development of the regulated professions”¹⁶ and states that “...the primary objective of the Review is to ensure that England and Wales has a

legal education and training system which advances the regulatory objectives contained in the Legal Services Act 2007, and particularly the need to protect and promote the interests of consumers and to ensure an independent, strong, diverse and effective legal profession”.¹⁷

The Review does not aim to produce a blueprint for law degrees or detailed systems of continuing professional development (CPD.) Rather it will look at how legal education and training are regulated and how such regulation, in turn, supports the regulatory objectives set out in LSA 2007 s 1 (1). Any recommendations will go out to further consultation and discussion by stakeholders.

Underlying these debates are the questions: ‘What should law students *know*?’ and ‘What should they *be able to do*?’ Should they emerge ‘thinking like lawyers,’ or do they need a broad ‘liberal’ education with the lawyering left to the professional training stage? It is LawSync’s contention that students can do *both*. Through clinical legal education, including modules like LawSync, students can gain valuable experience of what it is like to think like a lawyer while at the same time critically reflecting on legal practice – be that with clients, or law firms – and thinking about how things might be done differently. Or, as one of us put it on Twitter, “It can be knowing how a lawyer thinks, and critically reflecting on that. Meta-metacognition...”¹⁸

The vocational stage is not of direct concern to the LawSync project, but any changes in that area could have implications for the academic stage. Of greater importance for LawSync is the possibility of new ‘career pathways’ within an evolving legal industry, as legal services and other disciplines such as computer science and business ‘fuse’ into new professions. A degree which prepares students for the vocational stage of training of a profession which they have decided not to enter by the start of their third year will be demotivating and likely fail to meet students’ needs unless it is also preparing them for the alternative ways in which they wish to make use of the legal knowledge, skills, and understanding they have built up during their studies. This, we suggest, is a notable benefit of including modules like LawSync within law degree courses where a significant number of the student cohort may well become more interested in pursuing career pathways outside of the traditional routes of solicitor and barrister.

LawSync: both a response and a ‘laboratory’

We return now to the basis of LawSync: with all of these changes, what can law schools do to prepare students to not only react to such changes, but to be part of them?

At the core of the LawSync teaching module is a desire to motivate students to be more than merely passive recipients of training. Our goal is to inspire them to become *innovators* in legal services – active creators of new products, services, and methods. The module will be available for final year students in the 2013 academic year, building on the understanding of legal business and practice gained in the second year Clinical Legal Education module.

When studying on the LawSync module students would be taught the regulatory and policy context of legal services both in the UK and elsewhere and, alongside this, encouraged to innovate in respect of one or more of the following: legal products, legal training, business models or business operations (including service delivery) in the legal practitioner contexts

Additionally, we are keen to work across disciplines, not only to bring in insights from outside the law, but also to reflect the composition of the evolving legal services industry. As DeStephano discussed in her presentation at Law Tech Camp London 2012, and at greater length in her article on “non-lawyers influencing lawyers”, there is a need for ‘exaptation’ – the use of ideas from other areas – to enrich the practice of law and encourage innovation.¹⁹ We consider such an approach to be a necessary ingredient to making the module – and the students on it – as commercially relevant as possible.

Beyond this particular teaching module, the team are keen to address the various pedagogic and regulatory challenges to embedding the LawSync concept throughout the degree programmes in the Department of Law, Criminology and Community Justice. We believe that this concept can – and should – be extrapolated to other teaching elements within and beyond the Department’s offering in law.

As well as being an academic course of study, the LawSync module will act as a think tank for innovation in legal services. We envisage it being staffed by both academics and commercial actors (drawing where appropriate from staff outside the law group across various disciplines) who will address not only the taught element of the module but guide, inspire, and facilitate the

R&D of innovative products and structures/models. SHU's Law Clinic – currently modelled on orthodox legal service provision – could be used as a laboratory for this purpose.

Key individuals in both 'orthodox' and 'new breed' law firms as well as barristers' chambers would be on the advisory committee and would, it is hoped, be involved in assessing student work. In time we would look to build links with a range of universities in different jurisdictions with a view to enhancing the international experience of staff and students.

The module would also act as a base for research, consultancy and CPD related spin offs, for example consulting for 'new breed' and orthodox law firms and major corporations with in house legal teams both within and outside the UK and access to justice issues for governmental and NGO type bodies at national and international levels.

Change in action: some examples

The Law Without Walls project²⁰, created by the University of Miami School of Law, brings together academics and businesses from several countries to deliver an academic module to students from a number of institutions. The aim is to develop entrepreneurial and innovation skills in students.

The ReInvent project²¹ at Michigan State University College of Law has a similar remit; MSU has worked with the University of Westminster to develop its 21st Century Law Summer School which covers "technology, innovation, regulation, entrepreneurship and the international legal marketplace."²² As Daniel Katz put it at Law Tech Camp London 2012²³, "law schools need labs", and ReInvent Law will be the lab for MSU.

That these and other institutions are looking into the effects of technology, regulation, education, and consumer needs on legal services is an encouraging sign for the LawSync project; it not only serves to indicate that we are on the right track, it also opens up possibilities for collaboration.

We can also look at some legal ventures as examples of firms which are looking to respond innovatively to the challenges outlined so far. Riverview Law²⁴ aims to provide a fixed price service – as a common concern amongst legal service users is price²⁵. In common with many

American firms customers can use a portal to access documents and send information 24/7, make use of a library of free legal documents and complete key forms electronically.

Advise me Barrister²⁶ also offers a fixed fee service. They offer direct access to barristers, and so aim to 'cut out the middle man.' Customers send in their legal issue and the Advise me Barrister team choose an appropriate barrister who then advises the customer. Where a legal issue does require the services of a solicitor, whether because of the skill and training differences between the two branches of the profession or due to regulatory restrictions, Advise me Barrister can appoint someone suitable.

In both cases, predictability of cost is held out as a key selling point. Additionally, both services also make use of technology to give (potential) customers easier access to, and control of, the process.

Some have argued that such new firms, whilst different and a move in the right direction are not the disruptive force so long predicted.²⁷ Perhaps it is firms such as Legal 365 and Rocket Lawyer²⁸ which will provide the innovation many feel is needed; or, to take Jon Busby's view²⁹, it could be the firm which really takes on board client input which will take the lead. In any case one of LawSync's roles is to see where such disruption might come from, and how to prepare students for working with it.

Summary

New technologies are enabling service provision from any sector of the market to be more integrated, intuitive, convenient, adaptable, personalised, and accessible to a more diverse consumer base. The Legal Services Act 2007 enables non-lawyers to own law firms and thereby introduce new dynamics and methods into this sector. Even when changes are not a direct result of the LSA 2007's provisions, it has acted as a catalyst for change.³⁰

The increasing deployment of new communication and process technologies, the changing expectation of consumers generally, and the relatively outdated nature of many present day providers of legal services will likely result in consumer demands for a radically different set of legal products as well as new service delivery (operational) and business models. These

developments have the potential to improve access to justice – a key regulatory aim of the LSA 2007.

The new breed of legal businesses in the UK is likely to be at the forefront of developments in the next two to five years to respond to this demand and consequent opportunity for growth. There is no reason why law schools cannot play a part of, and contribute to, such developments.

The ability to think in a commercially relevant and creative way is a skill that will be in increasing demand from providers of legal services. The proposed module seeks to fill the gap in this skill set.

LawSync has been created primarily to explore how providers of legal education at Higher Educational level can encourage law students to use the legal knowledge that they gain during a law degree as the basis for innovation and recognise the various ways in which their legal training can be of use beyond the traditional routes into the legal profession. The success of this project will be influenced by the extent to which various stakeholders in the new ‘legal industry’ get involved and help to mould its development. The LawSync team therefore extends an open invitation to anyone who might be interested in participating in what we believe will be an exciting and rewarding venture.

¹ See <http://www.lawsync.com> and <http://twitter.com/lawsync> for more details

² <http://www.sra.org.uk/solicitors/freedom-in-practice/alt-bs/licensed-body-register.page>

³ <http://www.legalfutures.co.uk/legal-services-act/alternative-business-structures/everything-you-wanted-to-know-about-abs-applications-but-were-literally-afraid-to-ask>

⁴ <http://www.legalfutures.co.uk/latest-news/keep-on-trucking-eddie-stobart-enters-legal-services-market-yes-really>

⁵ See <http://www.lawsync.com/2012/05/25/emerging-markets-and-lawsync/> and accompanying responses.

⁶ <http://www.lawsync.com/2012/04/05/do-you-have-a-reservation-2/>

⁷ See Susskind, R (2010) Legal informatics – a personal appraisal of context and progress. *European journal of law and technology* 1(1). Online at <http://ejlt.org/article/view/18/7>

⁸ For an interesting blog post by Stephen Allen highlighting the likely importance of what he terms ‘Professional Quotient’ in such the ‘legal industry’ that is likely to replace the legal profession see:

<http://www.lexfuturus.com/mind-your-pqs/>

⁹ Kimbro, S (2012) Regulatory barriers to the growth of multijurisdictional virtual law firms and potential first steps to their removal. *North Carolina journal of law & technology* 13, 165-225, pp 175-177

¹⁰ <http://www.euclaim.co.uk/>

¹¹ Regulation (EC) no 261/2004 of the European Parliament and of the Council of 11 February 2004, establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91.

¹² See <http://www.sra.org.uk/documents/students/academic-stage/jasb-handbook-september-2011.pdf> p8 for the list of Foundation subjects

¹³ See for example Huxley-Binns, R (2011) What is the “Q” for? *The Law Teacher* 45(3), 294-309

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- ¹⁴ See Discussion Paper 01/2012, 'Key Issues (1): Call for Evidence', Legal Education Training Review at para 100.
- ¹⁵ See <http://www.hefce.ac.uk/whatwedo/lt/publicinfo/kis/> for more information on KIS.
- ¹⁶ <http://letr.org.uk/about/what-is-letr/>
- ¹⁷ *ibid*
- ¹⁸ <https://twitter.com/LawSync/status/212543616244125696>
- ¹⁹ DeStephano, K (2012) Non-lawyers influencing lawyers: too many cooks in the kitchen or stone soup? *Fordham Law Review* 80, 2791-2845.
- ²⁰ <http://www.lawwithoutwalls.org/>
- ²¹ <http://reinventlaw.com/Invent/ReInvent.html>
- ²² <http://21stcenturylawpractice.com/London-Summer-Program/description.html>
- ²³ See <http://computationallegalstudies.com/legal-info-engineering-summer-2012/> for details of Katz's work at the 21st Century Law Practice Summer School and Law Tech Camp London 2012.
- ²⁴ <http://www.riverviewlaw.com/>
- ²⁵ See, for example, http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/understanding_consumer_needs_from_legal_information_sources_final_report.pdf p14
- ²⁶ <http://www.advisemebarrister.com/>
- ²⁷ Ajaz Ahmed of Legal 365 made this point at Law Tech Camp London 2012.
- ²⁸ <http://www.legal365.com/>; <http://www.rocketlawyer.com/>
- ²⁹ <http://legal-two.com/lawtechcamp-london/>
- ³⁰ See <http://www.lawgazette.co.uk/news/outside-funding-compelling-reason-take-abs-route>