

International development

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1. Introduction

I was delighted to be invited to write the chapter on international development for this book. With a career in managing barristers' chambers spanning over 45 years, the last 37 years being with Essex Court Chambers, I have been in the very privileged position to see, first-hand, the development of the English bar on the international stage.

The Bar may be perceived as the more cautious and conservative arm of the legal profession when it comes to marketing innovation. If you think about the first legal websites, embracing social media, finding budget for commercial sponsorships and many other key marketing developments, the Bar has paused, waiting to see what works for law firms before following suit. However, I think it is a different story when it comes to business development, where the barristers' clerk has arguably been ahead of the game, both in terms of recognising the importance of client and intermediary relationships, and being successful in developing and retaining these bonds.

In spite of this, for many, the idea that the English Bar, the very image of British traditions in the most Dickensian of terms, might have a major role in terms of determining international legal development might seem somewhat out of place and even arrogant. However, as I intend to show in the following pages, the English Bar is ideally placed and perfectly formed to do just that.

2. History

International development of the Bar is not a new phenomenon. The Bar has always been an internationally oriented profession. As the 'common law' originated in England and Wales, English barristers really come into their own in jurisdictions where English law is dominant and they have long been able to appear in the courts of other Commonwealth jurisdictions. The colonial history of England means that there are a significant number of legal systems based, at least initially, on English law.

Barristers are able to provide expert opinions in English law, as well as acting as legal representatives. They can also be appointed as arbitrators, mediators and adjudicators. The number of barristers with international practices is growing all the time, and within every specialist area there are opportunities to develop an international practice.

3. London and the law

London is the leading common law jurisdiction, and so as British colonial history sets up the English Bar to operate across the world, London's modern status as one

of the leading financial and commercial centres in the world confirms its credentials as a pre-eminent centre for international litigation and arbitration. Foreign litigants accounted for more than 70% of the cases before the English Commercial Court last year (2016/2017). Transactions of enormous value are conducted in London in fields such as banking, investment, financial services, insurance, reinsurance and shipping. The London Stock Exchange is the most international and largest stock exchange in Europe. More than half of the London Stock Exchange top 100 listed companies (the FTSE 100) and over 100 of Europe's 500 largest companies are headquartered in central London, although as I write we are yet to know what impact Brexit may have on this position. London has a highly developed infrastructure, excellent transport links and is increasingly multi-cultural. To quote London's mayor, it is an international hub of creativity and a beacon of diversity. However, other important factors encouraging the volume of international dispute resolution being conducted in London include the dominance of English as an international business language and the fact that English contract law is the most important and most used contract law in international business. International businesses frequently choose English law to govern their contracts and the disputes arising from them because it is a highly developed system which offers a greater degree of legal certainty than most others. It is based on precedent and relies upon previous decisions. It is usually possible to find answers under English law to the particular legal questions that arise by reference to decided cases and the reasoning applied in those cases.

4. The independent nature of the Bar

So we have history making English the dominant law and London's success making the location attractive; the final ingredient is the practitioners themselves. The English Bar provides a pool of talent in advocacy and specialist expertise, but barristers have one particular quality which gives them a legal advantage over solicitors on the international stage – their independence.

Barristers' chambers are not 'firms', nor are their members partners or employees. Rather, a chamber is made up of individual barristers, each of whom is a self-employed sole practitioner. Members of chambers are commonly retained by opposing sides in the same dispute, both in litigation and arbitration, with protocols in place to safeguard confidentiality. As well as acting on opposing sides, individuals appear in front of other members acting impartially as deputy judges or arbitrators. This independent status gives the English barrister enormous flexibility and freedom to develop individual practices irrespective of any collaborative strategy of his colleagues. The chambers' 'brand' is simply a wrapper but it does not dictate or restrict for whom or with whom an individual may work. It is the comparative freedom of movement of the English barrister which allows him to develop an international practice with relative ease; the English solicitor must hold back and wait for mergers or alliances.

Having established that the self-employed status of the barrister is fundamental to the Bar's ability and flexibility to work internationally, let us now explore how this provides a context which offers huge potential for English barristers to develop international practices.

The basic principles of international business development are the same as developing any practice – research the market into which you want to move, set achievable objectives, and once you have a good understanding of the challenges ahead, develop an action-based marketing plan. Once you have a toe in the market consolidate with the same techniques you would in a domestic market: be good at what you do; look after your key client relationships and do not let them down in terms of effective communication and fulfilment of promises; develop a reputation for being a ‘go to’ expert for your area of specialisation; make sure that your target audiences are aware of your expertise through effective marketing communication; and maximise the use of your marketing time with precision targeting, long-term planning and good use of resources available. These principles, which apply to a domestic market, remain true in terms of developing an international practice, but the much larger marketplace offers even greater opportunities than the domestic arena and effective marketers must adopt perspectives to match.

5. What we can learn from other international professional firms

We can learn from the experiences of other professional firms – the many accountancy and law firms which have had multi-location operations for many decades. These international firms continue to develop international presences in spite of the challenges of establishing workable management hierarchies that provide the benefit of both local autonomy and firm-wide collaboration. You only have to look at, say, the US firms based in London, which continually strive to market locally but with, in the majority of cases, marketing strategy and communications tools being developed by a centrally based US team. All lawyers are wordsmiths and so receiving correspondence written with American spelling when your contact is based in London is, perhaps, not the best first impression. Success is most evident in those firms that have empowered the local practice to create individual business development strategies while encouraging the lawyers on the ground to harness the central resources of the wider organisation but further shaped to reflect the local market.

These multinational firms have bases in key business and financial centres around the world. They may be foreign offices of the one partnership or an LLP as in the case of Clifford Chance or maybe a looser affiliation trading under the one brand as in the Baker McKenzie model. Some firms have entered the market by buying up a small local firm; others establish a presence by manning the new office with ex-pats from London or elsewhere. Whatever the business structure, for a law firm’s business development strategy, location is all-important. Not so the English barrister whose place of work, his ‘chambers’, may provide a physical building to unite members, but it is not necessary for a barrister to have an ‘office’ in a country in order for him to have a practice, although of course, as members of Essex Court Chambers have proved with Singapore, it can provide a focus and be advantageous in showing a commitment to a region. A brass plaque is not a necessity for a barrister as his international reputation is based on his (and his clerks’) ability to maintain relationships with foreign lawyers and his expertise to achieve the results his client expects. Unburdened by corporate structures or potential client conflicts, English barristers continue to be increasingly in demand to provide legal advice all over the world.

6. Words matter

The English barrister's independence allows a chameleon approach to meeting the needs of the global client. We have touched on the advantages of English being the dominant business language, but in terms of business development, it is also important that an individual does not unnecessarily limit himself, or worse alienate himself, from a prospective client with a lack of thought around language and terminology. This is particularly true in terms of how we refer to ourselves in a business development context, especially at the introductions stage. We may be defined geographically by our professional qualifications; an 'attorney' is American, an 'avocat' French and so on. However, all of us can be accurately referred to as 'lawyers'. Universal terminology works well in developing an international practice and so thought should be given as to how you present yourself and consider descriptions such as 'international lawyer' rather than 'English barrister' when seeking opportunities outside the United Kingdom.

What you call yourself is also of relevance when we talk about the role of clerks in terms of business development generally and this is even more challenging in an international context. This is another fundamental difference between barristers and their solicitor colleagues. Professional business development teams within law firms have grown significantly. In the early 1990s even the largest of firms employed only a handful of marketing and business development professionals; today we are talking about highly qualified multi-functional teams supporting every practice area and every office. The Bar has its own growing band of marketing professionals, but when it comes to business development and driving practice-marketing initiatives, it is still very much the role of the clerk, albeit that for many sets, the term 'practice manager' is increasingly being used. Whatever the title, rolled up in the one function of 'clerk' are several support functions common in any law firm. The clerk is the intermediary between barrister and client responsible for relationship management and client care, fee negotiation and administration relating to the management of both the client relationship and the actual day-to-day running of the case. When developing relationships internationally, be aware that meaning can be lost or mistaken in translation and that it is more important that the role and relationship of the clerk as an agent to the international lawyer is understood.

7. Understand the differing business cultures

Being an international lawyer means you are working with a myriad of different business cultures, and if you are serious about developing a place in a country's legal market, it is imperative that you are constantly mindful of different working practices around the world. You need to start with understanding the local legal structures. Never assume that foreign lawyers operate in the same way as English solicitors' firms. Some have structures more akin to a set of chambers, with each lawyer or partner earning only from his own cases. Others pass profits back only to the partner who introduced the work to the firm, regardless of who did the work or where it was done. You need to appreciate the financial incentives of any firm or individual in giving an English barrister instructions. It also helps to recognise that the training and career path for a foreign lawyer does not always mirror that of an

English solicitor, but do look out for shared educational interests as many do spend time in the United Kingdom.

Cultural sensitivity is a key requirement for anyone wishing to be a business player rather than a holiday tourist. Nothing is better than experience but to avoid costly mistakes, research in advance of visiting a country the correct way of doing business with different nationalities. The European Commission has funded a website called 'Business Culture' covering 31 different European countries, but cultural differences can be even more important when dealing with major markets such as China and India. Issues such as negotiation practices, body language and the use of business cards and other aspects of etiquette can be vital in terms of succeeding as an international lawyer.

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