

Mergers

10 points you must consider

Pressures on High Street practices continue to grow at an alarming rate. Many small and medium sized law firms are already wondering whether to carry on in their present form or to consider merging with another firm.

As pressures grow, some firms may start to panic and grasp for easy, fast solutions. Merger may seem the simple way of confronting these challenges -- but is it really? What factors do you need to consider in considering mergers?

Where do you want to be? It is becoming increasingly clear that in the current climate there are only two routes available to law firms -- adapt or die. Simply staying still is no longer an option. Those traditional high-street firms who take no action and expect to carry on as they have been for many years sadly risk oblivion. They are likely to struggle and may not survive the threats posed from many directions including Clementi, HPS, e-conveyancing and the inevitable ongoing reduction in legal aid rates. It is absolutely essential that all firms take stock and decide where they want to be in 5, 10 and even 20 years time -- as a high street firm you must now identify your personal vision of the future for your own practice.

Is the merger a good fit? Does the structure of the new merged firm fit in with your vision? It may be of course that merger opens up new possibilities that had not been previously considered. But if not, how will the merger help you achieve your future target? Be very cautious of a merger for its own sake. Does the other firm had a different client base, serve a different geographic or professional community -- do they have strengths and expertise in areas where your firm is weaker? If your plan, for example, is to move out of legal aid and to strengthen your commercial client base, is it really worth taking over another firm and all their clients, if that firm is still committed to legal aid?

Size isn't everything: Many firms may be tempted to merge purely on the basis of a mistaken belief that bigger is better. This is a dangerous and simplistic view. Bigger firms may have advantages in some areas -- they may have financial benefits through economies of scale, wider areas of expertise and greater depth of specialisation and a greater management resources-but they may not. A larger practice may equally prove inefficient, with little degree of financial control, too many offices and poor channels of communication. The larger law firm with numerous partners may prove slow to adapt and highly resistant to change. Could expansion make the merged firms position worse rather than better? There are many examples of firms who have been panicked into merger on the basis that their size will help them survive, only to vanish entirely just years later.

Be selective: The world solicitors work in is tough and, like it or not, is getting tougher. To survive firms will have to make hard commercial decisions which do not always sit comfortably with the world of gentlemen professionals which many current partners grew up in. Just because you want to merge with another firm does not necessarily mean you have take on all of their work, staff or even partners. If there is perhaps just one department or even one fee earner who is particularly profitable, why not consider headhunting them rather than taking on the whole firm? Equally the reverse is often also true -- is there a firm that is attractive as a whole but with one partner or department, or even client type, that you simply don't want to have on board? Consider a merger without that department. You might

want to merge with Bloggs and Co-but perhaps not take on their legal aid clients or any members of the family team. There is no reason why the target firm cannot decline to act for their legally aided clients further, prior to the merger -- there is nothing in the LSC contract compelling you to continue to do publicly funded work. This might allow your firm, for example, to take on the other firms privately paying family clients, without taking on their family department fee earners. This, in turn, could enable the newly merged firm to give up family legal aid creating a much more profitable family department dealing with private clients only.

Who is in charge? One critical factor in the success or failure of merger is the question of control. Every successful firm needs a clear direction and strong but sensitive leadership. Imagine a scenario where two traditional local firms merge with all existing partners taking a share of the new firm. Who will become senior partner, how will management decisions be taken and in what order will partners appear on the firms headed notepaper? These issues have all arisen in past mergers and as the saying goes, "those who haven't read their history will be doomed to commit the same mistakes". The vision of any law firm will prove increasingly critical and if there is little agreement on where responsibility for decisions finally lies in a merged firm, it is unlikely that there will be any clarity in its direction.

Culture: Every firm has its own distinctive culture -- simply put it means "how we do things round here". One successful firm may extol old-fashioned values, have a strong traditional client base, may be suspicious of "marketing" initiatives and prefer a formal way of business emphasising professional values. Another equally successful local firm may have open plan offices, a less rigid dress code, a managing partner who is enthusiastic about marketing with a full-time marketing assistant and may see itself as a business selling legal services. Without some very careful thought, imagine how these two firms would merge if the equity shares of each of the firms were roughly equal. It would probably be a nightmare and a subsequently messy de-merger would be on the cards.

Added value: Whilst the solicitors practice must always remain true to the highest professional standards, at heart it is a business, and a business exists to make money. Therefore the most important question to ask of any merger is whether it provides "added value". If the merger cannot lead to either reduced costs or new business opportunities and ultimately increased profit, then what is the purpose. Again as I have indicated above, size is not the issue. If two firms both struggling to be profitable merge, then unless there are savings for example on overheads or some other way to increase profitability, then all you're left with is a larger firm that is struggling to be profitable, with all the attendant trials and pressures that any merger inevitably brings. The simple truth is if any proposed merger does not bring added value -- don't do it.

Branding: Every firm has its own unique personality in the public eye. You may be lucky enough to have a reputation of excellent client care and high net worth clients, or you may be renowned as a thoroughly decent legal aid practice with a reputation of going the extra mile for the client, whether it is profitable or not. Equally the firm you



are planning to merge with may have a poor reputation for looking after their clients. It is crucial in the success of any merger as to how the new firm will be perceived by clients and potential clients.

Due diligence Before entering into any binding merger, any sensible firm will make careful and full checks on how the other firm has been performing. Apart from the last few years accounts, perhaps the most important documents you must see are the other firm's internal complaints record and most importantly, their professional indemnity insurance records. You would want to think twice before entering a merger if your insurers are going to charge a massive hike in your premiums.

Managing change: Never underestimate the inevitable difficulties and period of destabilisation that accompanies even the most successful merger. Many lawyers, and support staff, simply don't like change and one thing you can guarantee is that any merger will bring change -- and plenty of it. Even if the merger is effectively a takeover, where one firm retains all the equity in the newly merged practice, there will still be considerable change. New colleagues, increased or decreased responsibility, swapping offices and new systems can be disruptive. There is an inevitable cost to all this even in the smoothest of mergers. Any successful merger will require a considerable amount of management time -- even the most apparently straightforward of administrative tasks (e.g. integrating the firms differing file storage systems) can prove. Also never underestimate way any change can unsettle staff. Even if employees from the old or new firm are not actually unhappy at work, the level of change brought about by a merger can often lead them to reassess their own position and personal ambitions. Even the smoothest merger is usually accompanied by a period when there is a noticeable increase in staff turnover.

Even if your firm has decided that bold action needs to be taken, you should always think of the alternatives to any merger/sale/acquisition. There may be other solutions to your problem or better ways to deal with that business opportunity you spot. A long-term marketing campaign producing slower but steady organic growth internally might provide the answer. Whilst a merger may indeed solve some of your problems, don't forget that even with successful mergers and there'll always be unforeseen difficulties and a unsettling bedding in period.

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