



## Business process management

# Parts of the process

While the headlines focus on the negatives of profit falls and redundancies, the woes of a recession could also be the making of a business, forcing it to innovate to survive. But this means changing some basic business processes.

**By Alastair Ross, director, Codex Associates Ltd, John Bessant, Professor of innovation management, Imperial College Business School, and Robert Pay, former chief marketing officer of law firm Taylor Wessing**

In 2006 the UK legal sector was in the midst of a boom, driven by property development, merger and acquisition work and ever increasing regulation. Even then, however, there were some clouds on the horizon.

By January 2009 the clouds had become a raging storm of a deep recession and law firms have seen a severe contraction in client work. Particularly hard hit are those firms with sizeable real estate and finance practices as commercial and residential property transactions have fallen off a cliff. In response firms have cut discretionary spending, and for the first time in a decade lawyers are being laid off in large numbers. Will this be enough to enable firms to weather the recession? We think not. For as clients respond to their own business challenges by cutting their own spend, legal services will come under the purchasing spotlight and significant reductions are demanded. If firms respond with another wave of redundancy, they risk cutting into their key 'muscle' of talent and repeating the talent wars of the mid 1990s when the eventual market upturn sees them lacking legal resources.

Another option for firms is to examine their business model to look for new ways to add value and reduce cost in the way they work – what we call 'business process innovation'. Are firms ready to take this step? One law firm

director asked this question by one of our authors replied: "We're not spending any money on things like that. If we have any spare budget, I'd rather spend it on taking a client to a rugby match." While we would not disagree with the client-focused sentiment, we do believe process innovation has a major role to play in surviving the recession and emerging from it in a more competitive position.

### Long-term view

Understandably the immediate challenges of the recession have been the prime focus of partners, as they seek to work the twin levers of sales and cost management. However, there are also longer-term threats:

- Client focus on value and increasing use of purchasing approaches to buying legal services;
- Ongoing impact of web-enabled IT on established ways of working;
- Growth of in-house legal teams;
- Trend for hourly charging to be replaced by fixed price;
- Growth in 'de-lawyering' in key business areas such as insurance and dispute resolution;
- Challenge of recruiting and retaining adequate levels of legal talent;
- Market deregulation after the Legal Services Act – enabling new competitors.

The Legal Services Act will initially affect private services such as personal injury, conveyancing and will writing by enabling new competitors, such as accountants, financial-services firms and major supermarkets to enter the market. However, this will only be the tip of the iceberg. A 'low-cost paradigm' arriving in a market has the tendency to become a dominant paradigm in that market. Witness the triumph of low-cost airlines against premium airlines over the past five years. A similar threat exists for commercial legal services – all clients will expect to see the benefits of value improvement from innovation pioneered in the 'lower end' of the legal market. Multi-disciplinary partnerships (MDPs) may provide the opportunity for highly efficient and focused 'one-stop' offerings at better transaction value to clients than today's fragmented offerings (i.e. lawyers, accountants and banks). Better, partly because accountants and businesses are typically better at service delivery, with lawyers tending to rely on high technical quality to satisfy clients.

Another challenge comes from the impact of technology. IT has enabled major efficiency improvements in repetitive legal processes, which have driven down costs and commoditised some (particularly private client) offerings. The internet has greatly eased the ability for businesses to work electronically with clients, but this has also resulted in the

## Case study

NELSONS SOLICITORS LLP, a major regional law firm, founded in Nottingham in the early 1980s, launched a new level of online services for both commercial and private clients in January 2009. The [nelsonsonline.co.uk](http://nelsonsonline.co.uk) site offers fixe-fee services, delivered over the web and covering over 200 legal documents including employment law, purchase and sale agreements, non-disclosure agreements (NDAs), lease, divorce and probate. Chief executive, Tim Hastings said: "We'd been thinking about exploiting the web as an additional way of delivering our services for many years. Our research unearthed what was being done by other competitors, including both law firms and others, such as Tesco, Halifax and employment consultancies. These were all online forms-based propositions. We saw the need to get on with this and also to defend our client base from incursion by new online legal service providers." Nelsons' solution uses online forms, completed by the client, which are then automatically sent to solicitors for review and authentication via a workflow system and then returned to the client. Thus, the firm is able to differentiate its service from non law firms, who only provide configurable forms, with its additional legal review. The online solution offers clients a clear price list, a configurator to enable users to select the right form and a 'try before you buy' form completion. Nelsons is also a founding member of [Mylawyer.co.uk](http://Mylawyer.co.uk), a collaboration with five other law firms, to provide a 'virtual law firm' offering similar online services.

emergence of new web-based competitors for private-client services. Business clients are increasingly expecting online services, more cost-effective solutions and also innovation from law firms. Larger business clients are growing their in-house legal teams and are thus capable of performing an increasing level of their company's legal work themselves. They are increasingly using panels and procurement to drive down charges. This will accelerate in the recession.

Meanwhile, all firms are struggling to recruit and retain newly-qualified solicitors, and often find that these 'Generation Y' employees do not think like their elder partner colleagues – they are seeking a better work-life balance and many will want sabbatical breaks to enable travelling and a more 9-5 working life. The result will be that law firms will likely struggle to meet all their needs for these skills, and will have to be innovative in the way they perform legal tasks, through application of business process design and management, use of paralegals and increasing use of IT.

To address these challenges, firms will need to innovate across much of their business model. One key opportunity area is in the operation of business processes within firms.

### What is business process innovation?

Business processes are the highways along which services are delivered to clients or internal departments. They cross vertically aligned functions and departments within firms. The result of this is that business processes are performed through the participation of many different operating units within a firm. The performance of a due diligence matter, for example, would typically require the involvement of the seller's lawyers, the client, partner, lead lawyer, real estate specialist, employment specialist, regulatory and licensing specialist, and administration and billing. This level of involvement creates opportunities for errors, duplication of work, delays and other inefficiencies, which can only be addressed when the end-to-end process is considered as a whole. In many law firms, business processes are not standardised or consistent, and each lawyer, team, or office will perform them in different ways.

People often think of innovation as the 'eureka moment', when a radical new idea is invented. Invention is indeed part of innovation, but only part of it. Invention alone does not equal innovation. Innovation is not just about the big ideas. It also includes small ideas or incremental

improvement. Toyota has achieved its leading position in the global automotive industry largely because of 50 years of incremental improvement through Lean (originally known as the Toyota Production System, or 'Just In Time'). This is one form of process innovation. Business process innovation (or 're-engineering') focuses on incremental ('Do Better') and radical ('Do Different') improvement of business processes.

A recent study of law firm innovation in 16 of the top-75 UK law firms in 2006-7 found that very few firms had a focus or structured approach to improving their business processes. There are some notable beacons of best practice for process thinking in law firms, such as Allen and Overy's work on financial transactions and Eversheds' advances in visibility and management of litigation spend. However, these beacons are notable for their rarity, and we have typically found the following:

- **There is often little process thinking in firms.** Firms have little understanding of current process performance and cost and the business benefits of good process management. This is not surprising given law firms' partnership governance model, which enables individual partners to have a high level of autonomy and the 'star' culture where particular lawyers effectively become 'brands' due to their performance and reputation in the market. There is thus often resistance against process management by partners as it is seen as interference and bureaucracy. Its need is typically only recognised by some firms as an effective way of enabling them to provide competitive services for low-margin 'commoditized' business areas such as wills, probate and personal injury;
- **The process often depends on who is performing the job.** Each partner/fee-earner will perform the matter differently depending on their office or team, meaning that the service provided and the cost of providing

it will be inconsistent and there is no guarantee that specific tasks have been completed or performed as required (which has compliance and risk implications). Indeed, a recent example of a real estate partner in a major UK law firm, who was found to have failed to make stamp duty payments on major commercial property transactions, would indicate a lack of process management;



### Case study two

CODEXX WORKED with a major UK law firm to re-engineer their probate process, which was challenged by competition from lower-cost firms and the difficulty of recruiting new private client lawyers. A probate core team was established and the current process mapped to show the problem areas. A TO-BE probate process and organisation was developed by challenging current thinking, developing a standard operating procedure, process cycle-time reduction, a new team-based organisation, applying Lean thinking and utilising lower-cost paralegals. The benefits of the new process were improved responsiveness and quality at a significantly lower cost. Reviewing the new process six months on, we found the team in one office was working very effectively, and as per the process, with significantly increased profitability. In another office, the lawyers running the teams had not made sufficient progress in moving from a 'hands-on' role to a leadership role, and therefore were still performing too much of the work themselves, thus limiting the potential gains in profitability. This is a good example of the challenge of making culture change a required part of the re-engineering process.

- **Processes have been defined as 'this is how we do this job'** and have often been unchanged for years, even if they have been automated by case management systems. They are therefore unlikely to be the optimum way of performing the required task;
- **Firms are not close enough to clients to understand their wants and needs.** Relationships with clients are typically on a transactional basis, and this means that lawyers don't understand their clients' business well enough to determine what they would really value, and so how best to design a service experience that 'delights' clients.
- **Major IT investments have not been implemented in tandem with re-engineering.** This means that the full benefits of IT investments, such as case management, are not realised. We have seen firms implementing case management by replicating the existing way of working, which has developed over years. This means that unnecessary waste will typically be present in the automated process (e.g. rework, duplication of effort, over-skilled personnel performing tasks);
- **Re-engineering projects can be difficult to resource,** as key processes will require cross-functional working to re-engineer, and so do not naturally fit into a firm's departmental and resource silos. This creates an 'inertia barrier' to tackling them and a tendency for each function to act independently – thus reducing the potential benefits from a re-engineered end-to-end process.

#### Why bother?

Process innovation has been applied in industrial businesses since the inception of scientific management at the very beginning of the twentieth century. A wave of IT-enabled process re-engineering began in the early 1990s in major industrial and financial services businesses. Lean methods have made a major impact in manufacturing business and began to move into the services

and public sectors in the last decade, so there is a large body of existing knowledge that can be applied to process innovation in the legal sector. We recognise, however, that the service offering and unique partnership culture in law firms means that process innovation must be applied in a tailored and sympathetic way.

In our work with law firms we've seen clear benefits from process innovation, particularly in terms of:

- **Significant cost reduction** through waste elimination using Lean techniques and 'right skilling' of processes through more appropriate use of skills. This can be more than 40 per cent (and even more if 'offshored');
- **Improved client service** through focus on improving the client 'experience' (Figure 2). An effective service delivery process will enable a consistent and high-level service to be delivered to clients with high employee productivity;
- **More repeatable processes** – using a defined and documented 'Standard Operating Procedure' for repetitive activities, thereby enabling more consistency;
- Reducing legal talent constraints by making more use of automation and paralegals.

Process innovation tackles the problem of poor or uncompetitive performance by examining key business processes in a systematic and challenging way, determining client requirements and then designing and building a significantly better way of performing the process.

Key elements include:

- Really understanding what the client or customer values;
- Mapping and quantifying how the process is actually performed today (this is the 'AS-IS');
- Challenging the current way of doing things;

- Seeking best practices elsewhere – and not just in other law firms;
- Defining a bold improved process – (this is the ‘TO-BE’);
- Creating a TO-BE that dramatically reduces waste and provides improved service;
- Making a case for change in resourcing to move from an AS-IS scenario to a TO-BE;
- Building a core team of partners and associates who will champion the new process;
- Being persistent in working to achieve the TO-BE.

As part of process innovation, there is also a major opportunity for law firms to apply Lean techniques. Lean thinking has arguably been the biggest revolution in business thinking since Ford’s introduction of mass production at the beginning of the 20th century. Originating in Toyota, it has flowed through manufacturing businesses in the past two decades and is now entering service organisations and the public sector. Lean is a philosophy based on waste elimination and enabled by a set of tools and techniques proven over many years across many sectors. There is clear opportunity for applying Lean elements in law firms, particularly in repetitive processes (and even in the repetitive elements of more complex processes, such as litigation or mergers and acquisitions). Indeed we have applied elements of Lean in process re-engineering projects in probate, due diligence and property processes for law firms. There are five key elements:

1. Focus on value;
2. Understand the value stream and eliminate waste;
3. Enhance flow;
4. Make only what the customer pulls;
5. Strive to deliver perfection.

While this terminology might be somewhat alien to a client service business, all five elements are applicable. Together they can enable high-quality, repeatable

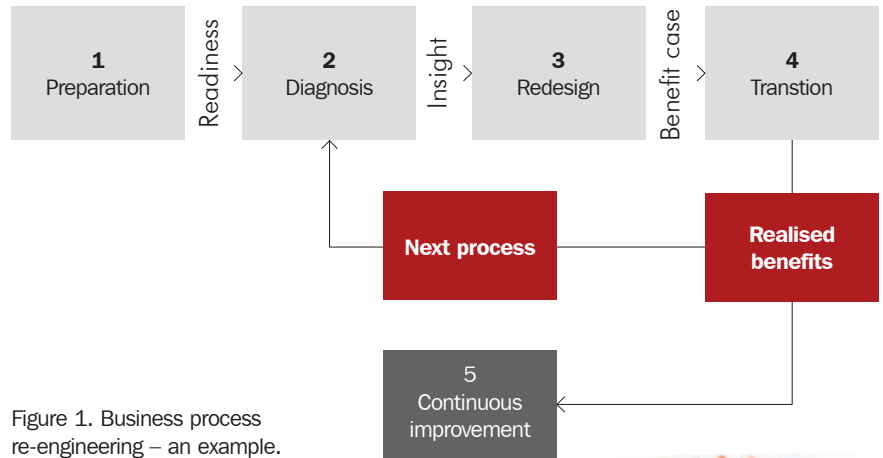


Figure 1. Business process re-engineering – an example.

processes to be run at optimum cost to provide clients with high-value services.

However, successful process innovation requires the following critical success factors to be in place:

- **A champion for change** – in the management team or a practice head;
- **Buy-in** from practice/firm management (as appropriate);
- **A structured approach** to re-engineering;
- Sufficient **resources and skills**;
- **‘Stickability’** to complete the project;
- Ideally a remit to **‘think the unthinkable’**;
- **A practical approach** to implementation and deployment.

A typical approach to re-engineering is outlined diagrammatically in Figure 1. The Diagnosis AS-IS phase is important in sharing today’s process and all its shortcomings. This will help in building a mandate for change. The Redesign TO-BE phase is all about designing the future process – this is where innovation is required. The future process should embrace best working practices, organisation and the application of technology to bring a new level of service to clients at an optimum cost. Realising the TO-BE is down to a realistic transition plan that is well executed. You cannot (and should not) think of realising the TO-BE in one step. A pragmatic



### Case study three

A MAJOR UK law firm wanted to improve due-diligence process as the current process resulted in a high level of write-off of billable time. An AS-IS workshop of the current process mapped the process and identified key process issues. The current process was not well defined, had not really changed for at least 10 years and was cumbersome to execute with a finished product that was not always of a high enough quality and often needed rework by a partner. Typically 30 per cent of the chargeable work had to be written off to meet the client price estimate. A TO-BE workshop was then held to create concepts for a new improved process, involving representatives from the firm’s departments that were involved in a typical due-diligence matter. This generated many ideas for improvement – quite a few being practical solutions that could be easily and quickly implemented – as well as a clear support for change.

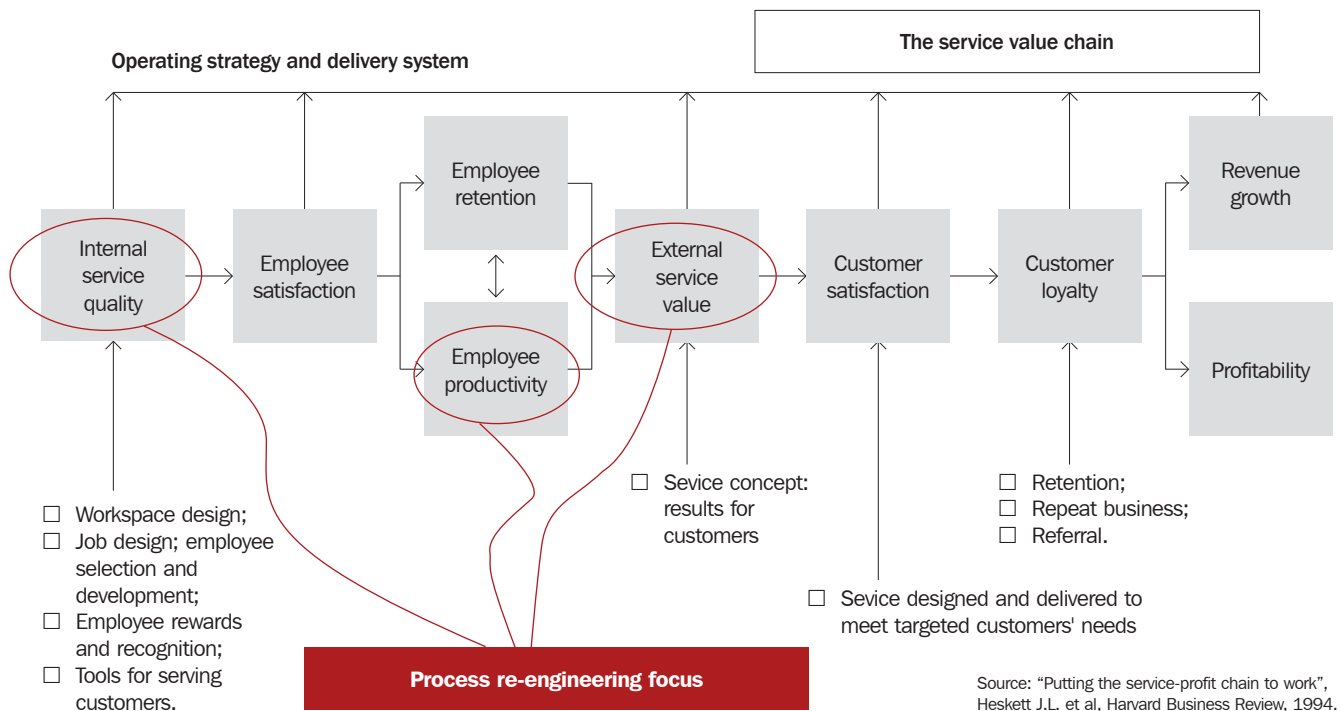


Figure 2. Process re-engineering impacts the service value chain.

transition plan will introduce the new features in several phases to enable early benefits with controlled risk.

How can such change be made during a recession? Recessions are nothing new, and in the past progressive businesses have transformed themselves during a recession. Toyota committed itself to the company-wide implementation of what ultimately became Lean in 1950 when it was almost bankrupted by recession in the Japanese economy. Nintendo (currently enjoying the success of its radical Wii gaming machine) only moved away from its core business of making playing cards in the late 1960s, when its market collapsed. IBM re-engineered itself from a computer hardware business into the world's leading IT services business from near financial implosion in the early 1990s. Adversity can be a powerful force for business improvement if harnessed effectively by management. Competitive improvement should address both cost reduction and value improvement. To date, in this recession,

most law firms have simply addressed cost reduction through reduction in discretionary spend and headcount reduction, but a recession can be an excellent time for innovation.

- It provides a clear 'burning platform' - a case for change;
- Employees will be prepared to put effort on improvement activities, to help secure their employment;
- Partners and the workforce will be less resistant to radical change;
- Required redundancies enable the 'right-skilling' of the workforce;
- Suppliers will be prepared to be more innovative in their offerings and pricing to secure business;
- Improved value products and services will be seen positively by clients;
- Nearly new technology can be purchased at significant savings via bankruptcy asset sales.

The UK legal sector is facing major changes now and in the years ahead.

For firms to succeed under these new market conditions, they must develop the capability to quickly and effectively innovate. It is clear that most UK law firms are well behind other business sectors in business process management and improvement. There are decades of process innovation experience in other business sectors that law firms can learn from and tools and methods they can apply. Therefore the only real barriers lie in the firms themselves – in their will to act and their courage to execute. ■

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