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Department of Marketing

**The Role of Legal and Managerial
Competences in the Delivery of Professional
Legal Services**

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Declaration

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The Role of Legal and Managerial Competences in the Delivery of Professional Legal Services

Abstract

This thesis addresses the performance and delivery of professional legal services. Previous research has focused on the shape of professional services and the organisation of professional service firms. This study extends the scope of research into professional services and provides understanding on how opportunities to shape and deliver professional services in new, creative and innovative ways are identified.

The empirical research examined the management and delivery of professional legal services across private law firms and in-house legal groups in the UK. Across the UK radical measures proposed for the provision of legal services under new business models suggest a transition towards dual activity and services across the professional institutions and organisational settings providing legal services. As lawyers face demands to deliver services that are increasingly driven by commercially focused strategic aims the professional dimension to their services is being subjected to increased scrutiny. Lawyers are facing demands to strategise and introduce innovation across their services that are diminishing the professionalism of their role and services but not significantly so. Increasing heterogeneity across the legal profession and the consequences for the professionalism of lawyers has seen lawyers diversifying their services and introducing innovation to their role both by adapting their existing skills and acquiring new skills

A theoretical framework draws on three theoretical approaches to inform this research. The co-existence of firms and professions and the interdependencies between and interconnections across these two structures are examined. Resource theory (in the tradition of Penrose 1959) is used to understand not only the

relationship between resources and services but also the level of strategic interaction across the processes combining resources. A resource approach to the strategic management of firms (Foss and Ishikawa 2007) is developed by explaining the management of the complex interconnections between firms and professions in the delivery of professional legal services. This research examines the influence of processes across these two social structures in driving innovation across the delivery of professional legal services. Specifically, process theory (Langley 1999, Van de Ven and Poole 2005) is used to develop ideas about the relationship between resources and services and to explain the relationship between the dual contexts of professions and organisations in order to understand how the processes of combining resources are influential in driving innovation in the delivery of a service.

This exploratory research study was inductive in its approach and used a grounded theory methodology to address the research aims. The ontological, interpretivist view of grounded theory is appropriate to understand the complex social phenomena of this research.

Chapter 1

Introduction to the Research Project

1.1 Introduction

The first chapter will introduce the research project and outline the research aims and the process of the research that has been undertaken to address these aims.

This research explores the delivery of professional services and the management of the processes that shape and deliver those services. Firms and professions are both robust social contexts within which resources can be organised and managed and from which services may be delivered. The profession is an additional organising structure or institution which cuts across the usual institutions of firms. The conjunction of profession and firm places boundaries on the heterogeneity of firms and also provides an additional means of shaping and connecting the resources, which co-comprise firms and the profession itself.

The research is guided and informed by the literature on resource theory and a resource-based approach to strategic management that recognises that firms can compete through the control of their unique resources (Scarborough 1998, Holcomb, Holmes and Connelly 2009). It is also influenced by the recent work by Gruber, Heinemann, Brettel and Hungeling (2010) who argue that much of the literature on the resource-based view is a repetition of similar arguments and suggest that as a theoretical approach to strategic management more attention should be made to the contribution of resources in directing and shaping a firm's strategy (Hitt, Bierman, Uhlenbruck and Shimizu 2006)

The neo classical view of the firm as a production function questions the differences that exist across firms but only in terms of products and services. A resource-based view of the firm (in the tradition of Penrose 1959) acknowledges that firms may differ and differentiate themselves in terms of their resources and through the organisational processes and routines that, as connections, interact with a firm's resources (Eisenhardt and Martin 2000). The role of processes in shaping and managing resources, and in particular the role of knowledge and learning processes, combine with the influences of experience and context in connecting resources with services (Araujo and Spring 2006, Ford and Hakansson 2006).

A conceptual framework is constructed with a focus on the potential for growth from a firm's resources and the contribution of the successful management of those resources exploiting the functional relationship that exists between a firm's specific characteristics and the productive opportunities generated by services (Teece 1982, Wernerfelt 1998, Scarbrough 1998, Lockett and Thompson 2004). The influences of issues of professionalism and professional socialisation are used to explore the relationship between firms and professions and the consequences for services that derive legitimacy from their professional role (Suddaby and Greenwood 2005, Malhotra and Morris 2009).

Resource theory dominates the current literature on the strategic management of firms (Foss and Ishikawa 2007) and provides an appropriate framework to inform research questions that explore the relationship between a firm's resource base and the delivery of services. In his review and analysis of the empirical literature on the resource-based view Newbert (2007) outlines different approaches to this perspective found across the literature but concedes that they are not necessarily mutually exclusive. Much of the literature adopts a resource-heterogeneous approach, arguing that value to a firm derives from the rare, idiosyncratic qualities and characteristics of resources (Barney 1991, Mahoney 1995, Kor and Mahoney 2005). Resources are objective, tangible and intangible assets that are independently recognisable regardless of the context in which they are found (Baker and Nelson 2005). Resource heterogeneity is the source of difference in firm performance (Ahuja and Katila

2004) achieved through ‘bundling resources’ and enabling firms to deliver products or services. A resource-based view in the tradition of Penrose (1959) assumes that firms can be contextualized as bundles of resources (Eisenhardt and Martin 2000). Their contribution extends beyond the efficient maximisation of their strengths and weaknesses (Barney 1981, Wernerfelt 1984) and their influence on firm performance is significant when they combine with the dynamic capabilities of a firm’s organisational and strategic routines (Eisenhardt and Martin 2000).

The value of resources to a firm is demonstrated through the interconnections across them and interdependencies between resources and processes that enable and empower firms to strategise and innovate (Mishina, Polack and Porac 2004, Bingham and Eisenhardt 2008). Processes are seen as fundamental to the management of resources and the exploitation of the dynamic capabilities and interconnections that exist within firms that combine to deliver services (Collis 1991, Baker and Nelson 2005). Penrose’s view of processes as the means by which firms may grow identifies with a strategic management approach to resource theory (Rugman and Verbeke 2002). Processes are complex in nature and understanding them is seldom straightforward. The research is informed by the work of Langley (1999) and Van de Ven and Poole (2005) and the processes that deliver services are rationalised as the consequence of a sequence of events over time (Gersick 1994). Resource theory recognises the value to a firm from leverage drawn from a combination of resources and capabilities from which services may derive and which may be exploited to respond to challenges faced by increasingly diverse demands on services (Sherer and Lee 2002, Pinnington and Grey 2007).

A resource-based view of the firm (in the tradition of Penrose 1959) is used to address the theoretical implications of productive services emerging from resources and comparisons are drawn with the identity of a profession existing as a structure within a firm and its influence in shaping and connecting services. Firms and professions can and do co-exist but their relationship may be complex and the professional context is inevitably shaped by aspects of a social identity that conform to the professional role. For example, the need for specialist training and knowledge

(Quinn, Anderson and Finkelstein 1996), and the membership of a professional association (Montgomery and Oliver 2007). The literature is clear that professions and professionals remain largely defined by the shape and content of their work (Suddaby and Greenwood 2005, Malhotra, Morris and Hinings 2006, Malhotra and Morris 2009) and this perspective informs this research as it explores the relationships and strategic interactions across firms and professions in the organisation and delivery of professional services. The social and institutional contexts within which services are delivered are influential in the delivery of professional services and resource theory provides a theoretical framework to examine the complex relationship between two co-existing social identities, namely professions and firms.

1.2 Research Aims

The aim of this thesis is to contribute to the understanding on how firms identify and shape opportunities for developing and delivering professional services and in doing so, to understand how the role of professional and manager are reconciled across the processes that shape and deliver those services.

Theoretically the research is shaped both by Penrose's original interpretation of the contribution of processes as the means by which firms grow through innovative resource bundling and by Rugman and Verbeke's (2002, 2004) focus on the role of processes in the strategic management of organisations seeking growth and innovation. Processes are the connections between resources and services and the link to their interdependent relationship. Resources are the means by which firms and professions can drive innovation and creativity to differentiate themselves and their services. The resource-based perspective views knowledge as an objective, transferable commodity (Penrose 1959, Spender 1996) and Loasby (1998) develops those ideas around the contribution of specialised knowledge and experience in the relationship between resources and services. This thesis embraces this approach that implies dynamism in knowledge that is both valuable and useful and which it

recognises in the context of this research, namely the delivery of professional services. Professionals are empowered by their ability to connect with their resource base (Scarborough 1998) and, by managing their resources they generate the processes that effectively combine resources to deliver innovative and creative services (Baker and Nelson 2005).

Much of the research and discussion on resource theory has focused on ideas about growth and innovation through the strategic management of firms and by building on existing resources and capabilities (Collis 1991, Lowendahl 2005, Foss and Ishikawa 2007). The influences of social, institutional and organisational contexts are similarly recognised in shaping and processing resources whilst conceding that boundaries still exist and need to be managed (Newell et al 2003, Montgomery and Oliver 2007).

The relationship between resources and services is defined, in part, by a level of strategic interaction across the processes combining resources and these processes are influential in driving innovation in the delivery of a service. A combination of different inputs and contributions may produce the most efficient utilisation of capabilities but may be compromised by the demands of the professional context, regulations and routines within which specialist knowledge develops. Professions and professionals are a link between a firm's resources and value creating services. A profession is characterised by its professional authority and the exclusive jurisdiction it traditionally enjoys (Wilensky 1964). Professionals are defined by both the nature and scope of their work and the services they deliver (Malhotra and Morris 2009).

The literature on the resource approach to the delivery and management of professional services addresses the relationship between a firm's resources and the delivery of services in relation to potential opportunities and value to a firm and explores the influence and constraints imposed by a professional dimension to services (Mahoney 1995, Lepak and Snell 1999, Robertson, Scarborough and Swan 2003, Malhotra and Morris 2009). The contribution of specialist knowledge in shaping and directing professional services is a neglected area of research and this study aims to address the gaps in the literature by researching further the relationship

between resources and the development of the knowledge and experience that shape the processes delivering professional services.

The ability to share knowledge, and in doing so to communicate ideas about experience, generates valuable learning within an organisation. Professions use routines, codes and norms of practice that exclude outsiders and inevitably make communication across social and institutional boundaries difficult (Johnson et al 2002). The desire for effective communication within and across organisations demands a level of ‘shared language’ (Cohen and Levinthal 1990). Feldman and Rafaeli (2002) define connections as “*interactions between people that enable them to transfer information*” (p 312). This definition guides interpretation of the contribution and role of the codes of conduct and norms of practice used by professions as connections within which knowledge can be directed as the study assesses the influence of the resources of specialised knowledge and experience in the interdependent relationships and connections between resources and services. This research on how professions and professionals share knowledge and manage the appropriate forums and methods created to manage knowledge transfer engages with and contributes to theoretical understanding about the influence of professional knowledge and experience across professional services.

Professions are facing challenges to adapt, innovate and diversify their services and the influence of increased managerial authority has seen the introduction of measures designed to rationalise the delivery of professional services. As professions and professional firms become increasingly differentiated the profile of management is raised and its role increased in influence. The growing trend towards greater ‘managerialism’ within firms through increased levels of bureaucracy has reduced the autonomy enjoyed by professionals and the devolvement of some of their authority (Cheetham and Chivers 2005). The complex relationship and the interplay between professionalism and management underpin the role of management in identifying and shaping opportunities for developing and delivering professional services (Pinnington and Grey 2007, Malhotra and Morris 2009). As professionals and managers are reconciled across the processes that shape and deliver professional

services the drive for innovation and creativity inevitably raises concerns for the professional role.

Greenwood, Suddaby and Hinings (2002) describe the legitimacy of a profession in terms of ‘appropriateness’ that derives from a level of conformity with organisational values that is reinforced by professionals associations as “*mechanisms of conformity and reproduction*” (p 62). Loasby (1998) suggests that describing ‘management’ as a range of skills, experiences, knowledge and traditions may imply intransigence and inflexibility in the managerial role. As management becomes more strategic its role sits comfortably with a resource approach to organisational growth (Watson 2001). Nevertheless this shifting paradigm questions the value of the professional role and creates tension between professionals and managers that may inhibit innovation.

Addressing these challenges to the professional role, and acknowledging that professionals may be constrained by the cultural and social values that define their profession, this research develops the focus of these concerns and explores the authority of the professional role in managing the tensions between stability and change as professionals introduce innovations into their services. The research examines the role of the professional identity in identifying and shaping opportunities whilst resolving challenges encountered from managerial opportunism. It assesses the value that an integrated approach to managing and delivering professional services may bring and the discretion and authority available to managers to organise and develop the necessary capabilities, routines and skills to deliver professional services. In doing so the research findings contribute to theoretical understanding of a resource approach to the management of professional resources as firms and organisations look to develop and enhance their professional services.

1.3 Orientation of the Research Aims

The legal profession is one of the oldest and most recognisable of the 'professions'. It provides a service that is founded on a combination of codified knowledge and the tacit component of a knowledge base that is the product of a specialised education and training. In the UK the profession enjoys an exclusive jurisdiction and a level of autonomy and authority that is supported by self imposed regulations and adherence to a set of accepted 'professional norms'. The legal profession is inherently conservative and has an acknowledged social status. The coordination of the profession is achieved through the imposition of regulated standards of skill which ensures a level of conformity across the profession whilst also fostering an allegiance amongst the members to a shared set of common rules and values (Brock, Powell and Hinings eds. 1999). Traditionally the management of the delivery of legal services was rarely a matter of deliberation, strategy or policy. The coordination of services was often by informal ad hoc arrangements relying on the strength of collegiate relations borne out of a common professional background and identity. Within private law firms (the traditional context from which legal services were delivered) a hierarchy of seniority dictated the management of firms within departments or areas of legal specialist expertise. The emphasis was not on effective and efficient management but instead on delivering a high quality, reliable service to a client base in return for which the lawyers were rewarded financially and also in terms of an enhanced reputation.

The legal profession in the UK is regulated by the Law Society of England & Wales and the Law Society of Scotland. The Law Society of England & Wales was established by Royal Charter in 1845. Its regulatory powers are underpinned by the Solicitors Act 1974, the Courts and Legal Services Act 1990, the Access to Justice Act 1999 and the Legal Services Act 2007. The Law Society of Scotland is the governing body for Scottish solicitors and was established by the Legal Aid & Solicitors (Scotland) Act 1949. The governing regulations are set out in the Solicitors (Scotland) Act 1980. In 2009 there were 115,475 lawyers practising in England and Wales, of whom 73.7% were employed in private law firms and the remainder across

commercial, industrial and public sectors (Law Society of England & Wales Annual Report 2009). In the same year in Scotland there were 10,413 practising lawyers of whom 80 % worked in private practice and 20% across other sectors (Law Society of Scotland Annual Report 2009).

The legal services market in the UK is currently operating in a climate where the introduction of measures for the deregulation of this market is driving change across the legal profession. The demands of the external business environment that is served by the legal profession are central to the shape and nature of the service they provide (Ranson, Hinings and Greenwood 1980). Concern in the public domain that consumers' interests were not being adequately addressed and served by the self regulation of the legal profession resulted in a Government review of the legal service market in England and Wales. In response to the findings in a 2002 Consultation Paper "*In the Public Interest*", published in July 2003, the Government instigated an independent review of the regulation of the legal services market in England and Wales with the aim of promoting competition and innovation and improving services for the consumer. "*The Clementi Report*" was published in December 2004 and its recommendations were included in a Government White Paper published on 17th October 2005. The terms of reference for the Clementi Review were:

To consider what regulatory framework would best promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector

To recommend a framework which will be independent in representing the public and consumer interest, comprehensive, accountable, consistent, flexible, transparent, and no more restrictive or burdensome than is clearly justified

The recommendations of the Clementi Report are aimed at not only improving the quality of services available to the customers of law firms but also to allow the introduction of new business structures that will provide new opportunities for other areas of expertise and other professions to be integrated within a legal firm and in doing so will provide new business models that will be better positioned to respond

to both consumer demands and changing market conditions. Measures to comply with the recommendations in the Clementi Report have been introduced in England and Wales by the Legal Services Act 2007 and new forms of practice and regulation across legal services permitted under this legislation will be adopted from October 2011.

A similar review instructed by the Law Society of Scotland was conducted into their legal services market with a remit to “*identify, describe and analyse the different legal service markets operating in Scotland*”. The findings of this review are contained in a report published in April 2006 (*Report by the Research Working Group on the Legal Services Market in Scotland*) and its recommendations were implemented in the Legal Services (Scotland) Act 2010 whereby the delivery of legal services is permitted from alternative business structures that comprise a minimum of 51% legal professionals and the remaining 49% non professional external investors and contributors.

Across the UK the provision of legal services under new business models is radical and changes being introduced suggest a transition towards dual activity and services across the professional institutions and organisational settings that are synonymous with the provision and delivery of legal services. There is a common thread running through the current trends in the development of the managerial role and of managing lawyers both within private law firms and within an organisational setting as an in-house legal group, which transcends the two jurisdictions of England and Wales and Scotland. There is widespread, if perhaps understated, recognition of the need to address the management of lawyers. A range of initiatives are being promoted by some firms and organisations and the opportunities to educate and advance new ideas and approaches are many and readily available. However there is also disquiet that many in the profession are not yet ready to endorse such initiatives and to openly encourage them. There is little direction from the regulatory bodies in this regard and the demands on training are perfunctory. Nevertheless in response to demands being made on them to provide more diverse professional legal services (driven both by client demands and Government initiatives to deregulate their

services) lawyers are demonstrating they are both resilient and resourceful in reorganising themselves. They are adapting, innovating and diversifying their services, often across increasingly fragmented organisations. The consequences for such reorganisation have given rise to increased levels of managerial opportunism across their services that challenge the traditional systematic role of the legal profession. These challenges highlight the rationale for this research study and its contributions to greater understanding about the complex relationship and the interplay between professionalism and management that underpin the role of management in identifying and shaping opportunities for developing and delivering professional services.

1.4 Research Topic Defined

The research is conducted across two different social dimensions from which lawyers deliver their services, namely, law firms and in-house legal groups. Structural differences are relatively unimportant but professionalism remains influential in shaping and defining the conduct of profession's work. Lawyers continue to display loyalty to the functionalist aspects of their role that derives from the status and authority synonymous with their professional identity (Larson 1977) and is enhanced by levels of specialist training and knowledge (Konntinen 1991). However growing heterogeneity across the legal profession has consequences for issues of professionalism in the way lawyers are organising and managing both themselves and their services. Recent trends have seen movement away from the Anglo-American functionalist approach to professions, where professional identity is seen as a status and authority, towards a Weberian inspired more rationalist approach that adopts a more open, less systematic role for the legal professional (Cheetham and Chivers 2005). As lawyers place less emphasis on conforming to the norms and routines synonymous with their profession and turn to embrace a more open and innovative approach to their services they are demonstrating that they are willing to promote a more business orientated approach to their services that inevitably must reconcile with increased managerial authority (Pinnington and Grey 2007, Malhotra

and Morris 2009). Nevertheless lawyers continue to deliver their services from within a regulatory framework that is central to their professional role and which defines the levels of professionalism that endorses the credibility of their role. The strength of professionalism that underpins the legal profession is reflected in the levels of specialist knowledge, skills and experiences that identity with the legal role. The professionalism of the legal role is examined for opportunities it may present to resourceful managers through potential interconnections with innovative ideas as they seek to reconcile managerial initiatives with the prevailing professional standards.

This research is conducted within the context of the legal profession and the delivery of legal services across the UK. The service demanded of the legal profession is shaped both by the social interaction in the lawyer/client relationship and also in terms of the expectation of benefit to be derived from the delivery of that service (Araujo and Spring 2006). Professional legal services are particularly distinguished by the levels of specialist knowledge and the influences of experience and expertise. Historical and idiosyncratic processes developed through a combination of resources and interaction across social functions and shaped by the subjective influences of experience and context (Rugman and Verbeke 2002, 2004, Ford and Hakansson 2006) present lawyers with established and familiar routines and systems on which they can build a relationship with their resources in a manner that is strategically valuable (Araujo and Spring, 2006). However these pre existing routines and practices that embrace *inter alia*, the procedures, conventions, codes of culture and conventions that are synonymous with the profession (Levitt and March 1988) whilst influential in developing shared understanding and a common focus (Feldman and Raefeli 2002), may be counter-intuitive to initiatives promoted by management in the pursuit of opportunistic and strategic growth.

As the demand on legal services become wider and more diverse, increased levels of heterogeneity are observed across the legal profession. Lawyers are responding to demands to strategise their services by delivering their services by adopting a progressively corporate focus and, in doing so, inevitably some aspects of their

professionalism are diminished. Researchers have begun assessing the role of the manager and the broader activity of managing as critical processes in the organising and performing of the professions (Robertson, Scarbrough and Swan 2003, Malhotra, Morris and Hinings 2006, and Malhotra and Morris 2009) but there has been little research into the challenges of managing organisations that exist in an institutionalised professional context. This research examines the consequences of changes being introduced to the shape and nature of professional legal services through the successful application of their resources in the processes delivering services. The management of the legal profession and the delivery of their services are reviewed across the range of managerial skills and competences exhibited by lawyers in different contexts and the level and nature of managerial training deemed appropriate and required to fulfill those roles is examined. The research findings contribute to knowledge and understanding about the management of professional services across complex interconnections and, specifically, about the challenges of managing the relationship between the dual contexts of professions and organisations.

1.5 Approach to the Literature

This study adopts an inductive approach to the research and follows a grounded theory methodology. Despite the insistence of Glaser and Strauss (1967) and later Glaser (1978 and 1992) that such research should begin free from the influence of a defined theoretical framework sourced from the literature this research is guided by the more pragmatic and flexible approach advocated by Strauss (1987) and Strauss and Corbin (1998) that regards the literature review as a ‘familiarising process’. There is a clear focus to the purpose of this exploratory research project and the literature review was influential in framing and defining the research aims. Golden-Biddle and Locke (1997) and Locke (2001) encourage the use of the literature review in a grounded theory approach to describe the ‘theoretical story’ that informs a research project. Developing a clear understanding of the current research across the literature within the research area not only provides grounds for justifying the project

(Suddaby 2006) but also highlights gaps in the literature and potential areas for further research (Eisenhardt 1998 and Charmaz 2006). The purpose of such a review is not merely to establish current thinking across conceptual and theoretical frameworks but also to understand the rationale behind the arguments and discussions and to use them to guide and inform further research (Easterby-Smith, Thorpe and Jackson 2008).

The focus of this research is framed within the resource-based view of the firm in the tradition of Penrose (1959). This thesis therefore reflects a dominant focus on discussions in the literature that expand on this perspective and specifically the 'path dependent' approach that identifies with a resource-driven view of organisational behaviour towards growth and innovation (Teece 1982, Wernerfelt 1984, Scarbrough 1998, Lockett and Thompson 2004, Ford and Hakansson 2006). A review of the literature necessarily involves some degree of categorisation to reflect the range of perspectives informing the research study. The literature review explores not only the contribution of resources within organisations (Foss and Ishikawa 2007) but also addresses the role of organisational capabilities in delivering services (and specifically professional services) and their interaction and relationship with resources (Mahoney 1995, Lepak and Snell 1999, Eisenhardt and Martin 2000).

1.6 Methodology

The research aims are addressed using a qualitative grounded theory approach. The broad aims of this research are to explore the relationships and strategic interactions between resources and services and to understand the interdependencies with processes that drive innovation in the delivery of those services within the context of professional legal services. These research aims are not seeking to make knowledge claims about an objective reality but are looking to explore and understand social phenomena and to interpret the role and actions of the actors within a social context. Specifically the research aims are to understand the professional role in developing, accessing and mobilizing resources as lawyers seek to develop and innovate their

services and further, to assess the role of lawyers, managers and legal and managers, in the context of performing, delivering and innovating legal services.

Grounded theory is an inductive approach to research that adopts a fundamentally interpretivist view (Goulding 2002). It assumes the notion of a socially constructed reality and as such is an appropriate methodology for understanding complex social phenomena (Suddaby 2006). Grounded theory has been applied in a wide arena of social science research encompassing, inter alia, research in management and organisations, (Kram and Isabella 1985, Denzin and Lincoln 2000, Rafaeli and Sutton 1991, Eisenhardt 1989a, Charmaz 1990) and is widely used in qualitative research. Researchers in 'professionally' orientated areas have similarly turned to grounded theory as a qualitative approach (Scher 1997, Langley 1999) and as a methodology it embraces a flexibility and adaptability in its procedures that enable the researcher to capture and understand the complexities in substantive areas such as organisational and individual interactions and behaviour and decision making (Locke 2001) and to contextualise the findings (Martin and Turner 1986).

The inductive nature of grounded theory research combines with the ontological considerations of constructionism that adopt a perspective on how social realities are created and acknowledge that social phenomena and their meanings are accomplished by social actors (Bryman and Bell 2003). Epistemologically the research is conducted within an interpretivist framework where the focus is on social practice and experience. This approach fits comfortably with a pragmatist perspective on individual and social reality framed in the influences of the early American pragmatist philosophers (James, Mead, Peirce, Cooley and Dewey). Pragmatism recognises the contribution of both knowledge and experience in framing the practices and routines that shape organisational behaviour and which set the boundaries within which social actors exist. Methodologically, pragmatism fits well with a grounded theory approach to research that is inherently reflexive and creative. As a perspective on practices and social interactions "*it offers a way of engaging with 'how' practice emerges in real-time rather than 'what' practices are in use*" (Simpson 2009 p 1343).

A grounded theory approach to a research project is focused on gathering knowledge and gaining understanding about situations from both the empirical data and the experiences of the research process (Post and Andrews 1982, Locke 2001). Grounded theory is about ‘theory building’ and this research adopts the systematic approach and procedures advocated by Strauss and Corbin (1990 and 1998) designed to develop the emergence of explanations and theory. This prescribed approach is the preferred choice and the one most commonly adopted in organisational research areas (Goulding 2002). It follows a three stage coding process (Open, Axial and Selective) during which the empirical data is constantly analysed, coded and compared. The coding processes are the means to identify similar constructs and relationships across potential variables of interest (Graebner and Eisenhardt 2004) and from there the processes of conceptualizing and theory building develops from the constant comparison of the data (Strauss and Corbin 1990, Maitlis and Lawrence 2007). The processes of constant coding, analysis and comparison of the data were carried out throughout the data collection period. The QSR NVivo 8 programme was used to assist in coding and analyzing the rich and varied qualitative data collected. The data was coded and recoded across a combination of non-hierarchical categories in ‘free nodes’ and ‘families’ of nodes comprising an organisation of categories in ‘tree nodes’. The comprehensive list of free and tree nodes used are set out in **Appendix A**.

1.7 Sampling

A purposeful, non-random approach to sampling is adopted in line with grounded theory and the demands of theoretical sampling (Eisenhardt 1989a) that combines the direction of the sample choice with the opportunity for the researcher to consider ideas across emerging descriptive categories (Charmaz 2006). The empirical evidence comprises data obtained from a range of sources. Multiple case studies were carried out and a total of twenty nine in-depth interviews form the substantive basis of the empirical data. Details of each case study are set out in **Appendix B**. Case studies are an appropriate method for collecting empirical data in exploratory

research (Eisenhardt 1989b). The case studies selected presents the opportunity to look for patterns around the areas of interest but, mindful of the need to ensure rigour in respect of validity and reliability (Gibbert, Ruigrok and Wicki 2008), triangulation of sources was sought from both primary and archival data (Swan, Scarbrough and Newell 2007).

A range of data sources can add rigour and robustness to research (Glaser and Strauss 1967, Strauss 1987, Corbin and Strauss 1990, Maitlis and Lawrence 2007): “...the data for a grounded theory can come from various sources. The data collection procedures involve interviews and observations as well as such other sources as government documents, video tapes, newspapers, letters and books – anything that might shed light on questions under study” (Corbin and Strauss 1990 p 5). Adopting this pragmatic approach data was sourced not only from the interview transcripts but also from government publications, websites, books, journal and newspaper articles and documents provided by the sample groups. The legal profession is served by a range of published journals (weekly, monthly and quarterly) and a total of six professional journals were scrutinized over a period of four years for information relevant to the research and to the sample organisations. **Appendix C** lists the range of these data sources used to inform the sample, and **Appendix D** details the articles reviewed.

1.8 Structure of the thesis

This chapter has introduced the research origins and aims and has set forth the research topic in some detail. The design of the research and the context of the study have also been explained. The following section will outline the structure of the thesis.

Chapter two reviews the literature on the resource-based view of the firm and services.

Chapter three continues the review of the literature and discusses the current research on the resource- based view across the field of services and specifically the delivery of professional legal services and the management of professions and professionals. The critical review of the literature in these two chapters develops a conceptual framework that orientates this research study. The relationship between resources and services in the delivery of services is discussed across an emerging theoretical framework that is informed by the arguments analysed in these chapters. Three research questions emerge from the conclusions drawn:

RQ 1 How do legal firms and law professionals process and mobilize resources as lawyers seek to develop their services?

RQ 2 How do legal professionals encounter and resolve managerial challenges to their professional identity?

RQ 3 How does the role of the legal manager offer new ways to identify and shape opportunities for developing and delivering legal services?

Chapter four introduces the research philosophy of this qualitative research project and explains the appropriateness of a grounded theory methodological approach to address the research issues. The chapter concludes with a critical discussion of a grounded theory approach and addresses the implications of this approach within the framework of this research.

Chapter five gives a detailed review of the research design and process. It includes a discussion of the sampling process and gives a detailed account of the sample chosen and the use of the QRS NVivo 8 programme in the coding, analysis and comparison processes carried out across the data.

Chapter six is the first of three chapters presenting the findings of the empirical evidence. This chapter and chapters seven and eight present the findings of the research across the entire data sample but on occasion highlight select case studies to

provide detail examples of emerging themes and ideas. The use of multiple case studies reassures the internal and external validity of the research findings. This chapter presents a discussion on the relationship and interconnections between resources and services and specifically on the significance of context in the demand for professional services and its implications for the processes that deliver those services.

Chapter seven introduces issues surrounding the challenges facing professionals from demands for more diverse and innovative services and addresses the consequences of increased levels of managerial input in the management and delivery of those services.

Chapter eight develops the discussion on managing the delivery of professional services, the impact of growing heterogeneity across the legal profession and their implications for both lawyers and managers. This chapter also discusses the relationship between lawyers and managers and how that relationship is being addressed and coordinated.

Chapter nine concludes this thesis with a discussion on the theoretical implications arising from this research whilst addressing its limitations. Finally areas of possible future research are identified.

Appendix A

Nodes used in the coding process

Free nodes

Appraisal schemes
Authority of regulatory framework
Changing focus for the legal profession
Combining legal with other skills
Diversity of skills
Legal Services Policy Institute
Legal education and training group (LETG)
Resistance to change
Risk management
Understanding both law and business issues
Value driven processes

Tree nodes and 'families' of nodes

Career Opportunities

- Attitudes and initiatives
- Combining legal and management skills
- Diversifying
- Support and encouragement
- Thinking strategically

Coaching and Mentoring

- Attitudes to Benefits of
- Not for everyone
- Recognition of
- Relevance to law and legal practice
- Skills needed to be a coach
- Value of programmes
- What is it and how does it work

Combining legal and management skills

- Leadership skills
- Pre eminence of legal skills

Different management approaches

- Non legal managers
- Professional managers

Education and Training

- Acknowledging a firm's commitment to training
- Acknowledgement of value
- Attitudes to management training
- Continuity in training across organisations
- Cost effectiveness of in house training
- Formal management qualifications
 - College of Law initiatives
 - MBA in Legal Practice
- Gaps and omissions in the training process
- Initiatives by private firms
 - Developing future leaders
 - Training and development support
- Learning from experience
- Level of interest in management training
- Sharing knowledge and experience
 - Resistance to sharing

- Structured management training
 - Teaching business issues
 - Transferability of skills
- Fundamentals of law today
- Demands of the market
 - Inherent values
 - Local Government Group of Solicitors
 - Managing a law firm
 - Measures of success
 - Nurturing future leaders
 - Range of providers
 - Recognising management contribution to legal providers
 - Role of the private law firm
 - Strength and value of team work
 - The new style legal practitioner
- In House Lawyers
- Attitude of the business
 - Government Legal Service (GLS)
 - Career Development
 - Internal Organisation of legal function
 - Management training
 - Mentoring
 - Managerial responsibility
 - Strategic aims
 - Training programmes
 - Integrating lawyers into business
 - Local Government Lawyers
 - Career Development
 - Internal organisation of legal function
 - Management training
 - Managerial responsibility
 - Mentoring
 - Training programmes
 - Strategic aims
 - Position within the organisation
 - Responsibilities of the legal team
 - Role of the head of legal
 - Strength of legal identity
 - Value of lawyers' knowledge
 - Value to the organisation
 - Law Society of England & Wales
 - LMS at Law Society
 - Relevance of its role today
 - Support for new training initiatives
 - Law Society of Scotland
 - Initiatives in education and training
 - LETG
 - Attitudes to training
 - Cost effectiveness of training
 - Role and aims of organisation
 - Local Government Group of Solicitors
 - Association of Council Secretaries and Solicitors
 - Relevance of management skills
 - Role of the lawyer in local government
 - Management as a Profession
 - Challenges of managing lawyers

- Conflicts in managing lawyers
 - Culture of management
 - Manager of lawyers
 - Managerial responsibility
- Relevance of management training to lawyers
 - Strategic Direction
 - What makes a good legal manager
- Management potential
 - Developing managerial skills
 - Developing partners as managers
 - Enhancing management skills
 - Identifying potential
 - Leadership potential
- Management training for lawyers
 - Lawyers as managers
 - Level of interest amongst lawyers
 - Level of value given to management training for lawyers
 - Management relative to numbers
 - Training for all levels
- Managing the delivery of services
 - Managing a team
 - Team work
 - The role of the partner in private practice
 - Valuing management expertise
 - What is needed from leadership
- Motivation
 - In a team
 - Management role
 - Value of
- Professional socialisation
 - Acquiring new and diverse skills
 - Conflicting loyalties
 - Elitism in legal profession
 - Lawyers should focus on law
 - Professional autonomy
 - Professional Identity
 - Resistance to change
 - Strength of professional identity
 - Team work
 - Training Budget
 - Value of legal skill
 - Work Ethic
- Relevance of managing lawyers
 - Different management styles
 - Role of legal manager
- Service Delivery
 - Different management styles
 - Role of legal manager
 - Client expectations of service
 - Client focus
 - Managing the delivery of services
 - Prioritising the client
 - Responding to demand
 - The client relationship
- Strategic Aims
 - The role for leaders and managers

Data from each case study was also coded within individual ‘families’ of tree nodes

‘Families’ of nodes used for each private law firm case study

- Autonomy issues
- Career Development
- Development Role
- Internal Organisation
- Management Training
- Managerial Responsibility
- Managing Partner Role
- Mentoring
- Strategic Aims
- Training Programme

‘Families’ of nodes used for each in- house legal group case study

- Career Development
- Internal Organisation
- Levels of autonomy
- Management responsibility
- Management training
- Mentoring
- Strategic aims
- Training programmes

Data from the management consultants sample was also coded within individual ‘families’ of tree nodes

- Background and experience
- Main focus of consultancy work

Appendix B

Case Studies

Private Law Firms

'Andrew Bankton'

- UK domestic law firm with three offices
- 17 partners and 57 lawyers
- Interview conducted with the Managing Partner

'David Hume'

- UK domestic law firm with two offices
- 39 partners and 96 lawyers
- Interview conducted with the Head of Human Resources

'George Joseph Bell'

- International law firm with offices across UK, Europe and Asia
- 210 partners and 900 lawyers (approx.)
- Interview conducted jointly with the Director of Human Resources and the Director of Quality

'George Mackenzie'

- International law firm with offices in UK, Europe, USA and Asia
- 595 partners and 1800 lawyers (approx.)
- Interview conducted with the Training Development Officer

'James Dalrymple'

- UK domestic firm with three offices
- 65 partners and xx lawyers
- Interview conducted with a member of Human Resources team with responsibility for professional training and development

'John Erskine'

- UK domestic firm with two offices
- 36 partners and 250 lawyers
- Interview with the Executive Chairman

'William Forbes'

- International law firm with offices in London and across Europe
- 170 partners and 600 lawyers (approx.)
- Interview conducted with the Career Development Officer

'Viscount Stair'

- International law firm with offices across UK, Europe, Middle East and Asia
- 200 partners and 1000 lawyers (approx.)
- Interview with the Senior Training Manager

In- house Legal Groups

'Agency'

- Legal group serving an international energy company
- 650 lawyers (approx.)
- Interview conducted with the Global Legal Services Coordinator

'Contracts'

- Legal group serving a UK Government Department
- The legal group is a subdivision of the Treasury Solicitors (TSol) who are part of the Government Legal Service for England & Wales
- 45 lawyers
- Interview conducted with the Senior Legal Advisor and Head of the Group

'Delict'

- Legal group serving a Scottish Government Department
- The legal group is part of the Government Legal Services for Scotland
- 80 lawyers
- Interview conducted with the Senior Legal Advisor and Head of the Legal Group

'Jurisprudence'

- Legal group serving a Scottish public service organisation
- 40 lawyers
- Interview with Senior Legal Advisor Head of the Group

'Succession'

- Legal group serving a non – ministerial UK Government Department
- 80 - 90 Lawyers
- Interview conducted with the General Counsel and Head of the Legal Group

Appendix C

Sources of Empirical Data

Interview Transcripts and Archive Data

Education and training groups
In- house legal groups
Management consultants
Private law firms
Professional organisations

Journals (articles listed in Appendix D)

Journal of Law Society of Scotland
In – House Perspective
Law Gazette: Journal of the Law Society of England & Wales
Managing Partner Journal
Managing for Success: Journal of the Law Management Section of the Law Society of England & Wales
The Lawyer

Law Society of England & Wales – Reports and Guidelines

- Law Society of England & Wales Annual Report 2009

Solicitors Regulation Authority

- Professional Skills Course (01/05/2005)
- Solicitors Codes of Conduct 2007
- Training trainee solicitors: Guidelines on performance review and appraisals (29/07/2005)
- Training trainee solicitors: Induction checklist (29/07/2005)
- Training trainee solicitors: Guidelines on supervising trainees (01/06/2006)
- You and your training contract: What you need to know (01/06/2006)
- Training trainee solicitors: Guidelines on monitoring of training contracts (17/08/2006)
- Training trainee solicitors: Guidelines on recruitment and selection (02/07/2007)

Commerce and Industry Group

- Reconciling the Irreconcilable? Best Practice Guidelines for In-House Lawyers in England and Wales in the new corporate governance environment (11/03/2005)
- A fine line: Further guidance to In-House Lawyers in England and Wales on ensuring good corporate governance in your organizations (24/07/2006)

Law Society of Scotland – Reports and Guidelines

- Law Society of Scotland Annual Report 2009
- Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008
- DISCUSSING THE DETAIL...Paper 1: A consultation on the future of pre-qualification legal education and training in Scotland (01/02/2008)
- DISCUSSING THE DETAIL...Paper 2: A consultation on the future of solicitors' Continuing Professional Development requirements in Scotland (01/03/2008)
- Professional Education and Training - Stage 1 Proposals (2009)

Government Publications

- The Clementi Report: Regulatory Review of Legal Services (15/12/2004)
- Legal Services Act 2007
- Solicitors (Scotland) Act 1980.

Appendix D

Articles from Journal Sources

Journal of the Law Society of Scotland

- "A bill to divide us", (2006), May, p.9.
"A road to somewhere", (2005), June, p.9.
"A wider angle" (2004), November, p.32.
"Acquiring masters degree can be rewarding business", (2003), July, p.22.
"Be both commercial and professional" (1999), November, p.32.
"Communication: the number 1 risk management tool", (2006), April, p.36.
"CPD: the way forward", (2008), April, p.34.
"CPD for new lawyers", (2008), July, p.40.
"Defining moment", (2007), December, p.48.
"Diversity of disciplines shape new business of law" (2003), June, p.16
"Down to brass tacks", (2008), January, p.28.
"Education's Big Bang", (2006), October, p.16.
"Firm foundations", (2004), August, p.14.
"Future present" (2008), April, p.14.
"Independence", (2008), April, p.14
"Legal science or law-lite?" (2006), February, p.14.
"Legal science or law-lite? A response", (2006), April, p.9.
"Many roles, one team", (2004), February, p.40.
"Opportunity knocks", (2004), September, p.32.
"Practice? What practice?" (2007), March, p.20.
"Pull together", (2004), June, p.26.
"Putting theory into practice", (2004), March, p.34.
"Putting theory into practice", (2004), April, p.36.
"Staff surveys", (2004), January, p.32.
"Survival of the fittest?" (2006), September, p.14.
"Switching channels", (2006), July, p.22.
"Take a firm approach", (2008), February, p.9.
"The future: build your own", (2008), June, p.12.
"The future in your hands", (2002), June, p.22.
"This means war", (2008), May, p.46.
"Training for growth" (2004), p.16.
"Training solicitors and teaching law", (2006), September, p.10.
"Unseen force", (2005), September, p.14.
"Vision 20:20", (2007), June, p.26.
"What makes a good partner?" (2003), July, p.34.
"Whose star will shine?" (2008), July, p.66.

In-House Perspective

- "In – house counsel in a globalising world", (2008), Vol. 4 (3), pp.23 -27.
"In House Counsel who return to practice", (2008), Vol. 4 (3), pp.19- 21.
"The In – House Legal Function – a Decade of Change" (2005), Vol.1 (2), pp.7 -13.
"Retaining lawyer" (2008), Vol. 4 (3), pp. 9 -11.
"Why Corporate Counsel Need to get Business Savvy" (2005), Vol.1 (1), pp. 5-7.

Law Gazette: Journal of the Law Society of England & Wales: <http://www.lawgazette.co.uk>

- "Amateurs and professionals", (2007), July, 26.
"Building a solid foundation, (2007, October 04).
"Business process management special: keeping in step", (2007), April, 26.
"Clifford Chance unveils MBA plan", (2005), October, 20.

“Coaching others – a question of style?” (2002), September, 12.
 “Continuing education”, (1992), February, 12.
 “Different class” (2001), September, 13.
 “Education, education, education”, (2001, October 19).
 “Legal education- professional skills course”, (1993, July 14).
 “Me a manager” (1996, October 9).
 “Solicitors lag behind on training”, (1992, April 1).
 “Towards better management”, (2003, July 25).
 “Training initiatives”, (1989, April, 5).

Managing Partner Journal: <http://www.mpmagazine.com>

“A strategic approach to coaching”, (2006), Vol. (1), May, 25.
 “A trained eye for success”, (2005), Vol.8 (1), May, 19.
 “Adding extra dimensions to firms”, (2002), Vol.5 (4), August, 20.
 “Brave new world: Facing a changing future in legal-service delivery”, (2006), Vol.8 (8), February, 10.
 “Coaching: a culture shock”, (2006), Vol.9 (6), October, 31.
 “Coaching conundrum”, (2005), Vol.8 (3), August, 2.
 “Cross-selling: Why, how and who?” (2003, Vol. 6(1), May, 1.
 “Cultivating careers”, (2004), Vol7 (3), July, 7.
 “Doing it in bulk: Lessons in service delivery from the bulk providers” (2004), Vol.7 (2), July, 27.
 “Don’t give up the day job”, (2004), Vol.6 (8), February, 3.
 “From lawyers to leaders”, (2007), Vol.10 (5), October, 2.
 “Genuine client focus: Managing the sophisticated client’s expectations”, (2004), Vol.4 (7),
 “Getting the most from executive coaching”, (2002), Vol.4 (10), April, 25.
 “How can law firms manage innovation? Meeting the needs of an expanding market”, (2002), Vol.5 (1), May, 24.
 “Imitation to innovation: Lessons from the consumer world”, (2004), Vol. 7(5), October, 5.
 “Improving performance”, (2001), Vol.4 (5), September, 10.
 “Internal affairs: Better managing people to meet strategic objectives “, (2005), Vol. 7(8), February, 16.
 “Is your firm’s leadership performing?” (2004), Vol.6 (8), February, 3.
 “Knowledge-management tools in legal practice”, (2004), Vol.6 (9), March 9
 “Laws of leadership”, (2005), Vol.8 (3), August, 2.
 “Leadership and management “, (2000), Vol.2 (9), March, 1.
 “Leading lights: Leadership tips for the modern law firm’ , (2005), Vol.8 (3), August, 2.
 “Leading and learning”, (2007), Vol. 10(3), August, 14.
 “Learning to lead”, (2008), Vol.11 (3), July, 22.
 “Listening to your clients...and the survey says?” (2001), Vol.3 (7), January, 19.
 “Making the most of your firm’s know-how”, (2003), Vol.5 (9), February, 19.
 “Managing content-heavy client relationships”, (2002), Vol.5 (7), December, 2.
 “Managing your workforce: effective leadership in a people business”, (2002), Vol.5 (6), November, 1.
 “Marketing legal service in a dynamic environment”, (2001), Vol.4 (6), October, 2.
 “Maximising the benefits - making law firm client relationship management work”, (2002), Vol.4 (10), April, 25.
 “Moving the earth: Implementing change for business-development success”, (2005), Vol.8 (1), May, 19.
 “Opinions decisions, decisions”, (2008), Vol.11 (3), July, 28.
 “Passing the baton”, (2006), Vol.9 (3), August, 3.
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 “Personal training tools”, (2007), Vol.9. (8)February, 2.
 “Support solutions: Making business development work for law firms”, (2005), Vol.8 (1), May, 19.
 “Survival of the fittest? Assessing the evolution of the modern law firm”, (2002), Vol.5 (4), August, 20.
 “Talent spotting”, (2006), Vol.9 (7), December, 6.

- “*Thank your lucky stars: Putting your partners at the heart of successful business development*”, (2003), Vol.6 (6), November, 4.
- “*The importance of knowledge management*”, (2003), Vol.6 (6), November, 4.
- “*The managing partner’s dilemma*”, (2002), Vol.5 (4), August, 20.
- “*The missing link*”, (2006), Vol.9 (2), July, 3.
- “*The right culture for KM*”, (2004), Vol.6 (9), March, 9.
- “*Time to re-think knowledge management?*” (2004), Vol.6 (10), April, 13.
- “*To be the best: Trends in training in an international law firm*”, (2004), Vol.7 (6), November, 5.
- “*Training for success*”, (2006), Vol.9 (6), October, 31.
- “*Understanding leadership*”, (2003), Vol.5 (10), April, 2.
- “*What price is a good leader?*” (2003), Vol.5 (8), January, 29.
- “*Why some law firms are more successful than others?*” (2002), Vol.5 (7), December, 2.

Managing for Success: Journal of the Law Management Section of the Law Society of England & Wales

- “*A new voice from the Chair*”, (2004), Issue 23, January, p.4.
- “*Practice Management made perfect*”, (2006), Issue 31 January, p.23.
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Chapter 2

The Resource – based Perspective on Firms Delivering Services

2.1 Introduction

This research project is concerned with the management of the legal profession across a range of settings. In seeking to better understand the performance of professional services, and in particular the services of the legal profession, a framework is adopted that assesses and compares the theoretical implications of the resource–based perspective of the firm in the tradition of the productive services emerging from resources (Penrose 1959) with the identity of a profession as an organisational structure or institution that places boundaries on the heterogeneity of firms and provides an anchor for shaping and connecting resources. A profession provides a complementing and external form of governance but also provides an additional means of shaping and connecting the resources. The professional identity is marked by a shared adherence and loyalty to values, norms and orientations linked to the profession and that engender common characteristics across the profession (Tushman and Scanlon 1981).

The neoclassical view of the firm as a production function acknowledges that firms differ, but only in so far as their products and services, and such differences are not significant. The resource-based view argues that firms differ in respect of their resource base and these differences are valuable and offer significant productive opportunities. A resource-based perspective is essentially an economic view that aligns a firm’s strategic growth to the potential generated from its resource base. A firm’s strategy may direct a firm’s productive services but it does not define it.

Colbert (2004) describes a resource-based view as a combination of developing and deploying a firm's resources to create unique qualities that are essential contributors to a firm's value and strength. Grant (1991) identifies resources as "*inputs into the production process*" (p 118). A resource-based view of the firm (in the tradition of Penrose) dominates the literature across issues of strategic management of firms (Foss and Ishikawa 2007) and is an appropriate perspective to explore the relationship between a firm's resource base and the generation of productive services and the combination of the unique characteristics of those resources and their application within the firm that translate into differentiated services that create value for the firm.

The delivery of legal professional services is used to highlight and explain the connection between a firm's resources, its capabilities in managing these resources and the delivery of a productive service.

Section 2.2 reviews the literature on both resources and services and, in doing so, outlines the different approaches to understanding what resources mean for a firm, and specifically addresses their relationship with a firm's capabilities in developing and delivering services.

Section 2.3 completes a more rigorous review of the resource-based view of the firm and develops ideas regarding the management of resources in the productive delivery of services.

Section 2.4 addresses issues surrounding the combination of resources and capabilities by firms and organisations in yielding services and questions the role of management in acquiring and utilising resources and services.

Section 2.5 outlines the role of knowledge, expertise and experience within the context of a firm or organisation and assesses the influence of 'professional' or 'specialised' knowledge.

Section 2.6 uses the context of a professional service firm to discuss the role of the professional in the delivery of its services in the tradition of the resource approach and questions the appropriateness of this role and identity.

The chapter concludes with a summary of the conclusions to be drawn from this chapter and the research questions that emerge.

2.2 Resources and Services

A resource-based theory approach understands that a firm represents a unique bundle of tangible and intangible resources (Collis 1991) and through it we expect firms to differ because they comprise bundles of idiosyncratic resources, accumulated historically in the form of experience and expertise and coordinated through practices, routines and procedures. Although the resource-based literature is weak in providing clear definitions for the internally generated competencies and capabilities found within firms it is acknowledged that they represent the firm specific characteristics that distinguish a firm (Scarbrough 1998). Resource theory acknowledges that these capabilities can drive strategic decisions for the firm and that the processes by which firms conduct their business represent the successful coordination of those capabilities with resources (Raff 2000, Bingham and Eisenhardt 2008). The origins of resources are important in understanding these processes (Ahuja and Katila 2004) but so too are the heterogenic services that they render. Araujo and Spring (2006) develop this theme in their discussion on products and services and their interaction with firms and markets. They dismiss the ‘outcome versus process’ definition of services as inadequate and offer their own definition of services as; *“the application of specialised competences (skills and knowledge) through deeds, processes and performances for the benefit of another entity or the entity itself”* (p 326).

Theoretically, a resource perspective of the firm in the tradition of Penrose’s work provides a basis for exploring the relationship between a firm’s resources and the

delivery of services within the context of professional services. Mahoney (1995) acknowledges that “*heterogeneous firm-specific resources and capabilities are the foundation for the resource-based theory of the firm*” (p 92) and opportunities and strategic growth may derive from these sources of ‘creative potential’ within an organisation (Penrose 1959, Colbert 2004). The focus of growth and profit is directed by a firm’s unique portfolio of resources which provides challenges in the form of ambiguities arising from the complex make up of organisations (Penrose 1959, Barney 1991, Colbert 2004). It is the very individual qualities of the productive services that mark out an organisation and provide it with valuable growth opportunities.

2.2.1 Competences and Capabilities

A ‘core competencies’ approach to resources understands that the interaction of a firm’s resources drives innovation and performance (Prahalad and Hamel 1990, Bingham and Eisenhardt 2008). There is value in the tacit knowledge embedded within a firm and opportunities to build on this knowledge with new initiatives may be lost through a lack of the capabilities or the “*the knowledge of how to get certain things done*” (Loasby 1998 p 150). Organisational processes and routines not only generate familiarity through their use overtime but additionally provide a source of knowledge and a means of sharing it (Levitt and March 1988). These processes are the predictable connections that interact with a firm’s resources to create capabilities. They contribute to shared knowledge and understanding by acting as internal conduits for transferring learning and knowledge (Nelson and Winter 1982, Eisenhardt and Martin 2000). Customs and practices may evolve into something more tangible when integrated by a clear framework of connecting principles (Loasby 1998).

2.2.2 Path Dependency

The combination of a firm's resources, its competencies and capabilities define the 'path dependent' nature of a firm but constraints may be imposed by specialist or expert knowledge, skills and routines (Mishina, Pollock and Porac 2004). The social relations and institutional contexts in which organisational knowledge is embedded are also significant and important in the delivery of services (Scarbrough 1998). Interaction across a social environment that reflects a degree of path dependency arising from the subjective influences of context and experience highlights interdependence across resources that shape the delivery of services (Ford and Hakansson 2006). Resource theory distinguishes between a firm's assets and contextual determinants and provides grounding from which research into the interaction between service and user and the management of this relationship can be better understood in terms of the implications for a firm's resource base in the delivery of professional services (Araujo and Spring 2006). Scarbrough (1998) identifies a level of interaction between resources and services and the 'path dependent' nature of their relationship and the ability of firms to compete through the development and innovation of their unique resources;

“Core competences and associated terms denote an attributional model which links resources or capacities to some kind of transformation process and hence outcomes”

Scarbrough, *ibid.* p 223

2.2.3 Developing and Delivering Services

The resource theory literature highlights gaps in research into the relationship between a firm's resources and these services, specifically in relation to the provision of professional services. The users of services are significant drivers in the delivery process and the role of innovation emerges as a key player in a successful and productive relationship between resources and services (Baker and Nelson 2005). Firms, faced with increasing demands on their services, may be forced to choose to

either acquire alternative resources or innovate ways to adapt existing resources (Sherer and Lee 2002, Pinnington and Gray 2007).

The delivery of a professional service is essentially a client focused service in which the client pays for the provision of a service sought and payment is commensurate with the value of the service provided (Lepak and Snell 1999). Such a service has an inherent human dimension and a resource approach acknowledges the value of human resources to a firm. It is the promise of service that is sought by the client and the provision of this service must be well coordinated. Langlois (2002) refers to the need for “*qualitative coordination*” (p 32) within an organisation to embrace the inevitable interdependencies and connections that exist within a complex internal structure. The successful combination of a firm’s resources, knowledge and tacit capabilities can provide valuable leverage for that firm and services may be the productive outcome of that leverage (Newbert 2007). Resource theory drawn from Penrose’s resource- based view of the firm explains the relationship between a firm’s resource base and the delivery of services and recognises the interdependencies that exist with a firm’s capabilities.

2.3 The Resource-based View

The resource-based view of the firm asserts that firms differ because they comprise bundles of idiosyncratic resources, accumulated historically in the form of experience and expertise and coordinated through emerging practices, routines and standard operating procedures. Penrose (1959) offers an interpretation of a resource base as a repository of resources that yield productive opportunities but is careful to distinguish between ‘productive resources’ and ‘productive services’. She adopts an emergent perspective to her resource based strategy and builds her interpretation of a resource base by linking it to knowledge within the firm and looking for dynamic explanation between the resources available and the productive services offered. Organisations develop routines and practices overtime that function as internal conduits to share knowledge and experience (Cyert and March 1963, Feldman 2002,

Feldman and Rafaeli 2002). Knowledge has a pivotal role as a link or connection that can bring dynamic explanations (Eriksen and Mikkelsen 1996). Penrose describes a firm thus:

“A firm is basically a collection of resources. Consequently, if we can assume that businessmen believe there is more to know about the resources they are working with than they do know at any given time, and that more knowledge would be likely to improve the efficiency and profitability of their firm, then unknown and unused productive services immediately become of considerable importance, not only because the belief that they exist acts as an incentive to acquire new knowledge, but also because they shape the scope and direction of the search for knowledge.” (p 77)

The recent literature on the resource base approach has created some sharp divergence of opinion and interpretation following on from the ideas submitted by Penrose in 1959. Rugman and Verbeke (2002) developed a conceptual framework in which they positioned Penrose’s view of the theory of the firm firmly in terms of a prescriptive approach. For them, Penrose’s work described the processes through which firms grow and these in turn, inform the descriptive components of a resource based model of the firm. They take issue with what they see as Penrose’s failure to address long term growth and expansion of the firm and her focus on the sources of firm heterogeneity to explain and understand innovation and growth. Lockett and Thompson (2004) disagree with this assessment of Penrose’s work and they concur with her view on a ‘path dependent’ nature of the evolution of the firm and *“the importance of considering factors internal to the firm when searching for the source of heterogeneous firm performance”* (p 201). This resource approach challenges context driven interpretations of the firm which identify the firm as a mechanism for allocating resources and instead adopts the resource theory position that emphasises a firm’s internally generated competencies and its ability to compete and influence the market through development and innovation of their resource capacity (Scarbrough 1998). Rugman and Verbeke (2002 and 2004) argue that Penrose explicitly rejected a focus on sustained growth through strategic moves and competitive advantage and as such her ideas do not comfortably translate into modern settings. But this view is rejected by those who contend that Penrose looked to the internal drivers within the

firm for dynamic and path dependent organisational thinking on growth and innovation, an approach that transcends changing attitudes and trends in strategic management (Teece 1982, Wernerfelt 1984, Scarbrough 1998).

2.3.1 Resource of Management

The resource of management has the ability to shape the productive services that may emerge from the other resources within a firm. Foss (1996) is clear on the contribution of management to the delivery of services:

“It is shown that not only that the resources with which a particular firm is accustomed to working will shape the productive service its management is capable of rendering but also that the experience of management will affect the productive services that all its other resources are capable of rendering” (pp 28-29)

Management as a resource implies a level of experience and knowledge which manifests itself in the interplay in the dynamic relationships within organisations. Organisational processes can assist the progress of new ideas and initiatives for the development and management of knowledge (Eisenhardt and Martin 2000). However ‘management’ may also be identified with intransigence and inflexibility (Langlois in Foss and Loasby eds.1998) and therefore caution must prevail when viewing ‘management’ as the embodiment of skills, experience, knowledge and tradition in an organisation. Management is necessarily configured by the resources available and these resources influence the range and level of authority of the managerial role. As firms and organisations become more strategic the expectations are that managers will adopt a more tactical approach and these implications shape the focus of the research questions. The research questions are framed by a resource-based view that recognises the need for what Langlois (2002) refers to as ‘*qualitative coordination*’ (p 32). Any complex organisational structure requires a level of internal coordination to embrace the inevitable interdependencies and connections that exist. The demand for dialogue across an organisation’s internal boundaries demands a degree of

cooperation and dialogue that implies that neither professional knowledge and expertise nor managerial skills and experience alone will suffice. The implications that management's role within organisations is indispensable and non substitutable are reviewed in the context of the research questions and the level of influence is assessed. The challenges facing management within professional organisations include increasingly competitive markets, growing deregulation of the institutional boundaries protecting the professional organisations and the emergence of the 'profession of management'.

There is high value in managing a firm's resources to support and influence new strategic direction. Such endorsement requires not only the selection of resources but also their coordination and deployment (Gruber, Heinemann, Brettel and Hungeling 2010). The challenge lies in sourcing the direction for a firm's resources without compromising their essence and identity (Colbert 2004). A firm may be constrained by "*managerial resources inherited from the past*" (Foss 1999 p 93) but a compromise reached through a firm's internal learning processes may direct the focus of increased knowledge (both old and new) towards new initiatives and potential opportunities. The internal learning processes that both develop and manage knowledge must of necessity run concurrently and indeed they may be inextricably linked both conceptually and in practice (Penrose 1959, Rubin 1973, Foss 1999). The importance and value in developing and managing knowledge is significant but nevertheless overwhelming assumptions are made both in the management of resources and knowledge and the ability to yield different productive services from the same resources implies high value for any firm.

Knowledge in a firm is apparent in tangible representations and is therefore relatively observable but despite this it creates a capability that enhances value and creates potential. The diversity of knowledge within a firm is stimulating and may promote new ideas and encourage innovation but opportunities may either fail to be fully realised or may be lost through a misguided approach to integrating managerial knowledge and skills (Simon 1985, Utterback 1971). The potential for creating value from knowledge relies on sharing and transferring that knowledge (Kogut and

Zander 1992) but the complexity surrounding the transfer of knowledge into coordinated and productive change points to a critical role for the management of that knowledge. The resource-based perspective creates potential for innovation and growth that in turn may give rise to managerial opportunism.

2.3.2 Service Sector

The resource-based view of the firm has been adapted to many competitive or strategic questions in manufacturing industries but less so in the service sectors. Its application across groups of firms presumes that idiosyncrasy can be a durable feature of a firm but also a focus of diversity across firms deemed to act in similar settings.

In their commentary on the internationalisation of large law firms Hitt, Bierman, Uhlenbruck and Shimizu (2006) make important observations on a resource-based perspective of professional service firms. They identify both human and relational capital as the critical resources of a professional service firm. They refer to them as the “*often idiosyncratic intangible resources*” (p 1139) but they nevertheless acknowledge the importance of these resources in highlighting a firm’s knowledge base which they consider the primary asset for any professional service organisation. The inter- relationship between human and relational capital is critical to the dominant roles that knowledge, expertise and experience contribute in the delivery of a professional service. The significance of this relationship highlights the differences between an approach to services which derives from the abstract ‘creative potential’ of resources and the more pragmatic approach of developing resources and capabilities both within and across an organisational framework to produce services that is discussed in this section. The successful delivery of an efficient and effective service is the consequence of the strength of the relationship between a firm’s resource base and its capabilities in managing these resources and it is this relationship that demands further research.

2.4 Firms Devising Services

Resource theory recognises that firms use their resources to differentiate and successful firms possess tacit capabilities on which they can draw to innovate, adapt internally and embrace change. Whilst influences in the external market are acknowledged drivers for the firm seeking internal innovation as a source of heterogeneous performance (Penrose 1959, Lockett and Thompson 2004) innovation in the delivery of a service may however be constrained by a firm's shape, structure and context (Nelson 1991). Conversely, as organisational structures become increasingly differentiated, the opportunities for firms to diversify and innovate are also increased (Brock, Powell and Hinings (eds.) 1999). Services are often intangible and may be 'consumed' as they are 'produced'. The real time delivery of services implies they must be coordinated and administered efficiently to be successful (Nightingale, Brady, Davies and Hall 2003, Lowendahl 2005). Araujo and Spring comment: "*Relationships with customers in the case of intangibles need to be managed more carefully and continuously than in the case of tangibles*" (ibid. p 798).

Understanding the nature of a firm's resources and their relationship with its capabilities (competences) in respect of knowledge, expertise and experience, both tacit and implied, highlights the nature of interaction and connections between those resources and capabilities in the emergence of productive services:

"The important distinction between resources and services is not their relative durability: rather it lies in the fact that resources consist of a bundle of potential services and can, for the most part, be defined independently of their use, while services cannot be so defined, the very word 'service' implying a function, an activity"

Penrose, ibid. p 25

Firms are idiosyncratic because of the nature of their assets, their intangible organisational routines and their learning processes (Collis 1991). Successful firms possess tacit capabilities that allow them to use these assets to innovate. Resources are often intangible or invisible and consequently difficult to define (Mahoney 1995)

but nevertheless they bestow distinctive qualities and add value to a firm. Their contribution within a firm requires direction and exploitation (Wernerfelt 1984). They are inherently complex and ambiguous. The challenge lies in sourcing their ‘creative potential’ without compromising their identity and value to the firm (Colbert 2004). The influence of such indirect capabilities in the delivery of professional services is examined in this study to consider whether such capabilities are valuable because of their inherent inimitability and indeed how the development of them may even indirectly dilute the influence and range of more positive and readily identifiable initiatives.

Potential or perceived opportunities are best addressed through a combination of individual and unique interpretations of resources combined with their ‘managed’ application. A resource-based approach to growth and innovation implies a role for the strategic management of resources. Penrose (1959) advocates the breakdown of the resource unit in order to determine both the range and effectiveness of resources and argues that it is from these ‘individual’ dimensions that the most valuable and distinctive qualities of the firm emerge. Managers, working as a group, may perceive productive opportunities and should harness and direct experience within the organisational framework to embrace and develop those opportunities. However an organisational framework, both formal and informal, may impose boundaries on creativity and innovation (Loasby 1998). Resources are so because managers, working as a group, perceive productive opportunities subjectively and entrepreneurially and combine skills and expertise around this vision as a plan. Managing is a resource of higher order (Loasby 1998). Theoretically, this research assess the resource-based view as applied to professionals services and question its application to a professional context as a cause of differential performance across similar settings.

2.4.1 Interdependencies across Resources, Capabilities and Competences

Organisational interaction involving an organisation's resources combines both technical and social complexity. Colbert (2004) argues that whilst the 'socially embedded' resources within an organisation are the most strategically important they are also the most difficult to deal with because of their inherent complexity and the social norms influencing them. Organisations are constrained by the socio-economic infrastructure in which they operate and inevitably those constraints impose parameters on the utilisation of resources (Ranson, Hinings and Greenwood 1980). Furthermore organisations are obliged to operate within environments which prescribe and condition their decisions and operations. A degree of strategic direction is necessary to generate productive opportunity from an organisation's resource base. The realisation that an organisation will derive strength and value from a level of qualitative coordination, especially within an area of specialism, implies that greater interaction across different resources is necessary. A relationship emerges between an organisation's resource base, its internal make-up and the productive utilisation of resources that link with the services which flow from those resources and that suggests levels of inter dependency, communication and coordination across an organisation (Mahoney 1995). This qualitative coordination embraces the inevitable interdependencies, connections and relationships that exist within a complex internal structure (Langlois 2002).

Loasby (1998) offers an explanation of the distinction between capabilities and resources that rely on the interpretation of what he terms '*know how*' and '*know that*'. Capabilities or '*know how*' embrace the knowledge of skills within a firm that is the ability to utilise those skills to achieve a productive result. For Loasby capabilities represent "*the kind of knowledge which is crucial to the performance of a firm*" (p 165). The mixture and interaction of resources, combined with tacit knowledge embedded within an organisation produce a 'capability' which is peculiar to that organisation and does not transfer easily. Penrose (1959) and Loasby (1998) agree that 'bundling' or 'clustering' a firm's capabilities is necessary in anticipation of some future, potential set of circumstances that may present 'productive

opportunities'. Combinations or 'clusters' of capabilities are the most effective in adding value to an organisation but they are diminished by unpredictability and ambiguity in their make-up. Capabilities are immobile and require the implicit nature of inter-active resources to generate capacity from them (Grant 1991). Loasby describes capabilities as "*the least definable kinds of productive resources*" (1998 p 144). Although a lack of understanding in an organisation's capabilities may impede their effective use, there is also real value in the unpredictability and instability surrounding them. This uncertainty hints at a dynamism that may be tapped into to capture opportunities and this influence is reflected across the research questions that are seeking answers to how creativity and innovation is developed across professional services.

Prahalad and Hamel (1990) define 'competence' as "*the collective learning in the organisation*" (p 82) but the role of 'competence' within an organisation translates into more than just a useful and purposeful deployment of resources (Erikson and Mikkelsen 1996). The collective assets and wherewithal to use these assets represent the organisational capital that can assist in coordinating activities. A close relationship exists between an organisation's internal structure and organisational capital and from this a link develops that will aid the coordination of a range of activities. These interdependent arrangements between a firm's resources, capabilities and competences rely on its tacit knowledge and expertise (Lepak and Snell 1999) but it is the different and diverse competences within a firm that translate into competitive difference (Nelson and Winter 1982). A firm must both know and understand its competences and be able to communicate them successfully to its customer. Ritter (2006) argues that since Prahalad and Hamel (1990) the focus has moved towards "*what is the firm good at and what can better contribute to value creation?*" (p 1032) and as a consequence customer orientation has suffered and firms must take steps to ensure appropriate levels of interaction and communication with its customers.

2.4.2 Processes

It is not only the tangible assets within an organisation that offer value and potential but so too do the invisible assets, the routines and the processes that develop as a consequence of a series of events over time (Gersick 1994, Langlely 1999, Van de Ven and Poole 2005). The strategic direction of an organisation is in part driven by the continuing development of such competences and capabilities. By aligning an organisation's strategic plan to its capabilities the profile of those capabilities becomes so polarised that their development becomes critical in future strategic decisions. The complexity and interaction involved in managing resources rely on organisational routine and the inevitable volatility involved empowers organisations to source appropriate capabilities and competences. There is an implied need for a degree of 'managed' interaction across the resource base of any organisation (Mahoney 1995, Grant 1991, Prahalad and Hamel 1990). Mahoney (1995) identifies the "*resource of management*" (p 92) as the core of a resource-based approach. There are inherent difficulties associated with identifying and realising emerging productive opportunities but the assumption is that managerial resources can themselves generate increased knowledge and awareness of other potential uses for their services within the organisation (Foss 1999). Management may influence the shape and direction in which resources are used but coordinating the sourcing and deployment of resources requires knowledge of those resources and the research examines how such knowledge is acquired and the extent to which this knowledge is implicit in the management role. It recognises the growth of the resource of management may be constrained by other existing, embedded resources, and therefore compromise might be necessary to mix the demands of those existing resources with the dynamism of new initiatives.

Penrose (1959) argues that instead of growth being merely an adjustment of the existing resource pool there must also be concurrent processes to progress new ideas and initiatives for the development and management of knowledge. The link between resources and knowledge within the firm (both tacit and implied) and the embedded knowledge in the firm is leverage for capitalising resources. 'Managerial knowledge'

is the catalyst between a firm's resources and its productive services are drawn from the close relationship between a firm's resources and the innovation and creativity of its managers and entrepreneurs. There are risks for the firm that is either resource deficient, management deficient or lacking the knowledge for the successful leverage of its resource base.

If the bundling of complementary resources is critical for the production of a good service then the role of managers is important and they can, overtime acquire and allocate resources efficiently. Holcomb, Holmes and Connelly (2009) adopt a resource-based approach to their discussion on the role of managers as a potential source of value creation. The ability "*to synchronize resource management processes*" (p 462) may be a potential source of value creation.

The delivery of services derives from a resource base that is complemented by organisational capabilities and competences and together they combine to create value for the firm (Lowendahl 2005). Understanding how these services evolve lends credibility to the resource view of the firm that the management of resources produces services. The process of combining resources serves as a social mechanism that exploits knowledge of the resources in driving innovation in the form of new services (Baker and Nelson 2005). Successful firms possess tacit organisational capabilities that allow them to produce services (Collis 1991). Hitt et al (2006) emphasise the need for resources to be managed effectively and recognise the dominant roles that knowledge, experience and social relationships play in the delivery of a professional service. For them: "*The primary asset providing a base for professional service delivery is knowledge*" (p 1139).

2.4.3 Managing the Delivery of Services

Whilst increased bureaucracy is seen as a consequence of inter alia, increased client demand, higher levels of efficient administration are not the prerequisite response. The delivery of a professional service may be enhanced by increased bureaucracy but

the role of the professional service firm is to “*be responsive to clients and provide services that satisfy their needs*” (Hitt et al 2006 p 1140). Pinnington and Morris (2003) observe trends towards ‘*more managed professional businesses*’ in the context of professional service firms and they conclude that these firms are embracing more centralised and coordinated organisational processes. As professional occupations become wider ranging and diverse, heterogeneity between and within professions has increased, and in the process, blurred the boundaries of professional identity. The fragmentation of the traditional professional role is occurring as “*a growing number of organizations expect their employees to become multi-skilled*” (Cheetham and Chivers 2005 p 38). As the professional role becomes differentiated there are implications for the authority and Challenges to the ideologies of the formal institutions of professionalism in the context of the modern markets, combined with assertions that managers can exert authority over the professional by claiming a superior form of ‘*general knowledge*’ (Friedson 2001) that operates more rationally and efficiently, reaffirm the rationale for the role of ‘managers’ and ‘managerial practices’ as a standard practice within firms. The increasing profile of managers is due, in part, to the co-existence of the dual organisations of professions and firms, and, whilst the concept of professionalism remains largely inseparable from the professional’s role and responsibilities within a firm and in the delivery of a service (Anderson-Gough, Grey and Robson 2000), this shifting paradigm towards a higher profile, more influential role for managers challenges the influence of the institutionalised professional role (Brock et al 1990).

Tensions in a competitive business environment provide opportunities for organisations to embrace a resource–dependent strategic approach which seeks out new opportunities for growth and innovation whilst embracing the role of the manager in developing and encouraging creativity amongst professionals. Similarly, acknowledging the value of the consumer to the firm, the resource-based view recognises the potential in responding to client demand through innovation and creativity in the management of its resources and the delivery of its services.

2.5 The Contributions of Knowledge, Experience and Expertise

Loasby (1998) describes firms as “*organisations that know how to do things*” (p 39) but the dynamics of that knowledge may be considerably altered by the influence of ‘professional’ or ‘specialised’ knowledge. The resource-based perspective of the firm views ‘knowledge’ as an objective, transferable commodity that is both a resource and a commodity (Spender 1996). The consequences of its application can be both significant and valuable. Knowledge is more than information. It encapsulates the ability of an individual or a group to generate capacity and realise potential from knowledge (Cohendet and Steinmuller 2000). ‘Expertise’ represents a combination of experience – based learning and taught, codified knowledge and consequently it can be assumed that elements of expertise can be both articulated and, if necessary, codified. The influence of ‘experience’ is evidenced in the interpretation and application of expertise (Johnson, Lorenz and Lundvall 2002). Assumptions may therefore be made that experience may inadvertently influence and direct knowledge (Nightingale et al 2003).

Knowledge embedded within a firm requires some degree of coordination to harness that knowledge and to generate productive opportunities, but such capabilities within a firm are constrained by the professional context, both real and implied, within which they operate. The ownership and delivery of expert knowledge and experience remains the focus for a professional service. The complexity surrounding the transfer of knowledge into coordinated and productive services points to a critical role for the management of that knowledge. The knowledge gap that exists between the professional and the client is the essence of a knowledge transfer process that is fundamental to the demand for a professional service. The knowledge gap between the professional and the client requires careful management to ensure that the specific characteristics of the firm’s resources are fully utilized and involved in the value creation process (Maister 1993, Lowendahl 2005). This role may however be compromised by overwhelming assumptions regarding the extent of managerial knowledge. The accumulation of knowledge over time may trigger a reassessment of a firm’s dynamic organisational capabilities. Unpredictability in situations and

demands on the firm may influence choices about knowledge through bounded rationality (Nelson and Winter 1982) but the management of capabilities may, through the lack of defined boundaries, result in the undirected development of capabilities through practice over time without the safeguard of appropriate scrutiny (Loasby 1998). As a knowledge base becomes more rationalised and codified (often by the demands of the organisation) there are implicit consequences on accessibility and the role of the professional within the organisation.

If organisational capabilities can be defined as a combination of “*knowledge, experience and skills*” (Richardson 1972 p 888) then inevitably organisations will direct those capabilities into developing areas of specialism and expertise from which they can innovate and differentiate. Careful management of knowledge and experience can direct their influence as catalysts for other resources. Opportunities may be lost through a lack of relevant specialist knowledge. Experience, both tacit and implied, can also be invaluable in this role. There is considerable value in the tacit knowledge embedded within an organisation, representing as it does, knowledge acquired and developed overtime through experience. Penrose (1959) argues that ‘experience’ is important to the firm in the processes of developing and managing knowledge and that without experience an organisation is necessarily diminished.

The term ‘absorptive capacity’ adopted by Cohen and Levinthal (1990) is a generic term used to represent the skills in recognising, assimilating and using knowledge in the innovation process within the confines of an organisational framework. Learning is a cumulative process and the greatest value from learning is achieved through building on an existing knowledge base. Organisations must of course learn to adapt and change in response to learning through experience. Confidence builds with the increased use and acceptance of new ideas but this must be balanced against the procedures, strategies and knowledge around which the organisation is structured (Levitt and March 1988). The role of prior and existing knowledge is a critical player in the exploitation of new knowledge and ideas. A knowledge-based focus for a resource-based perspective of the firm argues the existence of the firm may incorporate predictive elements associated with embedded knowledge within an

organisation. The existence of the firm is justified as an organisational framework within which knowledge can be freely shared and transferred (Kogut and Zander 1992, Conner and Prahalad 1996). This focus on the role of knowledge addresses only the social interactions within an organisation and does not explain the role of knowledge in the dynamic opportunities that may emerge.

The build up of knowledge is not confined solely to the accumulation of new ideas and expertise but is also determined by the social interactions in the organisation (Foss 1996). Knowledge embraces not only explicit and quantifiable information but also the know-how and learning of the uses of that information as ongoing practice. The established routines and practices that exist within organisations act as channels of communication to share and extend existing knowledge (Newell et al 2003). Professions have developed their own codes for sharing and transferring knowledge that may be managed across internal boundaries to achieve wider communication but may also exclude outsiders.

Loasby (1998) builds on the distinctions in the types of knowledge suggested by Ryle (1949) and in doing so identifies 'knowledge that' as being the knowledge of facts and relationships that form a resource and 'knowledge how' as the practices and routines that develop overtime and become idiosyncratic to the organisation as capabilities. The acquisition of new knowledge has implications for the existing knowledge base and has potential for stimulating dynamic capabilities from that resource. Thus there emerges a two-way interdependent relationship between the role of knowledge within an organisation and the productive opportunities that are generated through the utilisation of an organisation's capabilities. Although opportunities to innovate or promote initiatives may be lost through an absence of knowledge, it seems certain that, regardless of constraints imposed by organisational structure and routine, indirect capabilities promoting knowledge will nevertheless evolve:

“Partly by deliberate prescription, but primarily through the evolution of custom and practice (which, if integrated by a clear, if tacit, framework of connecting principles, merits description as a corporate culture) members of an organisation develop the indirect capabilities – the knowledge of how to get certain things done – which are necessary for them to use their own capabilities effectively”

Loasby, *ibid.* p150

Organisational routines and connections generate familiarity and may change or vary over time or with circumstances but significantly they also provide sources of knowledge and information (Feldman and Rafaeli 2002). The association with success and achievement serves to increase the profile and value of experience within an organisation but the dilemma for organisations is the successful integration of that experience into its knowledge base (Levitt and March 1988). The development of indirect capabilities endorses the need to share knowledge in an integrated, *ad hoc* network. Knowledge is important as is the ability to share knowledge and to be able to benefit and learn from knowledge (in the form of experience and expertise). There is a degree of transparency in the transfer of knowledge that suggests that the routine sharing of knowledge does not equate with knowledge acquired through experience. The arguments for and against the codification of knowledge are discussed by Nightingale (2003) who challenges the ideas that if knowledge has value then it is codifiable (Cowan, Foray and David 2000). This study identifies with Nightingale’s (2003) position and embraces an approach that recognises that different interpretations to tacit and codified knowledge emerge from the application of different skills and knowledge expertise. The difficulty lies in creating space, times and forums to manage this knowledge (Hansen, Nohria and Tierney 1999).

Knowledge in the form of organisational routines is difficult to explain and define. Connections in organisations generate familiarity and create shared understanding (Feldman and Rafaeli 2002). Knowledge is dependent on these connections and routines to give it an identity and as a result is difficult to distinguish. Organisations follow a degree of ‘path dependency’ that directs them to adopting choices that become routine overtime (Lockett and Thompson 2004). Conversely the level of input of both knowledge and expertise that translate into best practice and become

routine overtime is confirmation that innovation develops out of challenges to just such rules, routines and norms (Drazin 1990). The resource of knowledge, incorporating both expertise and specialism, is built up over time and maybe cultivated through internal processes that ultimately emerge as routine practice. Nevertheless it is important for organisations to generate and share knowledge, experience and skills (Richardson 1972, Loasby 1999). If organisational growth is achieved through more than just the adjustment of strategic direction but is identified as a product (both direct and indirect) of an increased awareness and understanding of the internal learning processes, then those processes for both developing and managing knowledge must run concurrently (Penrose 1959, Foss 1999). These processes need to be protected and preserved. There is a danger that “*knowledge fades if it is not used*” (Prahalad and Hamel 1990 p 82). If specialised knowledge and expertise is to be an effective contributor to this integration process then there must be a level of communication across an organisation that is in a common and shared language and understanding (Cohen and Levinthal 1990, Loasby 1998).

Although existing knowledge, both embedded and implicit, adds value to an organisation it may also present a constraint when challenged by new knowledge and ideas. (Scarbrough and Corbett 1992). A firm is a social community comprising both individual and social expertise and the social relationships embedded within the firm are critical to the organisation of the knowledge base (Kogut and Zander 1992). There is social capital in a community where knowledge can be freely exchanged and expressed (Kogut and Zander 1992). The ability to share knowledge with others is important and, by definition, so too is the ability to benefit and learn from another’s knowledge (Bartlett and Ghoshal 2002). Mason and Leek (2008) identified opportunities for the exchange and development of new ideas and knowledge through ‘*social cohesion*’ observed within organisations that provide opportunities to learn from shared experiences. However all knowledge cannot be codified. It varies in degrees of complexity and not all knowledge is widely shared. Some knowledge is personal and idiosyncratic (Kogut and Zander 1992 and Starbuck 1992).

“Explicit knowledge is knowledge that can be codified.... Tacit knowledge, by contrast, is difficult to articulate in writing and is acquired through personal experience”

Hansen, et al *ibid.* p115

2.6 Managing Knowledge, Experience and Expertise

Consequential problems for an organisation may arise when, by attempting to ‘manage’ the knowledge base; *“managers sometimes try to turn tacit knowledge into explicit knowledge”* (Hansen et al 1999 p 115). Szulanski (1996) refers to *“dynamic exchanges of organisational knowledge”* (p 28) as a transfer of ‘best practice’ that embodies a combination of tacit and routine use of knowledge, individual skills and collaborative social arrangements (Nelson and Winter 1982, Kogut and Zander 1992, Szulanski 1996). Organisations that routinely implement the transfer of knowledge will demonstrate an awareness of the value and usefulness of knowledge and routinely demonstrate a willingness to ease the transfer process (Szulanski 1996). The implication is that organisations who want to realise the potential of their knowledge base will put in place appropriate systems to ensure this. Organisations need however to develop an appreciation of what they know as opposed to what they do not know.

In 1996 Conner and Prahalad compared and contrasted the resource-based view of the firm with the more opportunistic transaction cost approach and in doing so questioned the role of knowledge, both individual and organisational, in shaping and defining the boundaries of the firm. Connor (1991) had previously recognised the ‘co-specialisation’ of resources as fundamental to the existence of the firm and implied an important role for knowledge. The importance of experience is highlighted in the form of managerial knowledge. Foss (1996) in his discussion on different approaches and arguments for the existence of the firm, suggests that knowledge *“accumulated in a path-dependent way”* (p 470) is a contributory factor in understanding and explaining how firms operate and grow but he argues for a ‘knowledge perspective in contrast to a knowledge-based approach to the resource-

based view. Kogut and Zander (1992) define a firm as a social community comprising both individual and social expertise. They value relationships in a firm where knowledge is freely exchanged and whilst it does not explain the reason for the existence of the firm it does address the contribution of knowledge to a firm and its influence in challenging and shaping boundaries.

“In our view, the central competitive challenge of what firms know how to do is to create and transfer knowledge efficiently within and organisational context”

Kogut and Zander, *ibid.* p 384

A resource-based perspective addresses knowledge as an objective, transferable commodity that comprises the skilled process of leverage for the firm's resources (Penrose 1959, Spender 1996). A combination of a firm's capabilities services not only the management of knowledge but also the learning processes that develop and share knowledge. A firm's capabilities can facilitate the transfer of knowledge against resistance to change or 'stickiness' in embedded knowledge (Szulanski 1996, Mason and Leek 2008). The importance of both embedded knowledge and the firm's internal learning processes are significant and underpin a firm's strategic processes. Knowledge is described by Spender (*ibid.*) as both a resource and a process and he refers to it as a 'tool' with managers as the users, very much in the style of Penrose and her ideas on 'managerial knowledge' as the catalyst between a firm's tangible resources and its productive services. It is this 'managerial opportunism' that helps to define a firm. Understanding and internally capturing a firm's knowledge and processes is shaped by the social context in which they operate. The presence of knowledge and experience frame the path dependent evolution of a firm in an environment where behaviour and performance are directly related to market conditions. Professional services that are the focus of this study are distinguished in terms of what can be experienced as a result of the delivery of the service (building on Penrose's interpretation of service implying a function or activity). The traditions of resource theory inform the role of the professional delivering a service but the role also demands a responsiveness and adaptability to external influences.

2.7 Professions as Service Makers

This research recognises the Anglo–American identity of a profession that derives historically from its sources in civil society in contrast to the Continental identity that derives from central bureaucratic associations with the State (Konntinen 1999). The assumed profession comprises a group which enjoys a monopolised practice requiring specialised education and training.

“The monopoly – control thesis defines a profession as an occupation that has gained control of its own regulation (including entry, education, fees and practice) from the state through a collective organisation”

Sterett 1990 p 364

A monopoly framework for understanding professions recognises both a microeconomic approach in the neoclassic tradition which argues that professions seek the benefits of limited competition shared between its members and an approach following the traditions of Weber whereby the professions achieve shelter from the market through social closure and collegiate control of entry and practice (Abel 1988). In the monopoly control tradition *“the hallmark of a modern profession is its ability to control entry and competition through a collective organisation”* (Sterett 1990 p 369) but the role of knowledge is ambiguous although ‘expertise’ may justify claims to a monopoly position.

Drazin (1990) refers to a structural functionalist perspective in which he sees professions representing specialised knowledge and training, and their social identity acquired in respect of this knowledge is reinforced through controlled entry and practice. The professional identity embraces assumptions that it represents a *“socialised role incumbent who contributes to the goal attainment of the social system”* (Drazin 1990 p 249) and also reinforces the concept of the relative homogeneity of the profession. This approach emphasises the social construction of professional knowledge and supports the legitimacy of a profession through the delivery of its services (Hodgson 2005). Drazin (1990) also discusses a radical –

structural perspective of professions that challenges the notion that professional communities are homogenous and portrays them as 'internally differentiated' and denies the role of knowledge development as critical for professions. Instead he advocates innovation as a reaction to contextual constraints through challenges to the existing rules, standards and codes. He suggests professionals are necessarily innovative as a consequence of reaction by them to external constraints such as managerial decisions on the allocation or coordination of professional knowledge which may have wider implications for the professional role. This research reflects on these ideas to examine if professionals pursue creative and imaginative alternatives for their services as a reaction to challenges to their knowledge, and questions whether in doing so, they reinforce their professional role or alternatively if a degree of path dependency to the experience and learning processes that shape and deliver professional services drives the direction of innovation and growth.

The drive for innovation and creativity inevitably raises concerns for the role of the professions in the delivery of its services. Resource theory recognises that 'professional' knowledge and skill is embedded in specific tasks and organisational contexts thereby limiting expertise to narrow knowledge domains (Mishina et al 2004) but whilst they represent 'stickier' resources, the path dependent and firm specific nature of these same resources can also be beneficial for the firm because they are by nature, difficult to imitate (Szulanski 2003). The challenge therefore for professions is to transcend their institutional, monopoly controlled identities and redefine themselves across the traditional demarcation lines without compromising the legitimacy of their role (Abbot 1988).

A profession is an identity which cuts across the usual institutions of firms. A profession provides a complementing and external form of governance that places boundaries on the heterogeneity of firms and also provides an additional means of shaping and connecting the resources, which co-comprise firms and the profession itself. A professional community is marked by a shared adherence and loyalty to values and orientations linked to the profession (Tushman and Scanlon 1981) and defined by a work ethic that is framed in professional norms and codes of conduct

that offer legitimacy to the professional role (Fournier 1999 and Hodgson 2005). A profession represents an additional or an alternative context for organising resources but nevertheless one which can also coexist in organisations. Whilst recognising the homogeneity of a profession, the professional (e.g. a lawyer) working within an organisation also represents a valuable contributor to the organisation. External influences in the form of regulatory bodies must be acknowledged and addressed. The role and influence of these regulatory bodies is significant and must not be underestimated. They have the ability to “*transcend both geographical and organisational boundaries*” (Robertson et al 2003 p 834). Starbuck (1992) evaluates the strength of professional identity in his study of ‘knowledge intensive firms’ and concludes that the contribution of professional standards and codes is a significant and defining role for a profession. This assessment is reiterated by Bledstein (1978) who refers to a ‘culture of professionalism’ that underpins organisations. Drazin (1990) argues that “*through a process of indoctrination*” (p 249) individuals become instilled with a set of values and motivations that, whilst peculiar to their profession, are also the same set of values that subsequently become central to the role the professional plays in fostering and promoting the continued development of knowledge within the organisation. Thus the professional identifies with the role of an agent with a remit to facilitate the transfer of knowledge between the professional and organisational structure (Drazin 1990, Tushman and Scanlon 1987).

The institutionalised professional context within which specialised knowledge develops is often grounded in a tendency towards elitism which then differentiates the professionals within the organisation (Abbott 1988). This elitism creates a social identity for the organisation which surprisingly may subsequently promote a level of commitment and loyalty amongst the professionals within the organisation. The active encouragement and development of an environment promoting individual performance is achieved through the combined cooperation and coordination of the profession and management. The compromise to professional demands within the parameters of the organisational framework achieves not only an environment of stability but one of commitment and loyalty to the organisation (Raelin 1986, Sterett 1990, Lowendahl 2005). The elitism developed across a profession is a consequence

of their specific knowledge base and it feeds into the social identity of a profession. However as this knowledge base becomes more rationalised and codified (often by the demands of the organisation) there are implicit consequences on accessibility and the role of the professional within the organisation (Lowendahl 2005). Consequently the rationalisation of knowledge can be seen as challenging the integrity of the professional (Friedson 1986). The implications are far reaching given that any managerial decision affecting the allocation and coordination of a knowledge resource base will impose on the role of the professional with the organisation. The reaction of a professional group may be to rigorously resist any attempts to rationalise their knowledge base and standardise their areas of expertise: Quinn et al (1996) believe it is so: *“because professionals’ knowledge is their power base, strong inducements to share are necessary”* (p 72). Conformity to the wider organisational structure may therefore become problematic (Drazin 1990). Robertson et al (2003) observed:

“While professional identities may promote behavioural norms that encourage knowledge creation (such as networking, egalitarianism and sharing of expertise), they also transverse organisational boundaries, so making organisations vulnerable to employees allegiance to their profession rather than their place of work”

Robertson et al *ibid.* p 850

The reluctance of professionals to conform to organisational demands that there are few opportunities for leverage out with their legal remit and organisations must strive to overcome the professional’s natural reluctance to share their expertise and knowledge. The expertise provided by professionals creates a source of intellectual capital for an organisation (Osiel 1990, Fournier 1999). A high level of creativity and innovation is demanded from the professional to manage both their expertise and to integrate their role into the wider organisation (Quinn, Anderson and Finkelstein 1996). Nevertheless anticipated tensions and conflict with professionals may be diverted and diluted through acquiescence to regulatory controls and, as a consequence of acceptance by the organisation of their compliance with professional norms and standards, the influence on behaviour and practice is more beneficial and productive (Robertson et al 2003).

The sharing of knowledge and experience across internal boundaries but within a professional context raises questions about both the level and degree of communication in an organisation. The ability to understand and internalise the information impacts on the quality of information and the manner in which it is shared. Promoting a shared and united approach to knowledge may diminish its diversity. Cohen and Levinthal (1990) advise a measure of caution in communicating and sharing knowledge within an organisation that is balanced with the stimulation offered by expert knowledge in areas of specialism. Trust is important and ‘*promotes information sharing*’ (Hitt et al 2006 p1146) but this is inevitably balanced by the constraints of professional grounding and elitism that reinforces the authority of knowledge and experience in a professional context (Robertson et al 2003).

In their research across two different institutional contexts (science and law), Robertson et al 2003 observed that the institutional contexts within which professional services are delivered contribute to the heterogeneity of these processes. Nevertheless specific challenges in the delivery of professional services derive from the combination of the range of inputs from the firm in the value creation process. Lowendahl (2005) offers two complementary definitions to understanding ‘professional services’ which both emphasise the idiosyncrasies of professional services; “*services delivered by **professionals** or services delivered according to **professional norms or rules of conduct***” (p 20).

A profession as an organisation derives its credibility from a combination of issues of identity, peer review and the enforcement of sanctions through codes of conduct, yet the influence of professional barriers and differences in norms and values may inhibit innovation and growth (Rashman, Withers and Hartley 2009). The literature concedes that these features do not necessarily contribute to the delivery of a professional service and group or firm may ‘act professionally’ and in doing so effectively deliver a service, nevertheless it also acknowledges that the delivery of a service in the professional context is defined by both a high level of specialisation and a close interaction and involvement with the customer (Maister 1993).

2.8 Summary

This chapter addresses resource theory in the tradition of Penrose's resource-based view of the firm. Resource theory explains the relationship between a firm's resource base and the delivery of services and recognises that successful firms possess tacit capabilities that they may draw on to innovate and differentiate their services. It acknowledges that a combination of resources, capabilities and knowledge within a firm produce successful leverage and services may be the productive outcome of that leverage and it identifies the processes through which firms may grow and which drive innovation. Moreover, resource theory recognises the complex interconnections that exist across a firm's resources and the value of their interdependent relationship with a firm's capabilities.

Successive discussions on a resource-based perspective have argued the value of a firm's resource base and have highlighted the productive potential within an effective combination of those resources and the knowledge and learning processes within an organisation that develop over time and through use and are managed within the context of an organisational framework. Section 2:2 addressed the different relationships between a firm's resources and capabilities and concluded that the delivery of services demands more than an abstract acknowledgement of the existence of this relationship. This chapter explores this relationship in the context of professional services and develops the focus on interconnections between two coexisting social contexts, namely professions and firms. The delivery of legal services has been used to explain and rationalise this relationship and to assess the appropriateness of resource theory as a theoretical framework to understand the complexities in managing and delivering professional services.

Both the social and institutional contexts within which services are delivered are recognised as influential, and specifically the role of a profession, in the delivery of professional services. A professional service is client-focused and defined by the social interaction in the professional / client relationship. The distinguishing and significant feature is the knowledge gap that exists between the provider and the user

of a professional service. Understanding the relationship between a firm's resource base, and the delivery of services from resource theory demands an appreciation of both Penrose's resource-based view of the firm that is drawn to its internal capabilities and the knowledge based view that identifies knowledge as a significant driver in the organisation of resources.

Professions and firms are robust contexts within which resources can be organised and services delivered. A profession provides not only a complementing and external form of governance that places boundaries on the heterogeneity of firms but also an additional means of shaping and connecting resources. The dual roles of firms and professions coexisting within one organisational framework create tensions and raise dilemmas concerning the management of those tensions and the durability of the professional identity. This review of the literature has drawn attention to the need for an explanation to understand how firms and professions process resources as lawyers seek to develop their services to address the delivery of professional services across the complex interconnections across the dual contexts of professions and organisations.

As demand grows for greater diversity across services, firms must demonstrate their ability to adapt and innovate through the successful allocation and processing of their resources. There are consequences for initiatives that may be introduced to manage those services more efficiently not least from imperatives from increased levels of efficiency driven bureaucratisation. The literature highlights issues of 'professionalism' that dominate both the demands and delivery of professional services and that may challenge the role of managers and the bureaucratic hierarchy within organisations. It is unclear if managers are equipped with the necessary authority and discretion to source and deliver an effective professional service in the traditions of resource theory of the firm and indeed if their role is critical to the process. These issues are the basis of the analysis of professions and the professional role in delivering services that is discussed in chapter three.

Chapter 3

The Management Role in the Delivery of Professional Services

3.1 Introduction

This chapter adopts a distinct and complementary perspective to addressing how professionals devise and deliver services. Resources can be characterised as aggregated and developed entities. Mindful of this, the chapter will review the sources and roles of experience, expertise and personal practices that are fundamental to professionals in the delivery of their services. The role of the professional in the delivery of a service will be assessed in respect of its durability against increasing levels of management within firms. Weber's model of rational–legal bureaucracy suggests that functional efficiency can be gained through the characterisation of formal knowledge and advocates greater managerial authority as a means of developing social order. This approach challenges the Anglo–American concept of professionalism which recognises the authority of the professional and rejects challenges to its autonomy control from increased managerialism (Freidson 1986). In seeking to better understand the identity of a profession and professionals a review will be undertaken of the different perspectives from which this identity is drawn. The concept of 'professional socialisation' within an organisational setting is significant in the context of the delivery of a professional service and its contribution will be assessed. As professional firms become increasingly differentiated the profile of the management teams within those organisations is increased. The contribution of 'management' in relation to the internal dynamics of a firm and, more specifically, in relation to the 'professionals' within a firm will be assessed.

The literature is clear on the significance of social boundaries in distinguishing social groups and establishing their identity (Newell, Edelman, Scarbrough, Swan and Bresnen 2003). Professions conform to a social categorisation that is defined by a combination of professional membership (Montgomery and Oliver 2007), ownership of a specialist knowledge domain (Quinn, Anderson and Finkelstein 1996) and the consequences of professional socialisation processes (Anderson-Gough, Gray and Robson 2000). Fournier (1999) describes the ‘appeal of professionalism’ as a control mechanism that is defined by professional socialisation. Professional socialisation draws on the specialised training and experience that in turn shape the processes delivering professional services (Baker and Nelson 2005, Cheetham and Chivers 2005).

Lowendahl (2005) advocates a resource-based perspective for the strategic management and delivery of professional services in which management has a role in the successful leverage of a firm’s resources. However the independence and idiosyncrasies of a professional culture fosters an attitude and approach that is not receptive to a directional form of management (Raelin 1991). The professional role is shaped and defined by the conduct of their work and the nature of their services (Suddaby and Greenwood 2005, Malhotra, Morris and Hinings 2006, Malhotra and Morris 2009). Nevertheless the drive towards greater efficiency and productivity can lead managers to introduce measures to routinise the role of the professional: *“The capacity to manage human intellect and to convert it into useful products and services is fast becoming the critical executive skill of the age”* (Quinn, et al 1996, p 71). However the *“idiosyncratic tactics of the professional culture”* (Raelin 1991, p 85) are the most problematic. It is the ‘us and them’ attitude that has a destabilising effect. Management by consensus is deemed more appropriate but the consequences of such an approach can lead to conflict across an organisation. Consumer demand for high levels of expertise and knowledge from the professions has generated initiatives not only towards the promotion of best practice serving consumer interest and demand but also towards the generation of a firm’s capacity to deploy the innovation and creativity embedded in a firm’s resource base (Nelson 1985).

The resource-based view of the firm in the tradition of Penrose (1959) is used as a theoretical framework to explore the organisation and delivery of professional services. Its application across groups of firms presumes that idiosyncrasy can be a durable feature of a firm, and so also a cause of differential performance across firms deemed to act in similar settings. This terminology sits uneasily with professionalism, but by applying the resource-based view in the context of professional services, additional insights into the character of firms' resources and also how they are combined and coordinated can be achieved. **Table 3.1** represents a summary of the literature on the foundations and concepts that define the theoretical framework used in this research.

The legal profession and the delivery of professional legal services are used as a context to explore the research issues, namely: (i) how firms identity and shape opportunities for developing and delivering professional services and (ii) how the roles of professionals and managers are reconciled across the processes that shape and deliver those services. Answers to three research questions are sought to address these research aims, viz:

RQ 1 How do legal firms and law professionals process and mobilize resources as lawyers seek to develop their services?

RQ 2 How do legal professionals encounter and resolve managerial challenges to their professional identity?

RQ 3 How does the role of the legal manager offer new ways to identify and shape opportunities for developing and delivering legal services?

Table 3.1

Literature sources on the resource- based perspective on firms and services

Research Context	Study	Findings
Resources of knowledge, experience and expertise	Starbuck (1992)	Knowledge is a stock of expertise not a flow of information
	Lepak & Snell (1999)	The resource-based view encourages an emphasis on the value creation potential of employees skills and expertise
	Loasby (1998 & 1999)	The resource of 'knowledge' and access to it is crucial to the performance of a firm
	Rashman, Withers and Hartley (2009)	Knowledge is a combination of perception and experience and a resource that can be codified and stored
The resource-based perspective to strategic management	Collis (1991)	The combination of a firm's resources, and its strategic decisions determines the 'path' of the firm
	Baker & Nelson (2005)	The process of combining resources may drive the discovery of innovation in the form of new services
	Lowendahl (2005)	The strategic management of a professional service firm should centre on the management of its resources
	Ford & Ishikawa (2007)	The resource-based view dominates contemporary strategic management
	Holcomb, Holmes and Connelly (2009)	There is a strategic relationship between managerial ability and resource productivity
	Gruber, Heinemann, Brettel and Hungeling (2010)	The configuration of resources and capabilities may influence strategy
The resource-based perspective on delivering professional services	Mahoney (1995)	A strong relationship exists between a firm's resources and the services which flow from those resources
	Quinn, Anderson & Finkelstein (1996)	A resource-based view recognises value creation potential in human capital
	Lepak & Snell (1999)	There is potential benefit to a firm from the successful leverage of professional activities
	Hitt, Bierman, Uhlenbruck & Shimizu (2006)	The critical resources of law firms are human and relational capital
The management of professional services	Robertson, Scarbrough & Newell (2003)	The demands of professional norms and codes constrain the management of professional services
	Malhotra, Morris & Hinings (2006)	The professional role is defined by the shape and nature of the work
	Montgomery & Oliver (2007)	Social and institutional boundaries reinforce unique knowledge domains
	Malhotra & Morris (2009)	The consequences of heterogeneity for the organisation of professional firms

The legal profession and the delivery of professional legal services are used as a context to explore and address the research issues.

Section 3.2 presents an historical perspective of professions and draws on the Anglo–American approach to understanding both professions and the role of the professional.

Section 3.3 outlines the new and innovative ideas and influences towards both professions and the professional that are emerging and highlights the comparisons with the more traditional systematic Anglo–American approach.

Section 3.4 outlines the persona of the legal profession in the UK and the services it delivers and references it to further analyse and better understand the institutions of professions and the delivery of a professional service.

Section 3.5 discusses resource, knowledge and experience approaches to professions and addresses issues for the management of an organisational culture and ethos that exists as a social identity in conflict with the role of precedence and routine that are often rooted in the need to maintain professional standards and conformity with professional norms.

Section 3.6 addresses the application of these approaches and discusses the difficulties and challenges for management presented by a lack of homogeneity and common direction amongst the professionals within a firm.

The chapter concludes with a summary of the conclusions to be drawn from this chapter and the research questions that emerge.

3.2 A Historical Perspective of Professions

The Anglo–American approach to professions acknowledges the control exercised by the professionals in defining both the form and the content of the profession assumed and seeks a monopoly control of a professional service that derives from specialist education and training (Konntinen 1991). This traditional, systematic view of a profession emphasises specialist knowledge enhanced through and delivered by an autonomous body of experts. The professionals in a firm are a focus of intellectual capital and creativity. They represent a set of occupations that are associated with power and prestige (Larson 1977). The job of the professional is characterised by its technical foundation based on systematic knowledge acquired through prescribed education and training and enhanced by experience acquired overtime. (Johnston 1972). Their task is to provide a service that will overtime develop a relationship with the client that is founded on the provision of a high quality service based on professional knowledge and expertise (Hall 1968). The education and training for a profession serves to underscore the importance of cultivating a knowledge base and, by creating a link for this knowledge to the practice of service provider, a rationale for the exclusive jurisdiction of that profession is created (Wilensky 1964). This view represents professions as a body of expert knowledge that act as an “*institutionalised form of control of occupations*” (Johnston 1972 p 38). It adopts an inherent conservatism which recognises that professionals need to be perceived as ‘different’, to have their work recognised as individual and valuable, and which acknowledges professional associations that set the boundaries for the accepted codes standards and norms that define a profession.

Although much has been written about the ‘professions’ and there have been many different interpretations of what constitutes a ‘profession’, no clear definition has been unanimously agreed upon and the matter continues to be one of discussion. Contributions to the literature fall predominantly into two time periods, namely the 1960s /1970s period in which the Anglo- American approach predominates and more recently, in which the literature challenges some aspects of these formative views.

Wilensky (1964) argues that the defining characteristics for any profession must include not only a technical basis but also the acknowledgement of a 'professional authority' that enjoys an exclusive jurisdiction. He also insists that there must be a clearly defined link between the standard of training demanded and the attainment of skill and with it, jurisdiction. The strength of the professional identity is very pervasive and consequently professionals relate closely to their professional identities and their associated codes and ethics. Friedson and Buford (1965) and Johnston (1972) both identify with the monopoly power of professions which they see as "*an institutionalised form of control of occupations*" (Johnston p 38) that reinforces their elitism. As more and more occupations are seen to become more 'professionalised' in their work, then those occupations must also be seen to systematically progress through stages of organisational change to achieve this ultimate goal of public acceptance of their professional status (Wilensky 1964, Johnston 1972). Millerson (1964) suggests a comprehensive list of 'traits' which broadly adhere to the characteristics outlined by Wilensky, but he provides no conclusion as to which combination of 'attributes' provide the most representative ideal of a profession.

Hall (1968) offers this definition:

"The professional model consists of a series of attributes which are important in distinguishing professions from other occupations"
(p 92)

He too concurs with Wilensky's core attributes but he believes that a combination of inherent characteristics and attitudinal aspects of an occupation offer the best definition of a profession. It is undeniable that all professions have both structural and attitudinal aspects to them and it is the variations in the combination of these aspects that produces diversity across the professions and idiosyncrasies within them. These aspects may change overtime but they do not necessarily do so together. Larson (1977) embraces a similar view of professions and observes:

“...professions are occupations with special power and prestige. Society grants these rewards because professions have special competence in esoteric bodies of knowledge linked to central needs and values of the social system and because professions are devoted to the service of the public, above and beyond material incentives”

(Introduction)

Professionals are assumed to have stronger loyalties to their profession than to an organisation (Goldner and Ritti 1967). Formal and standardised training within a profession creates a commonality amongst its members and serves to create a social structure within which there is a recognisable hierarchy and network. Membership of such a social structure has a homogenising and unifying effect (Larson 1977). Professionals seek to distance themselves from conventional bureaucratic control and, in doing so, rely on membership of autonomous organisations that choose to self regulate within the confines of accepted norms and professional standards. Hall (1968) suggests that such autonomous control is wide ranging but also creates a protective barrier for the professional, viz: *“this involves the feeling that the practitioner ought to be able to make his own decisions without external pressures from clients, those who are not members of his profession or from his employing organisation”* (p 93). The professional belongs to a regulatory body or organisation that is based on a common code of ethics. Coordination of the profession across different environments is achieved through the imposition of regulated standards of skills and conduct. Friedson and Buford (1965) comment that: *“Professionals have the special privilege of freedom from control of outsiders”* (p 107). However strict adherence to their codes of practice can present potential areas of conflict for the professional over the interpretation and relative degree of conformity to these codes. As individuals become immersed in an organisation they become more committed to that organisation and the role orientation for the professional can become conflicted between the demands of the profession, the organisation and the social market in which they operate (Wilensky 1964). Unlike professionals working within a professional firm for those working within an organisation they have to compete for recognition against ‘success’ that is measured in terms of advancement within the organization. Yet the professional who already has recognition and status

associated with his/her professional standing may have no need to seek identity and credibility from an organisation (Goldner and Ritti 1967).

In his research into the professionalisation of occupations within organisations, Hall (1968) categorises professional groups and distinguishes the 'autonomous professional organisation' as a group of professionals who determine not only the organisational structure for themselves but also represent the dominant authority within that organisation. He contrasts this group with the 'heteronomous professional organisation' in which he sees the professional employee as subordinate to an external system and where professional autonomy is significantly diminished by organisational bureaucracy. Hall challenges the assumption of an inverse relationship between professionalism and bureaucratisation but nevertheless acknowledges that a rigid hierarchy within an organisation, of which a 'professional department' is part, is incompatible with the autonomy and peer esteem associated with the professional ideal and suggests that it would be presumptuous to conclude that professional departments within organisations are inherently more bureaucratic than the autonomous professional organisation. Indeed he believes that the presence of a hierarchy of authority in an organisation seems to have little impact on the professionals there. The stability of a hierarchal authority may even enhance rather than diminish the role of the professional and although bureaucratic rules and procedures may prove burdensome on the professional they will not necessarily give rise to tension and conflict, indeed some degree of reconciliation may ensure the two processes of professionalisation and bureaucratisation become increasingly interdependent. The dysfunctional impact of bureaucratisation demanding the compliance with routine and rigidity over conformity may be limited by both external rules and professional autonomy (Montagna 1968).

The term 'professionalisation' implies a determination to reward a level of skill and knowledge with a recognition that brings with it social and economic reward but as professions diversify and develop within different settings so too must the context of professionalisation adapt. Larson (1977) acknowledges this and distinguishes between what she identifies as the 'old, established' professions and the new

emerging 'organisational professions' which, for her, are the product of increased levels of bureaucratisation and organisational order. The identity of 'professional' may, within some organisations, be an attempt to legitimise the role of the bureaucrat within the organisations and if so, these professionals will not be primarily concerned with the production of a professional service but will be focused on fulfilling a role providing a service that serves the organisation. This contrasts with the Anglo–American approach in which the 'professional' derives status and identity associated with his/her professional standing.

As challenges to the ideal of a 'profession' begin to emerge so too does the nature and role of professions and professionals begin to evolve into a less systematic, more open concept reflecting the changing societal contexts in which they operate. This more open and adaptable approach to understanding professions and professionals contrasts with the autonomous selection and control of the monopoly ideal of the institution of a profession but it nevertheless still adheres to some aspects of the functionalist Anglo-American approach to determine and reaffirm the credibility and authority of professions and professionals.

3.3 A 'New' View of Professions

As challenges to the functionalist Anglo–American approach to professions begin to emerge the literature turns towards Weber's rationalist approach to professions which endorses specialist knowledge as both the driver for greater efficiency and the control for a group that assumes a professional identity to provide shelter from the vagaries of the market (Abel 1988). However this approach implies a role for managerialism that does not fit comfortably with the traditional systematic view of professions that demands autonomous control and self regulation. Challenges to the functionalist, Anglo–American role of professions identify with a social structure of professions that is, unlike this approach, neither fixed nor uniformly beneficial (Abbott 1988). Professions, in common with other organisations, develop idiosyncrasies that reflect their responses to internal and external factors.

The recent literature (Cheetham and Chivers 2005, Hodgson 2005, Malhotra and Morris 2009) reaffirms that defining a profession continues to provoke discussion and reflect the changing ideals with which professions and professionals are identified. The context of a 'profession' is one that has been changing overtime and, whilst traditional and established professions remain the most frequently referred to and the most readily identified (e.g. medicine and law), the 'professionalisation' of an ever increasing number of occupations has inevitably brought further confusion and disagreement as to what constitutes a 'profession'. Increasing commercialism and competitiveness in markets have resulted in more diverse and wide ranging professional occupations and skills (Cheetham and Chivers 2005). Issues of service delivery in response to consumer demands have become the dominant defining features of a profession. Cheetham and Chivers acknowledge this focus in their definition of a profession:

“an occupation based upon specialised study, training or experience, the purpose of which is to apply skilled service or advice to others, or to provide technical, managerial or administrative services to, or within, organisations in return for a fee or salary” (p13)

Notwithstanding this evolving identity of a profession the constant feature remains the acknowledgement that professionals need to be perceived as 'different' and to have their work recognised as individual and valuable. The central focus of a profession as a body of expert knowledge as described by Friedson and Buford (1965) and later Johnston (1972) has become too narrow and introspective and is increasingly challenged by the ideal of a self-governing group of experts that emphasises the social construction of professional knowledge and that gains legitimacy for their conduct through the control exercised by the maintenance of appropriate norms of knowledge and conduct (Fournier 1999, Anderson-Gough et al 2000). The continued emphasis on formal and standardised education and training creates a social structure within which there remains a recognisable hierarchy and social network. This professional socialisation reinforces not only the characterisation process of assuming a professional identity but also endorses the resource theory approach that recognises the role of experience, knowledge and interaction in the delivery of the professional service (Anderson-Gough et al 2000).

The role of professional associations remains central to the professions. Professionals seeking to distance themselves from conventional bureaucratic control defer to membership of such associations that continue to represent the regulatory authority that sets the boundaries for the accepted codes and norms that define a profession. These regulatory bodies exercise such a level of authority over their members that exclusion from them prevents the professional providing his/her service and yet membership reaffirms the identity of the professional and commands respect and acceptance from the peer group (Lowendahl 2005). Their influence extends across both the social and economic settings that dictate the ideology of professional autonomy (Friedson 2001). Greenwood, Suddaby and Hinings (2002) describe professional associations as “*mechanisms of conformity and reproduction*” (p 62) that assume “*an essentially conservative role in reinforcing existing prescriptions for appropriate conduct*” (p 59) but acknowledge that despite their inherent conservatism, they have an important role to play through their endorsement of legitimising the new processes of changes for a profession.

Professionalisation is a cumulative process that occurs overtime (Hodgson 2005) and which is inextricably linked both with the professional’s role and responsibilities within a firm and the provision of a service (Anderson–Gough, et al 2000). It is the capacity to demonstrate and use specialised knowledge appropriately in accomplishing a task that distinguishes a professional role (Freidson 2001). Formal learning processes are enhanced by practical experience acquired through social interaction. Social processes highlight the levels of training and experiences demanded of a professional and establish the value and status of the professional role and reinforce an ideology of discretionary specialised knowledge (Friedson 2001). A profession seeks legitimisation for its role from the social structure in which it operates and social boundaries play an important role both in distinguishing social groups and facilitating identity (Newell, et al 2003).

In their work on boundary spanning activities Montgomery and Oliver (2007) found that despite evidence of professional/ organisational integration across their two case studies (namely the Jewish legal profession in Israel and physician executives in US)

they were framed within the context of networking activities that marked exclusive membership and proprietary domain and reaffirmed the legitimacy of the role of the members. However changes in levels of accountability and across market conditions have resulted in increased heterogeneity amongst professions (Cheetham and Chivers 2005). The professional role is evolving and adapting its identity: *“the process of becoming a professional entails considerably more than simply passing examinations – it is also a matter of the accomplishment of certain ways of behaving and understandings of the world”* (Anderson–Gough et al 2000, p 1154). As professionals become increasingly embedded in organisations they may look to some aspects of the organisational framework to reinforce their *“sense of identity and professional legitimacy”* (Mallon and Duberley 2000 p 42).

However no profession can exist without a demand and need for the service it offers and legitimacy for the professional is gained through performance that relies on the institutionalised forms of accepted norms of both knowledge and conduct (Fournier 1999 and Hodgson 2005). The job of the professional continues to be characterised by its technical foundation based on systematic knowledge acquired through prescribed education and training and enhanced by experience acquired overtime (Johnston 1972, Quinn, et al 1996). Their task is to provide a service that will overtime develop a relationship with the client that is founded on the provision of a high quality service based on professional knowledge and expertise (Dyer and Singh 1998, Hitt, Bierman, Uhlenbruck and Shimizu 2006).

The social context within which knowledge is shared is important but the inherent conservatism of the professional identity gives rise to conflict in the leverage by managers of professional activities. The assimilation of professional standards into an organisation's culture demands an ethos of shared knowledge and values:

“The profession may have a significant influence on the firm especially through the norms or code of conduct which is considered acceptable by both the surrounding society and by the employees”

Lowendahl, *ibid.* p21

Inevitably the establishment of such practices reaffirms an organisation's social identity but nevertheless they may also give rise to conflict over issues of authority and raise questions regarding levels of autonomy enjoyed by the professional.

Whilst an increasing number of occupations are promoting themselves as 'professions', the work done by them is also becoming increasingly organisational based. Professional work carried out within an organisational framework introduces challenges from existing managerial influences. The focus for such professionals lies in areas of operational decisions but they persist in their need to make such decisions without recourse to any external authority. Inevitably the parameters of such areas of autonomy are almost impossible to define and the fusion of the boundary between operational and organisational autonomy becomes confused and an inevitable source of tension:

“Since professionals are by nature individualistic and resist conformity to regulations imposed on them from outside the profession, it is no wonder that they tend to disregard procedures used to standardise some decision making in the organisation. Nevertheless some managers see value in routinising professional work to the extent possible, primarily because it increases efficiency”

Raelin, *ibid.* p116

However if the structure of complex organisations implies increased bureaucracy, the assumption is that inevitable tensions and conflict with professionalism will arise. As the amount of professional work carried out is increasingly done as part of a complex organisation so too the level of autonomy enjoyed by the professional will change. Both the level of presence enjoyed by the profession within the organisation and the demand for its services will influence the degree of autonomy it enjoys.

As organisations seek to deliver a professional service in response to consumer demands so too must professions and professionals adapt their role meet the demands and needs of the clients they seek to secure (Nelson 1985). Professionals assume a position of influence and status that may, in part, be attributed to their knowledge. The assumptions of the Anglo–American concept of professions derive from the

consequences of professionalism in terms of the external social consequences on their status and power but as professions respond to market demands the focus of occupational control is diminished and replaced by forces of efficiency driven bureaucracy. Changes to the traditional boundaries of the professional identity have resulted in increased bureaucratisation and limitations on the extent of professional autonomy (Cheetham and Chivers 2005). Concurrent with these changes professional service firms are becoming increasingly differentiated and there is evidence of growing heterogeneity both within and across professions.

The outcome of these changes is nevertheless not significant in terms of our understanding of professions and professionals. The literature has highlighted that professions and professionals continue to conform to and be defined by functional values synonymous with their identity: i.e. professional autonomy, professional associations, bureaucratisation, specialist education and training, peer review and demand for skills and service. Similarly the literature has established that professions are evolving from a traditional Anglo-American influenced identity towards a more open, rational Weberian style role. This emerging role and identity for professions and professionals is reviewed with reference to the characteristics. **Table 3.2** presents a précis of these values from both the historical and ‘new’ view of professions as discussed in the literature reviewed in this chapter.

Although professions have demonstrated their adaptability to the demands and expectations of an increasingly consumer driven service industry they nevertheless continue to exhibit a loyalty to the traditional core values and have refused to compromise entirely on issues of specialised training, peer review and self regulation.

Table 3.2
Functional aspects of professional identity
‘Traditional’ v ‘New’

Defining Characteristic	<u>Traditional View</u>	<u>‘New’ View</u>
Professional Identity	Derives from Anglo-American approach for monopoly control derived from specialist knowledge	Derives from Weber’s rationalist approach for efficiency from managerial control over specialist knowledge
Professional Autonomy	Self regulation according to professional norms and standards	Less rigid but still self governing
Specialist education and training	Has a critical defining role	Still has central role but concedes also the value of additional non specialist skills
Professional Associations	Enforce a strict adherence to codes and ethics	Enforce a strict adherence to codes and ethics
Peer review	Highly influential	Still influential but less so. Market recognition also important
Bureaucratisation	Professions resist moves towards and remain distant from wider organisation	Moves towards a compromise between profession and organisation
Demand for Skills / Service	Consumer led but dictated by the recognition of a professional identity yielding power and status	Consumer led but now highly responsive to consumer demands for greater efficiency and accountability

3.4 The Legal Profession

This section will review the issues addressed in section 3:3 (and specifically those highlighted in **Table 3:2**) with reference to the established empirical research relating to lawyers, the legal profession and the delivery of legal services.

The legal profession is one of the oldest and most recognisable of the ‘professions’. It provides a service that is founded on a combination of codified knowledge and the tacit component of a knowledge base that is the product of a specialised education and training. The role of the professional is the execution and delivery of a ‘primary task’ or ‘service’ that is enhanced by reputation, acquired overtime. The reputation of the professional is a product of both formal and tacit knowledge and expertise (Hall 1968, Maister 1993, Liebeskind 1996). The performance in the delivery of the service may change over time and in doing so may reflect the influence of changing inputs and influences. Changes in ‘taught knowledge’ may have consequences for the tacit elements of knowledge demonstrated through experience and expertise. In addition the personal dimension to such knowledge is significant and is seen in different interpretations and applications in the delivery of the service.

The legal profession enjoys an exclusive jurisdiction and a level of autonomy and authority that is supported by self imposed regulations and adherence to a set of accepted ‘professional norms’. The legal profession is inherently conservative and has an acknowledged social status. The coordination of the profession is achieved through the imposition of regulated standards of skill which ensures a level of conformity across the profession whilst also fostering an allegiance amongst the members to a shared set of common rules and values (Brock, Powell and Hinings eds. 1999).

The legal profession in the UK is regulated by the Law Society of England & Wales and the Law Society of Scotland. The Law Society of England & Wales was established by Royal Charter in 1845. Its regulatory powers are underpinned by the Solicitors Act 1974, the Courts and Legal Services Act 1990 and the Access to

Justice Act 1999 and the Legal Services Act 2007. The Law Society of Scotland is the governing body for Scottish solicitors and was established by the Legal Aid & Solicitors (Scotland) Act 1949. The governing regulations are set out in the Solicitors (Scotland) Act 1980.

The demand for the provision of legal services is client led and is driven both by reputation and the build up of the client/lawyer relationship:

“The relationship between lawyer and client is itself shaped by a particular set of norms entailing mutual trust and fiduciary obligations”

Nelson 1985, p 547

The legal professional must respond to the demands of the client base and provide a service that will satisfy their needs and expectations. The role of interpersonal skills amongst its members is important. Law is a business generated out of client relationships (Spar 1997). The professional/client relationship is central to any professional service firm. Relational capital in a firm represents the joint benefits embedded in this relationship:

“Most work in professional service firms is accomplished using teams of professionals and primary contacts with the client”

Hitt et al 2006, p 1147

The legal profession, in common with other professions, must focus and build on this relationship with their clients. They do so through efficient resource bundling. The bundling of complementary resources is critical for the provision of a good client service. It is their level of knowledge and expertise and its mode of delivery that are the ultimate criteria on which the legal professionals are judged, not just by their clients, but also by their employers and their peers (Starbuck 1992). Spar (1997) adheres to the idea that the legal profession serves to deliver the *“promise of a product”* (p 8) and describes law firms as *“essentially service firms selling the ephemeral products of information, skills and advice”* (p 8). They have the ability to accumulate and process information and knowledge but the value for the firm lies in

the individual lawyers and their knowledge and expertise. Firms need to ensure that this knowledge has a commercial value and is relevant to the needs of the client. The perception that the client seeks out the lawyer and not the firm demands that due attention is paid to its skills base.

Nelson (1985) believes lawyers are perceived as “*a breed apart*” (p 543) and their adherence to a particular set of routines and practices set them apart from standard business practice. The cultivation of this perception implies a degree of self-preservation amongst the legal profession. Increased levels of education and knowledge in the client market has had a twofold impact on the legal profession whereby there is a decline in the aura and ‘mystery’ surrounding the profession and an increase in scepticism and a consequential demand for greater accountability from the market it serves.

Professionals identify strongly with their professions and may do so at the expense of their relationship with their clients (Starbuck 1992). The management of that service and those who perform it is a sensitive and often difficult issue:

“Because professionals have specialised knowledge and have been trained as an elite, they often tend to regard their judgment in other realms as sacrosanct as well”

Quinn et al *ibid.* p 72

Sveiby and Lloyd (1987) describe law firms as examples of organisations that represent “*high technical but low managerial expertise*” (p 718). Law firms functioning as a private practice continues in both partnership and company form. Traditionally these organisations functioned as structures where the professionals within them were often not only the service providers but also the owners and managers. Brock, Powell and Hinings (1999) provide this description of the ‘stereotypical law firm’:

“a consistent picture has emerged of the archetypal professional organisation where power rests in the hands of the professional experts, managers administer the facilities and support the professional, decisions are made collegially, change is slow and difficult, and strategy is formulated and adopted consensually. There is little hierarchy and a relatively high degree of vertical and horizontal differentiation. Coordination and control occurs through the standardization of skills and a strong clan culture of professionalism rather than through formulated systems and close supervision”

Brock et al *ibid.* p 7

A combination of influences including the threat of possible deregulation, increased consumer awareness and wider and more accessible information has impacted on these traditional structures and changes are directing them towards a more corporate and managerial style of operation. At the same time, in common with many professions, the legal profession is also increasingly performing its work as part of larger, more complex organisations. Lawyers are now seen in employment across different settings but despite this diversity the nature of their work and similarities across these settings serve to both highlight and reinforce a professional identity that is derived from specialist education and training (Sterett 1990). The role orientations of those lawyers emerge as a product of conflict between the demands of their profession, the organisation and the consumer markets.

The template from **Table 3:2** is used as a reference to profile changes within the legal profession. The literature is clear that the legal profession continues to function as a tight social structure and performs a service that is directed towards excellence and that does not readily allow for creativity or innovation in the provision of that service. The education and training processes that are central to the attainment of the professional status instill a commitment and loyalty to that profession that may engender an isolation and elitism amongst the professionals. Training within a professional arena creates social structures whose members recognise and endorse the profession’s hierarchy and network. **Table 3.3** presents the findings from the literature comparing the changing identity of the legal profession and the evolving role of the legal professional across features of the ‘traditional and ‘new’ view of professions.

The discussions in Section 3:4 make it clear that the literature acknowledges the different societal contexts within which the legal profession now operates, and the adaptations it has made in response to changes in both context and demand for its services. Notwithstanding evidence of increased heterogeneity its status and role continues to be dominated by issues derived from the traditional, systematic approach to professions discussed in Section 3:2 in which specialist knowledge delivered by autonomous experts creates an identity that is defined and regulated by accepted standards and institutional codes of conduct. Questions about how professions adequately resolved the differences between the traditional, systematic and a new, innovative and responsive approach to professional services to enable them to deliver a service that will be sufficiently robust to withstand challenges to its professional ideology demand further investigation and explanation.

Table 3.3

Defining Characteristics	<u>Traditional View</u>	<u>Legal Profession (Traditional)</u>	<u>'New' View</u>	<u>Legal Profession (Emerging)</u>
Professional Identity	Monopoly control derived from specialist knowledge	Yes	Efficiency driven through managerial control over specialist knowledge	Yes
Professional Autonomy	Self regulation according to professional norms and standards	Yes	Less rigid but still self governing.	Yes but under threat from deregulation
Specialist education and training	Has a critical defining role	Yes	Still has central role but concedes also the value of additional non specialist skills	Yes but also embracing organisational based skills
Professional Associations	Enforce a strict adherence to codes and ethics	Yes	Enforce a strict adherence to codes and ethics	Yes
Peer review	Highly influential	Yes	Still influential less so. Market recognition also important	Yes but competitive market forces also significant
Bureaucratisation	Professions resist moves towards and remain distant from wider organisation	Yes	Moves towards a compromise between profession and organisation	Yes
Demand for Skills & Service	Consumer led but dictated by the recognition of professional identity yielding power and status	Yes	Consumer led but now highly responsive to consumer demands for greater efficiency and accountability	Yes

3.5 Resources, Knowledge and Experience

The discussion in chapter two on the management of professions refers to the resource-based view of the firm that argues that the strategic direction of a firm is linked to and directed by its resources, both tangible and intangible. The intangible resources are often rare and embedded in social complexities, making them difficult to imitate but they do provide a valuable focus for determining the scope and direction of a firm's strategic growth (Barney 1991). The leverage and interaction amongst a firm's human capital can present a unique organisational resource that is both valuable and dynamic (Spender 1996, Hitt, Bierman, Shimuzu and Kochbar 2001, Greenwood and Empson 2003). Hitt et al (2006) identify the critical resources in a professional service firm as 'human' and 'relational' capital and they see them both as valuable contributors to a firm's knowledge base. They refer to these resources as "*often idiosyncratic intangible resources*" (p 1139) and perceive a correlation between the level of these resources and their impact on the potential of a firm to optimise opportunities in a market. The service offered by the professional represent just such intangible resources. They can improve with use and over time and consequently may gain value for the firm. The input of experience and learning processes aids this development (Lowendahl 2005). Management is presented with challenges to direct these resources, which may only be partially controlled by the firm. The leverage process has benefits for both the firm and the client but it demands direction to ensure that the social capital obtained through leverage is maximised and the service provided, the client/firm relationship and the learning process are all enhanced and not marginalised.

Lowendahl (2005) suggests a role for management is to direct moves within a firm away from a focus on individual performance and towards a more integrated and shared approach thereby reducing a firm's dependence on individuality that can be both threatening and undermining:

“If a large part of the resource accumulation takes place in terms of increased competences that key professionals could easily use for the benefit of other employers, the firm also needs to set priorities in terms of linking these individually controlled resources (i.e. the professional) to the firm” (p 97)

Dependence on individual contributions from professionals creates uncertainty within an organisational framework. There is a danger of course that by stifling individuality this may compromise a firm’s potential for creativity and its ability to deliver innovative professional services but the over reliance on individual contributions can leave a firm vulnerable.

The challenges for the manager of the professional lie in effecting the successful leverage of the existing resource base combined with initiating moves that will build on and diversify those resources with a view towards future growth and potential, whilst also minimising exposure for the firm to potentially vulnerable situations. The skill and knowledge of the manager within the context of the firm needs to be harnessed to the identity and role of the firm to give it credibility and authority (Spender 1996). The resources within a professional service firm are unique and idiosyncratic. The focus of the professional service firm is primarily to provide a specialised and enhanced level of customer service that inevitably involves a close interaction and relationship with the client. In a client-focused service the client rewards the provision of a service in terms commensurate with the value determined in the level of service given and management has a role in ensuring the appropriate delivery is attainable. Finkelstein and Hambrick (1990) argue that organisational outcomes such as strategy and performance would be expected to reflect, in part, the characteristics of a firm’s leaders and consequently complex decisions are the result of behavioural factors within a firm and not rational analysis. A manager may be indirectly influenced in his/her interpretation of a problem by a combination of their demographic background and their commitment to the organisation but nevertheless an organisation is defined by the products or services they offer and by the markets they serve and therefore inevitably the characteristics of these domains will affect the level of managerial authority and discretion.

As professional firms continue to adapt and evolve towards increasingly differentiated structures these changes reflect the growing trend for professions away from a formal, processual approach to service delivery towards a more responsive, innovative approach and have generated an awareness of the need for some level of management to ensure that both the quality and delivery of service ideals are not compromised. Watson (2001) argues that there are emergent processes whereby management skills are developed and nurtured. Management is about continuous learning but nevertheless must also be responsive to organisational change. There has been significant movement from the traditional perception of a manager as an ‘administrator’ towards a more influential and strategic role within an organisation (Brock, Powell and Hinings eds. 1999). The transition from administrator to manager is accompanied by underlying tensions. Central to this shifting paradigm is the resource dependent approach which seeks out new opportunities for growth and innovation and the emergence of an organisational culture where strategic aims are allowed to develop and flourish (Allingham and Mill 2000). The consequent labelling of ‘management’ as an embodiment of a range of skills, experiences, knowledge and traditions is qualified by the danger of it also then representing intransigence and inflexibility (Langlois 1998). Nevertheless the management team emerges as a body of expertise and knowledge within an organisation that becomes an indispensable and non substitutable part of the organisation but one which may undermine and threaten the autonomy of any professional group.

Katz (1974) identifies three basic skills required to carry out the management role. They comprise a mixture of technical, human and conceptual skills but the relative emphasis on these skill areas will vary across different organisations and different levels of responsibility. Management implies a combination of an objective and analytical approach that suggests a need for cross–function and cooperation across an organisation (Livingston 1971). These skills are not prescribed but are developed overtime through a combination of education and training and experience. Experience is “*an often underused resource*” (Margiersion 1991 p 143) and the ability of managers to articulate lessons learnt from experience is an invaluable asset from which they will derive authority (Livingston 1971). Prescribed rules and

routines leave no scope for innovation or individuality. Watson (2001) maintains that successful management combines a balance between knowledge and professional skills and argues that it is more of a continuous learning process than a clearly defined role within an organisation:

“Management is not a clear cut occupation with either an established body of knowledge and operating principles or a clearly defined set of tasks of the type which we might expect to see in other parts of a society’s occupational division of labour” (p 221)

The emergence of ‘management’ as a profession brings with it the anticipation of improved efficiency and competitiveness. *“Management both within and outside professional organisations is undergoing professionalisation”* (Brock et al 1999 p 1). However the successful integration of the professional manager into an organisation demands an organisational culture that is receptive to changes in the behavioural norms and a consensus across the organisation that encourages cooperation and communication (McBeath 1994). In many organisations managers evolve through the internal learning processes whereby they ‘move up’ within the firm, learning and gaining experience and knowledge as they do so. Precedence can present dilemmas for management and pressure to maintain standards and consistency can lead to uncertainty and reinforce ineffective practices:

“Precedence becomes important in affecting management practices because precedence embodies some unstated, untested assumptions about individual and organisational behaviour that get automatically carried into new situations”

Lowendahl, *ibid.* p 91

Management practices can persist even if they are acknowledged as not particularly useful or effective. Conforming to accepted practices and norms avoids the need to learn or initiative new ones and so avoids potential conflict and the pressure to justify such moves (Pfeffer and Sutton 2000). Friedson (2001) addresses this problem by denying managerialism any claims to authority, instead claiming instead a more ‘*general kind of knowledge superior to specialised knowledge that can direct and evaluate it*’ (p 115). If ‘professional knowledge’ represents not only specialised, articulated knowledge but also a practical dimension that addresses performance then

the challenge for managers is to raise the expectations of their identity to acquire legitimacy for a role that demonstrates a level of knowledge and experience that transcends the traditional professional barriers. The role of the ‘techno bureaucrat’ is the product of the desire for recognition and advancement amongst those whose authority is embedded, not in esoteric or identifiable skills per se, but in the legitimatisation of their administrative role within an organisational hierarchy.

3:6 Managing the Professions

In any organisation there are difficulties as managers set about establishing their authority. These difficulties are exacerbated by the addition of the professional role into the equation. Tensions may derive from contradictions between the ‘professional expert’ and the ‘manager’ that stem from the level of professional autonomy enjoyed by a professional community and the externalised controls of a managerial hierarchy. It is important for any manager not to exceed his/her authority and in order to not to do so the manager must understand the nature and limitations of that authority and use it wisely and appropriately (Livingston 1971). Although the professional within an organisation may be reluctant to accept managerial authority, paradoxically the importance of the role of the manager increases relative to the complexity and level of specialised professional service offered (Lowendahl 2005). Acceptance and endorsement of the managerial role by the professional is critical to the authority of the manager. Maister (2003) claims that professionals ‘do better’ when they are properly managed: *“it is through the skill of the manager that the talents of powerful individuals are shaped into even more powerful teams, learning from and supporting each other”* (p 208).

The need to establish clear guidelines on issues of autonomy and the parameters of their authority are critical to the management of the professional. Professionals are notoriously difficult to manage and they can exercise a level of control over managers by *“allowing themselves to be managed”* (Westwood 2004 p 69). They are independent thinkers that demand a more consensual rather than directional approach

from management. There is an overwhelming need on the part of a professional to be able to make decisions in his/ her professional capacity without recourse to managerial authority (Raelin 1991).

A lack of trust between professionals and managers in a firm inhibits communication and cooperation. Trust promotes information sharing and increases knowledge and contributes to the quality of the service provided. Sharing knowledge and exchanging experiences each contribute to the learning process. Knowledge starts with the individual but, through sharing and communication, it can become accepted overtime as organisational knowledge (Nonaka and Takeuchi 1995, Spender 1996). However difficulties arise when professionals feel threatened and undermined as a result of sharing knowledge and expertise. They are torn between adherence to their professional identity and the rules that guide them and by the divided loyalty to the organisation of which they are part. Professionals tends towards a degree of self preservation and often demonstrate an unwillingness to detach themselves from the practices and routines that set them apart (Larson 1977, Nelson 1985), reflecting in part, the input that their professional institution has in shaping their knowledge. The learning processes of the professional give rise to embedded and implicit forms of knowledge, which empower the professional but, may also constrain the manager (Scarborough and Corbett 1992).

The element of trust is critical but that trust can be threatened when exercised within an environment that is controlled and regulated by external rules and codes designed to ensure conformity. Raelin (1991) argues that in areas of conflict between professional standards and organisational decisions, the professional is often only willing to acquiesce to managerial decisions in so far as they will affect their personal status. The implication is that the organisational routines and codes and standards set by management will only be tolerated in so far as they do not conflict with professional standards. Thus the role of the manager becomes important. An experienced manager can act as a conduit between the professional and the wider organisation. The sense of enforced isolation synonymous with a professional role can present a significant problem for the manager who has to balance a more open,

commercial approach with the intransigence of professional standards, rules and routines.

In their comparative study of two professional service firms, one in science and one in law, Robertson, Scarbrough and Swan (2003) commented that: *“Professional institutional influences on firm-level practices are often seen as leading to conflict with managerial forms of control”* (p 853). Their study included an overview of the working environment of both case study firms. They were surprised to report little evidence of tension between the high level of autonomy enjoyed by the professionals and the management in the two case studies where relative compatibility was the norm as a result of a process of cooperation rather than as a default through the abdication of managerial responsibility. Cooperation used the quest for elitism amongst the professionals as a foundation on which to build organising principles that sought to differentiate the professionals from one another. Significantly this attitude was central to maintaining stability and generating growth within the two firms. The authors comment that although this was at first unexpected, they conclude that it was unsurprising given the ethos of the firms:

“Management, in both firms, who (significantly) regarded themselves fundamentally as professionals, viewed the promotion of a professional ethos (that is self – discipline, collegiality and professional standards of work) as essential to knowledge creation. They recognised that these were tasks that they could not control directly and, therefore, relied upon professional norms to influence behaviour around work tasks”

Robertson et al, *ibid.* p 846

Further evidence on the management of professional service firms is provided by Hitt, Bierman, Shimizu and Kochbar (2001) in their paper on a study of the effects of human capital, and management skills on professional service performance. The sample used was large law firms. Although the study adopts a rather simplistic argument of performance, learning and social identity being rewarded by internal promotion and recognition within a professional hierarchy it does also acknowledge that, in addition to professional expertise, the aspiring professional must also acquire other organisational skills and suggests these may be acquired through experience:

“Time is required for new partners to develop rational and managerial skills and to build the social capital necessary to be highly effective partners and to manage the firm’s other human capital”

Hitt et al 2001, p 22

Again further comments are made about the management of law firms in the relation to a study on the internationalisation of large law firms by Hitt, et al (2006). They concur with Penrose (1959) that a firm’s resources must be managed effectively and they identify the human and relational capital in law firms as those critical resources (p 1139).

“Partners in professional service firms also perform a managerial role. Thus, managerial competences in such areas as recruiting, leading project teams and retention of personnel as well as strategic management skills are required for partners”

Hitt et al 2006, p 1141

However the authors also distinguish between legal skills and managerial skills and acknowledge that in many large U.S law firms there has recently been an increase in the appointment of professional administrators to assist the lawyers in the managerial responsibilities. They rationalise this trend because they believe managers are good at monitoring the functional and administrative tasks, primarily because, *“managers establish routines”* (p 1140). They conclude that their empirical evidence suggests that there is an increased reliance within large law firms in the U.S on professional managers to assist in managing the firms. Significantly however the authors acknowledge that whilst these observations may be true for North American law firms it should not automatically be assumed to be the same for UK or European law firms who *“often have considerably different management styles and structures than their US counterparts”* (p 1154).

Management decisions to stimulate knowledge sharing may impact in a wider context by a professional concerned about the long-term implications (Newell et al 2006, Holcomb, Holmes and Connelly 2009). Professionals may therefore resist attempts to rationalise their knowledge and conflict may arise when a progressive

and energetic manager demands conformity to the wider organisation of them. However segmentation within the professional role can develop as a consequence of demands on them for increasing levels of specialised knowledge and this in turn results in the professional becoming characterised and ultimately constrained by the limitations of their knowledge base peculiar to their area of expertise. If the professionals are to fully exercise their role as valuable contributors to a wider organisational knowledge base then they must break away from the confines of the homogeneity of their profession. Professions exist across a range of contexts and are organised in different ways but it is the professional dimension that shapes the conduct of the work and the service provided (Suddaby and Greenwood 2005, Malhotra, Morris and Hinings 2006, Malhotra and Morris 2009). In their empirical study on the heterogeneity in professions Malhotra and Morris (2009) concur with the literature that the consequences of heterogeneity for the organisation of professionals service firms stem from the expert knowledge of professionals. Moves to rationalise diverse pockets of knowledge within an organisation may have implicit consequences for the role of the professional and may even threaten the integrity of the professional (Drazin 1990) but they can also provide a stability and conformity from which an organisation may develop its culture and context (Robertson, et al 2003).

3.7 Summary

Professions and professionals represent a link between a firm's resources and value creating services. Despite the many challenges they pose, the professional represents not only a valuable resource of knowledge and expertise but for many organisations they are the core identity on which they are founded. The dilemma facing the professional service firm is securing the appropriate management team to negotiate increasingly diverse and complex demands across increasingly fragmented settings.

The establishment of and conformity to the accepted norms of conduct and behaviour that legitimise the professional role also provides a measure of its 'appropriateness'.

The demands of these standards combined with increased level of bureaucratisation in organisational structures raise questions about the appropriateness of the professional identity and its adaptability to delivering innovative, productive services.

A managerial role must address these issues whilst promoting a measure of conformity, rules and standards across an organisation that will not only generate a culture of organisational values and sharing but will also retain a measure of independence and individuality for the professional that reinforces their continued status and authority. On a second dimension a manager must assume responsibility for the management of the firm's resource base and put in place routines and practices that will enhance the firm and add value through the productive services it offers. Management is itself a continuous learning process but one that demands an appreciation of both the demands on the professional skills of the business and also the pressures of promoting innovative and creative strategies for future growth for the organisation.

Section 3:5 addressed the consequences for the management of those services that result from increases in efficiency driven managerial initiatives across professional services. **Table 3.2** highlighted the emerging influences and pressures on these firms and in doing so identified the fundamental issues central to professions and the professional role. The discussion around the evolving legal profession and the changing professional role draws conclusions that as challenges (resulting from, inter alia, increased levels of management), emerge to the traditional, systematic approach to professions so too have changes developed in the management of those professions that have coincided with the increasing levels of professionalisation observed within organisations.

In the preceding chapter resource theory provides a theoretical framework for a discussion of the relationship between resources and services in the context of the delivery of professional services. The arguments presented in that chapter highlight the issues in managing those services and these have been addressed in this chapter

to better understand the implications for professions as increased levels of managerial authority is exhibited in the delivery of their services to help identify and shape opportunities for developing and delivering legal services. All professions, both the established and the new, emerging ones, are, at least to some degree, bureaucratized, and increasing levels of organisational order across all professional institutions have generated increased levels of bureaucracy. Inevitably tensions arise across the professional and bureaucratic modes of authority and contradictions emerge between the traditional, self-regulatory, peer control approach of the professional community and the external controls of a bureaucratic hierarchy. Questions arise about the role of the manager and the task of management in a professional service firm providing the best opportunity for the successful delivery of services in response to increased levels of bureaucracy across different organisational settings.

3.8 Research Questions

Three research questions emerge from conclusions drawn from the literature reviewed in this and the preceding chapter. They focus on developing the arguments presented in these chapters and draw on resource theory (in the tradition of Penrose) that recognises the value from leverage drawn from a combination of resources and capabilities from which services may derive and explores the relationship between professions and organisations to understand how the processes of combining resources are influential in shaping services:

RQ 1 How do legal firms and law professionals process resources and mobilize resources as they both seek to develop legal services?

RQ 2 How do legal professionals encounter and resolve managerial challenges to their professional identity?

RQ 3 How does the role of the legal manager offer new ways to identify and shape opportunities for developing and delivering legal services?

Chapter 4

Methodology

4.1 Introduction

This chapter will assess and discuss the underlying principles and philosophies behind this research project. The subsequent chapter will then build on these principles and address them, in turn, in relation to this project and in doing so will allow a clear link to be drawn between the existing literature and the appropriateness of the methods adopted in relation to the phenomena under study.

Interpretative qualitative research about social realities and the social actors within it is a scenario that identifies with a grounded theory approach that adopts an inductive view of the relationship between theory and research in which theory is generated from the research data (Eisenhardt 1989, Bryman and Bell 2003, Graebner and Eisenhardt 2004, Suddaby 2006). The broad focus of the research questions developed for this research are drawn from discussions in the literature on the interconnections and relationships between resources and capabilities and which are fundamental to shaping the processes from which services are delivered. The basis of such discussions revolves around the social realities of changing and evolving scenarios and reflects the range of perceptions and understandings that develop as a result of an interpretivist research approach. This research adopted a grounded theory approach that this chapter will seek to explain and justify in terms of both the research design and the operation of this project, and will present an overview of qualitative research and thereafter draw on the various aspects of the discussion in

presenting a more applied discussion in relation to the research project in the following chapter.

Grounded theory has been applied in a wide arena of social science research encompassing, inter alia, research in management and organisations, (Kram and Isabella 1985, Denzin and Lincoln 1994, Rafaeli and Sutton 1991, Eisenhardt 1989, Charmaz 1990, Graebner and Eisenhardt 2004). It is used in qualitative research and combines with the pragmatist perspective on individual and social reality to provide an appropriate interpretive framework for this research. Researchers in ‘professionally’ orientated areas have similarly turned to grounded theory as a qualitative approach (Scher 1997, Langley 1999). As a methodology it embraces a flexibility and adaptability in its procedures that enable the researcher to capture and understand the complexities in substantive areas such as organisational and individual interactions and behaviour and decision making (Locke 2001) and to contextualise the findings (Martin and Turner 1986). Grounded theory in the tradition of Glaser and Strauss (1967) represents a challenge across the spectrum of social science research from empiricism to relativism and provides a methodology that aims to address the interpretive realities of social setting and their participants. Strauss’ (1987) interpretation of grounded theory identifies it as a qualitative research method that uses a systematic set of procedures to inductively develop theory about social phenomena and a more formal, prescriptive routine in analysis (Strauss and Corbin 1990, Locke 1996, Suddaby 2006) that is suited to the research issues of this project.

4.2 Researching Social Phenomena: the Arguments for an Interpretivist Orientation

If the choice of the research approach is influenced by the nature of the project (Collis and Hussey 2003) then this project falls within the umbrella of ‘business research’ encompassing as it does a study of the role of the professions, the management of professions and the professionalisation of management, and in particular the role and management of the legal profession. Grounded theory has

been widely adopted across social science research both in the 'business' orientated areas of management and accountancy and also in the practitioner areas of education and health (Charmaz 1990, Strauss and Corbin 1997, Cutcliffe 2000, Wimpenny and Gass 2000).

Alvesson and Deetz (2000) are highly critical of traditional qualitative methods in management research with their emphasis on the historical links with positivism. They argue that the direction of the research may focus the researcher on a particular methodology that will best serve the research aims. Research in management is typically concerned with issues of organisational change, leadership, and decision making and more specifically with both the organisation and individual interactions and behaviour in such arenas.

It is too simplistic and easy to view qualitative research in terms of 'what they do not do' and to consequently classify any research that does not quantify data as automatically falling within the definition 'qualitative research.' A distinction based on the measurement of data is ambiguous and the term 'qualitative research' encompasses a great deal more than a classification (Bryman and Bell 2003). There are many conflicting views on the most important direction for qualitative research. Bryman, Bresnen, Beardsworth and Keil (1988) believe that developing an understanding of the focus of the research is paramount whilst Silverman (1993, 1997) are drawn towards the practical discourses and interchanges that may be observed. Van Maanen (1979) advocates exploring the social culture in which the organisation exists and that is grounded in organisational experience with its own codes of behaviour and distinct thought processes and patterns in order to understand and explain organisational behaviour.

The epistemology underpinning a methodology provides a philosophical basis for decisions regarding what is acceptable knowledge. Interpretivism is an interpretation of the acquisition of knowledge that challenges the more orthodox positivist doctrine on research within the arena of the social sciences. In interpretative research the social constructs of language, understanding and shared meanings are no barrier to

research that is seeking to understand phenomena within a social environ. The aim of such research is to better understand a social world and this is achieved through the acquisition of rich data and its subsequent analysis. The role of the participants in this social world is paramount. The interpretivist must address the subjective nature of social interaction. Whilst acknowledging the objective nature of the social entities that were researched in this project, it must be qualified by the focus of the research that directs the researcher towards the social interactions of the participants and thus the objectivity of the research environment serves as a setting for the observation of the social interaction.

Bryman and Bell (2003) argue that the distinction between the two doctrines lies in the emphasis on seeking an '*explanation of human behaviour*' (p 15) that is sought from a positivist doctrine to the more empathetic '*understanding of human behaviour*' (p 16) that is favoured by the interpretivist view. Saunders, Lewis and Thornhill (2000) reject a positivist doctrine in respect of research involving areas of business and management. They favour a more interpretivist approach arguing that it encourages scope for the individual circumstances of each social phenomenon to be viewed and interpreted by the researcher.

4.2.1 Ontological Assumptions

The ontological assumptions are concerned with the nature of the social entities. The challenge is to determine if the world is an objective entity and external to the researcher or is socially constructed and therefore can only be understood by examining the actions of the social actors. Bryman and Bell (2003) refer to these positions as objectivism and constructionism respectively. Objectivist ontology represents a world existing independently of our knowledge of it (Hatch 1997). It views an organisation as a tangible object with processes, people and functions operating as a social order with rules and boundaries (Collis and Hussey 2003). Constructionism adopts a social scientific perspective that addresses how realities are made. It maintains that social entities cannot be separated from social actors and the

constant interaction and revisions between then constructs the realities in which they participate (Bryman and Bell 2003).

Qualitative research generally follows an inductive/constructivist/interpretivist approach where the researcher is immersed in exploring, explaining and understanding and ultimately, theory building. **Table 4:1** details these key features.

Table 4.1
Features of qualitative research strategies

Orientation	Features
Principal to the role of the research	Inductive: generation of theory
Epistemological	Interpretivism
Ontological	Constructionism

Adapted from Bryman and Bell 2003 p 25

The aim of the research is to better understand a social world and it seeks to achieve this understanding through the collection of rich data and its subsequent analysis. The role of the participants in this social world is paramount. Social reality is not stable and consistent but is a collage of situations and actors that is constantly changing and evolving in response to combinations of interactions and experiences (Locke 2001). Traditionally, research in the social sciences encompassed such areas as anthropology, sociology and cultural studies. Research followed field based, qualitative methods following modernist assumptions on objectivist knowledge

(Locke 2001). Increasingly however, the literature reflects a move towards social science research into management and organisational studies and with it a more reflexive approach to qualitative research. Locke (2001) refers to this transition as the period when “*the notions of social realism and objectivist knowledge were challenged, as many qualitative researchers embraced the position that knowledge is fundamentally an act of interpretation*” (p 4).

4.2.2 American Pragmatism

The philosophical and sociological orientations underpinning research need to be understood as their influence in directing the research process is significant and informs the research. Clarke (1997) argues that most sociological concepts direct the researcher to ideas that might be potentially worthwhile investigating:

“All research is guided by an approach and a perspective – assumptions about how one can learn and know the nature of causality, concepts of change and the proper unit of analysis. Theoretic and methodological principles thus guide and inform researchers in the sociology of science in their processes of discovery”

Clarke *ibid.* p 64

Philosophy and social theory sets the contextual focus of the research. The early American Pragmatist philosophers, (James, Mead, Peirce, Cooley and Dewey), were all devotees of an approach to thinking and conceptualising human behaviour that focused on individual practices and experiences. For them, life is a social process (Rock 1979) and reality is a continually evolving process that is made and experienced only through human activity. Their ideas, formulated in the late 19th and early 20th centuries, continue to influence research into the social interactions and dynamic interplay that shape organisational routines and practices (Cohen 2007, Simpson 2009).

The philosophical approach of American pragmatism is embedded in the traditions that inform a grounded theory methodology (Locke 2001). A pragmatic philosophy identifies with the aims of research that seeks to understand practices and social realities in order to conceptualise and rationalise human behaviour. Pragmatism views knowledge as an experimental process which derives some credibility and authority from being grounded in experience. Bryant and Charmaz (2007) offer this definition of pragmatism:

“An American philosophical tradition that views reality as characterized by indeterminacy and fluidity, and as open to multiple interpretations. Pragmatism assumes that people are active and creative. In pragmatist philosophy meanings emerge through practical actions to solve problems and through actions people come to know the world. Pragmatists see facts and values as linked rather than separate and truth as relativistic and provisional” (p 609)

A ‘processual understanding of theory’ draws on the relationship between pragmatism and grounded theory (Glaser and Strauss 1967, Strubing 2007). Star (2007) describes grounded theory as *“an excellent tool for understanding invisible things”* (p 79). The selected aspects of a process of reality that is shaped and directed by human activity identifies closely with a grounded theory approach. Strauss (1987) drew on this relationship and its significance for a grounded theory methodology in his observation that pragmatism *“assumed that change is a constant feature of social life but that its specific directions need to be accounted for”* (p 5). Theory is a representation of a conceptual picture drawn from the activities of social actors within a social setting and, seeking to understand and make sense of those actors and their actions in everyday decision making, invites the development of theory.

4.3 Grounded Theory: an Overview

Grounded theory was developed as a methodology by Glaser and Strauss (1967) as a reaction against the extreme positivism prevalent in social research at that time. It

represents a challenge across the spectrum of social science research from empiricism to relativism and provides a methodology that aims to address the interpretive realities of social setting and their participants. It provides an opportunity for subjective research into social phenomena through iterative data collection and observation and the process of systematically and continually reviewing and analysing the data (Glaser and Strauss 1967). Suddaby (2006) defines grounded theory as:

“an organic process of theory emergence based on how well data fit conceptual categories identified by an observer, by how well the categories explain or predict ongoing interpretations and by how relevant the categories are to the core issue being observed”

(p 634)

Grounded theory provides a framework for undertaking fieldwork that in turn embraces procedures for data collection and analysis, categorising and coding, and theoretical sampling that underpins the use of constant comparative analysis and the development of theoretical concepts that are the focus of any grounded theory research (Glaser and Strauss 1967, Glaser 1978, Strauss 1987, Strauss and Corbin 1997 and Finch 2002). Goulding (2001) comments on: *“The qualitative nature of the paradigm focuses on the search for meaning and understanding and not universal laws”* (p 569). Grounded theory is an appropriate methodology for this research with its focus on developing new theoretical insights into social phenomena.

Any discussion on grounded theory must inevitably start with reference to the seminal work by Glaser and Strauss *“The Discovery of Grounded Theory”* (1967). The systematic procedures guiding the inductive and abductive collection, analysis and interpretation of the data allow the identification of emergent themes and the generation of new theories (Glaser and Strauss 1967). Glaser and Strauss were drawn to the idea of *“the discovery of theory from data”* and Goulding (2001) expands this idea describing it as an approach that identifies with: *“systematic procedures for the inductive collection, analysis and interpretation of qualitative data with the purpose of generating new theories”* (p 568).

Grounded theory is not a prescribed methodology but a ‘style of doing qualitative analysis’ (Strauss 1987, Wimpenny and Gass 2000). Unlike other methodologies which use the framework of existing theoretical concepts, grounded theory aims to develop new theoretical insights into social phenomena through the constant comparison and analysis across the collected data (Goulding 2001). Theory evolves and emerges during the research process. It is an interpretive process that analyses the social interaction and behaviour of actors within social phenomena (Glaser and Strauss, 1967, Gephart 2004, Suddaby 2006). It comprises two key concepts that distinguish a grounded theory approach in a research process namely, the constant comparison and analysis of the data and the process of theoretical sampling. The simultaneous comparison and analysis of the data challenges the traditional research processes where the data is collected first and analysed at a later stage. Theoretical sampling involves decisions about what data should be collected to be determined by the ongoing process of interpretation and analysis of data (Glaser and Strauss 1967).

Glaser and Strauss (1967) rejected the idea that social science research should be directed at uncovering and explaining existing theories on social behaviour and instead proposed a more pragmatic approach whereby an understanding of a social reality can be gained through observation and consensus. Suddaby (2006) believes Glaser and Strauss viewed grounded theory as a compromise between ‘*extreme empiricism and complete relativism*’ (p 63). It is a methodological approach where data can be used to address and understand the ‘*interpretive realities of actors in social settings*’ (p 634). Glaser and Strauss (1967) originally conceived grounded theory as a methodology that would “*fit the situation being researched and work when put into use*” (p 3). Such a description has strong implications for the role of the researcher in the research process and Glaser and Strauss (1967) provide helpful guidance with their meaning:

“By fit we mean that the categories must be readily (not forcibly) applicable to and indicated by the data under study; by work we mean that they must be meaningfully relevant and be able to explain the behaviour under study” (p 3)

Glaser and Strauss argued against their critics who challenged the apparent lack of rigour in a research approach without a theoretical foundation and framework. They had observed pressure on some researchers to mould or adapt their research to ‘fit’ into an acknowledged and recognised theoretical concept and were concerned that the result was flawed research and inaccurate results. Grounded theory represented an alternative procedure for social science researchers that “*can help forestall the opportunistic use of theories that have dubious fit and working capacity*” (p 14).

The ‘control’ in grounded theory is the ‘process’ through which the collected data is systematically reviewed and analysed (Glaser and Strauss 1967). It is through the analysis of and interaction with the data that a theoretical framework can emerge.

4.3.1 Theoretical Sampling

The purpose of sampling is to serve the research aims of understanding, gaining insight and creating explanations. These aims create the basis on which the criteria are chosen that will determine the sample selection. Similarly the research question and its objectives will dictate the choice of sampling technique. The validity of the research aims relies on the sample selection and the generalisability of the findings will derive credibility from the sample (Ghouri and Gronhaug 2002).

A grounded theory approach to research endorses ‘theoretical sampling’ procedures whereby the sample chosen is directed by the findings of the data (Goulding 2001). The role of the researcher is to use ‘analytic grounds’ to choose which data to collect. Charmaz (2000) describes theoretical sampling as “*a defining property of grounded theory*” (p 519). She stresses its role in promoting and defining ideas and concepts and not a tool to increase the sample size. However, research is necessarily driven by its theoretical aims and consequently the data collection process is ‘controlled and guided by the emerging theory’ (Strauss 1987). Theoretical sampling was advocated by Glaser & Strauss (1967) and subsequently by Strauss and Corbin (1998) who further developed this sampling technique in the context of a grounded theory

approach to qualitative research. Theoretical sampling is done in order to discover categories and to suggest interrelationships across those emerging categories and concepts. Glaser and Strauss (1967) describe theoretical sampling as:

“the process of data collection for generating theory whereby the analyst jointly collects, codes and analyses his data and decides what data to collect next and where to find them, in order to develop his theory as it emerges” (p 45)

The overriding principle behind theoretical sampling is that the process of data collection is controlled and determined by the emerging theory and in doing so, theoretical sampling ideally *“captures all the activities of theory development following grounded theory procedures”* (Finch 2002 p 217). Finch (2002) further justifies the role of theoretical sampling in grounded theory by emphasizing its distinct contribution to the research aims namely: *“it is directed towards the purpose of establishing and ‘filing out’ categories of analysis while at the same time discovering more about phenomena”* (p 229).

Theoretical sampling (like all sampling procedures) starts with the identification of the sample population. In this research project the sample population is represented by the legal profession in Scotland, England and Wales, and with those both directly and indirectly involved in the management and training of the members of that profession. Theoretical sampling aims to identify categories within the sample population and samples from within those categories are purposefully selected for further investigation. Purposive sampling enables the researcher to use his/her judgment *“to select cases that will best enable you to answer your research question(s) and to meet your objectives”* (Saunders, Lewis and Thornhill 2000 p174). Findings from the initial sample inform the way the sample is extended into subsequent cases.

Purposeful sampling similarly addresses the grounded theory procedures advocated by Glaser and Strauss (1967). Justification of the choice of sampling procedure adopted is important (Patton 1990) but a link with a grounded theory approach serves

as an endorsement of the suitability of the sampling procedure within the research design:

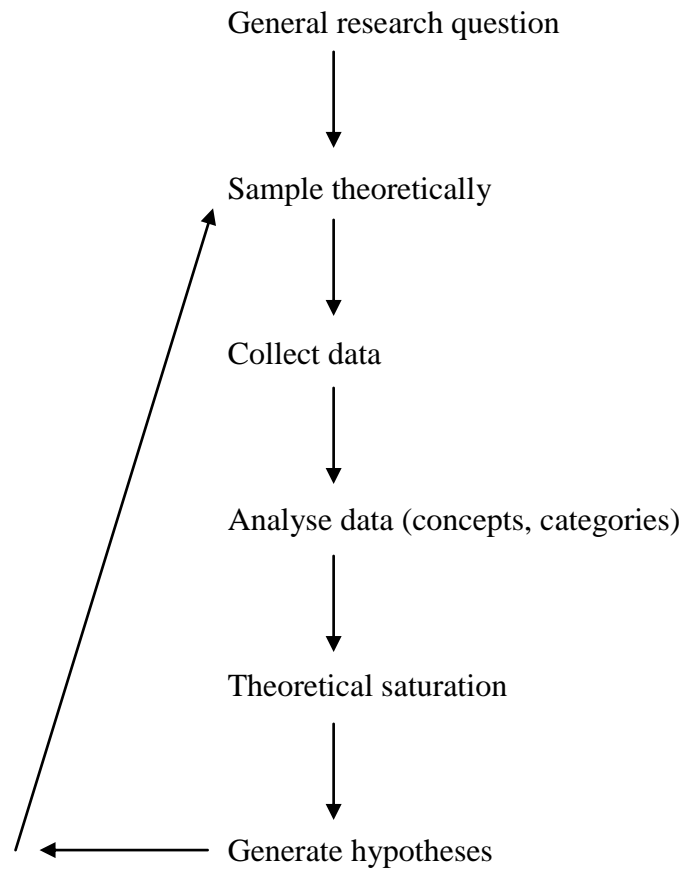
“The logic and power of purposeful sampling lies in selecting information - rich cases for study in depth. Information rich cases are those from which one can learn a great deal about issues of central importance to the purpose of the research, thus the term purposeful sampling”

Patton *ibid.* p 169

Grounded theory advocates sampling that is both relevant and meaningful. The criteria used for selecting cases should be dependent on the research question and the objectives of the project. Strauss (1987) advocates the researcher uses ‘analytic grounds’ to choose which data to select. Purposeful sampling *per se* requires the sampling procedure to be carried out within selected, identified parameters. Although there is scope for a random selection within those parameters (Glaister, Hasan and Buckley 2003), there was no ‘random’ element to the sample selection in this research. It was neither necessary nor appropriate for the research aims. The sample was chosen to extend the emergent theories, to fulfill the theoretical categories and to provide examples within those categories (Eisenhardt 1989b). This selective approach to the sample choice enables the emergent theory to be applied to a broad and differentiated range of categories within the sample population.

Theoretical sampling is characterised by its role in grounded theory as an ongoing process that complements the continuous comparison, coding and categorisation of data. This iterative process of data collection is fundamental to a grounded theory methodology. **Figure 4.1** illustrates the steps in this process.

Figure 4.1 The process of theoretical sampling



(Adapted from Bryman and Bell 2003 p 330)

In grounded theory it is not just people being sampled, but events and contexts as well. Ethnographic research often relies on a combination of convenience and snowballing factors for sampling. Bryman and Bell (2003) cite indifference or opposition to a research project as a barrier to obtaining data and the researcher is often forced to obtain evidence from whatever sources are available and accessible. Fortunately, with few exceptions, this was not the case with this project and generally access was secured from a cooperative and interested sample selection.

Successive interviews and other data collection methods form the basis for the creation of a category and confirm its importance. At that point there is no need to continue with data collection in that category. Data is collected until ‘theoretical saturation’ is achieved. Theoretical saturation of a category signifies that adequate sampling has been carried out and the data being collected ‘*no longer yielding surprises and exceptions*’ (Finch 2002 p 217). The replication of data is not necessary. Sampling should continue until no new or relevant data is seen to be emerging in a category and the category is well developed and the relationships among the categories are well established (Strauss and Corbin 1998, Suddaby 2006). The difficulty for the researcher is to decide ‘when enough is enough’. The sampling procedure is not designed to ‘test’ any emerging theory but to stimulate discussion and to promote understanding and explanations and the potential for yet more data collection to aid this process produces a dilemma for the researcher who must make an informed decision on when theoretical saturation of a category has been achieved.

4.3.2 The Concurrent Processes of Continual Comparison, Categorisation and Coding

The second unique characteristic of a ground theory methodology is the iterative nature of the analysis process involving the constant comparison across the data and the coding and category formation of the emergent concepts and themes. Newell, Edelman, Scarbrough, Swan and Bresnen (2003) describe the iterative process of the grounded theory methodology used in their research into ‘best practice’ development in the NHS:

“To aid in data consistency, the interview data was initially coded based on a coding scheme developed by the research team. However, the emergent categories- bringing together key individuals, social networks and templates – were the result of an iterative process between the collected data and existing theory” (p 4)

The process of theoretical sampling ensures that the sampling is directed by the findings of the data and complements the continuous analysis and comparison across

the data which encourages the identification of emergent categories and themes and aids the analytic process (Goulding 2001, Locke 2001, Finch 2002). The concurrent processes of theoretical sampling and continuous comparison of the data increases the robustness of the emerging theoretical framework (Locke 2001).

The process of categorisation is an organisational tool allowing the researcher to draw comparison and discern common meanings and themes from the data:

“The basic criteria governing the selection of comparison groups for discovering theory is their theoretical relevance for furthering the development of emergent categories”

Glaser and Strauss *ibid.* p 49

Grounded theory encourages the researcher to *“articulate and codify an emerging understanding”* (Finch 2002 p 216). The researcher has discretion to amend or even abandon categories but this approach to data analysis focuses on the identification of common characteristics and subsequently towards the establishment of units of analysis through emerging themes and trends. The processual nature of the emerging theory assists the identification of potential concepts and categories.

The stages of the coding process work to both authenticate and dismiss potential concepts:

“An important part of the grounded theory process is to lift the interpretation of the data from the descriptive level, through to the conceptualisation of the findings in order to integrate the interpretation on concepts with extant theory”

Goulding 2002 p 574

The coding procedures undertaken within grounded theory fall into three stages (Strauss and Corbin 1990 and 1998). Firstly, *Open Coding* in which the aim is to identify and articulate categories. This stage is often begun early in the data collection and may even emerge from the first cohort of interviews. The second stage, *Axial Coding*, establishes the dimensions within and across which variations in the categories of open coding may be organised. Finally in the *Selective Coding* stage, the researcher will seek to form the categories into causal explanations from

the dimensions identified in the Axial Coding stage. Central to the coding processes is the rationale that it is not merely a categorisation of the data but a means for exploring and synthesizing across emerging themes and ideas: *“To the extent possible, the codes and categories reflect the emerging ideas rather than merely describing topics* (Charmaz, 1990 p 1167).

Glaser (1992) cautions against the researcher ‘forcing’ categories during the coding process. Although grounded theory describes an overall process for systematically gathering and analysing data these processes should be conducted iteratively and not by adopting a rigid set of procedural steps. Similarly Suddaby (2006) advises against adopting an overly ‘mechanical’ approach to the research process. He identifies the role of the researcher as a key component in the data collection and analysis process: *“The researcher must make key decisions about which categories to focus on, where to collect the next iteration of data and, perhaps most importantly, the meaning to be ascribed to units of data”* (p 638).

4.4 Grounded Theory: a Methodology

Inevitably there are protagonists who contest that Glaser and Strauss’ grounded theory is too alienated from sound qualitative research procedures and reject the notion that a research process can be established without the anchor of an identifiable theoretical framework and that reference to existing knowledge provides clarity and focus in the research (Miles 1979). This argument is countered by some grounded theorists who identify that, through its capacity to provide a forum for opportunities for new theories to emerge, grounded theory can also play an important role in extending existing theoretical frameworks (Pettigrew 2002 and Finch 2002). Additions to knowledge can be made through research that ‘grounds’ itself in a process that aims to build on an existing knowledge base.

Subsequent to their work on the development of grounded theory in 1967, Glaser and Strauss later diverged in opinion as to the approach and implementation to be

adopted in interpreting their original ideas. The fundamental core of their divergence rests on their respective interpretations of grounded theory as a methodology. Glaser believes that grounded theory is induced from the data and does not precede it. (Glaser 1978, Lincoln and Guba 1985, Glaser 1992) whilst Strauss argues for a more prescriptive approach (Strauss 1987, Strauss and Corbin 1990). Cutcliffe (2000) describes the divergence of approaches thus:

“The crux of the dichotomy is, according to Glaser (1992) the fundamental difference between emerging and forcing.

As Strauss examines the data he stops at each word and asks ‘What if?’ whereas Glaser keeps his attention on the data and asks, ‘What do we have here?’” (p 1482)

Glaser is sensitive to the creative component of the interpretive process in grounded theory and he is conscious of ‘*theoretical sensitivity*’ in possible tension between a mechanical application of technique and the importance of achieving an interpretive insight into the research area (Glaser 1978 and Suddaby 2006). Theoretical sensitivity in the research process is an essential component of a grounded theory approach (Glaser and Strauss 1967). It encompasses the researcher’s ability to identify the ‘relevant’ data and to then reflect upon it in a theoretical dimension (Kelle 2007). The recognition of theoretical concepts and categories that adequately embrace and describe the empirical data requires ability and skill on the part of the researcher. The researcher must be conscious of theoretical sensitivity and demonstrate an ability to apply it to the data “*so that he can conceptualise and formulate a theory as it emerges from the data*” (Glaser and Strauss 1967 p 46). Whilst recognising the importance of theoretical sensitivity it is also acknowledged that the skills required can be problematic for the researcher (Bryant and Charmaz 2007). The researcher must demonstrate both ‘*an analytic temperament and competence*’ (Holton 2007 p 268) to be able to generate theoretical concepts from data. An abductive approach to the data encourages the researcher to draw comparisons which may, in turn, stimulate a more intuitive understanding of the data and thus draw the researcher away from preconceived perceptions on theory (Bryant and Charmaz 2007).

Glaser views grounded theory as an applied, systematic methodology and advocates its application as a general methodology of analysis but one that is inextricably linked with the data collection and which uses a systematically applied set of methods to generate an inductive theory about a substantive area. The objective of the research is identified through the focus on the ideas and issues of concern and interest to the social actors in the social phenomena under research. Grounded theory is a tool to generate concepts and to understand and interpret situations and variations. They should emerge and not be forced by the methodology (Glaser 1978, 1992).

Strauss' interpretation of grounded theory identifies it as a qualitative research method that uses a systematic set of procedures to inductively develop theory about social phenomena. Grounded theory is a mode of qualitative research and analysis whose principal aim is the generation of theory (Strauss 1987, Wimpenny and Gass 2000). His focus for grounded theory was adopted by Corbin with whom he subsequently wrote extensively on the subject. They believe the research question identifies the phenomenon under research. They endorse an inter-active role for the researcher in the interpretation process (Strauss and Corbin 1990, Corbin and Strauss 1990). Contrary to Glaser's approach, they identify a role for grounded theory in generating inductively derived theory from a combination of interrelated concepts comprised within a social reality. They adopt a pragmatic approach to understanding the inter-actions amongst constantly changing social scenarios and the actors within them. Grounded theory must be able to accommodate this change within its process and in doing so be able to determine how the actors respond to such change. "*A grounded theory should explain as well as describe*" (Corbin and Strauss 1990 p 5). Unlike Glaser who pursues a creative and 'open' approach to interpreting data, Strauss and Corbin advocate a more formal, prescriptive routine in analysis although they do caution against an overtly 'mechanical' application of method and encourage imagination and insight from the researcher in interpreting data (Strauss and Corbin 1990, Locke 1996, Suddaby 2006).

Glaser and Strauss both advocate an interpretive approach to a grounded theory research process. Grounded theory research is formative. The research itself has an

important role. It must be capable of adapting to changes in the research process but its application must be justified by the development of knowledge (Locke 2001 and Bryant and Charmaz 2007). The researcher collects data from a social reality but then must use his / her skill to interpret it within a social context that will produce useful and worthwhile outcomes that will become embedded within existing theory and literature (Goulding 2001). However the researcher must resist the temptation to label qualitative research as ‘grounded theory’ but should instead be drawn to a grounded theory approach in order to better understand the abstract concepts and ideas that may emerge from the data (Holton 2007).

4.5 Grounded Theory and Pragmatism

The literature demonstrates that different social theories and philosophical traditions have been adopted by grounded theorists, implying a range of diversity in grounded theory methodology. Mindful of these different approaches the researcher must endorse an orientation that will best serve the research aims. Grounded theory embraces a range of philosophical approaches to qualitative research and thus reflects its formative characteristics underpinning the notion that the research itself has an important role to play and must be able to adapt and change (Locke 2001). The philosophy and social theory that informs a research approach sets the contextual focus of the research.

The early American pragmatist philosophers (James, Mead, Peirce, Cooley, Dewey) drew on the symbolic and social nature of human behaviour in order to better understand and explain social actions and behaviour. A pragmatist philosophy characterises life as a social process in which the interactions of people operate as a cohesive force (Locke 2001). One of the original pragmatist philosophers, George H Mead, argued that pragmatism offered a perspective as ‘a means to order nature’, an approach that informs the comparative ethnomethodology approach to understanding situations from a common framework of meaning (Gephart 2004). Mead’s subjective approach to interpreting social interaction was focused on understanding the role of

external influences on human behaviour: *“His fundamental assumption was that the ‘social act’ is the basis of all human meaning making”* (Simpson 2009 p 1334). Mead’s approach to understanding behaviour through interpreting others is nevertheless challenged as positivist in its philosophy and more consistent with natural science (Bryman and Bell 2003). Dewey supported an approach that analysed the consequences and not the causes of social interactions. If understanding is founded on consequences then the researcher must address the *‘what happens if /when?’* question and then look to the impact of that reasoning on any subsequent experience. These early pragmatic traditions adopted the notion of an objective reality as an interacting perspective. Strubing (2007) develops these traditions further and argues that pragmatism embraces the processual nature of theory. The focus on the means/end relationship between method and theory is very dominant in a grounded theory approach. A ‘process’ or ‘processual’ research project focuses on interpreting a combination of the activities of organisations and individuals, social interaction, experience and knowledge (Bryman and Bell 2003). It embraces all the inputs and consequences of change over time. Langley (1999) defines a process as representing: *“events, activities and choices, ordered over time”* (p 692). Movement and change are central tenets of a process but as Pettigrew (1997) highlights in his definition: *“a sequence of individual and collective events, actions and activities unfolding over time in context”* (p 338) there is also an underlying focus on the need to ground a process in the development of greater understanding and knowledge about the context in which it operates. In seeking to understand a process, the researcher identifies closely with the pragmatic objective of understanding a social reality (Locke 2001). Pragmatism views reality as a continually evolving process and it is as a result of interfacing with the social actors that reality evolves. Strubing (2007) comments that: *“Reality becomes such only in so far as long as it is part of the environment within which actors act”* (p 583).

Corbin and Strauss (1990) were drawn to the pragmatists’ views on social interaction and human activity and identified with the constant interplay within an ever changing social scene and the role and behaviour of the actors in it. As the phenomena changes, so too must the approach build change, through process, into the method.

Both Glaser (1978) and Strauss and Corbin (1990) stress the necessity of incorporating process into a grounded theory approach. The pragmatist philosophy view of reality as a continually evolving process is one that is both derived from experience through action and through human activity. It is through the interfacing with social actors within an environment that meaningful situations are created:

“Pragmatists stress that not only are things meaningless if they are not acted upon, but moreover that in the absence of (inter) action they cease to have an existence for us at all as things”

Strubing ibid. p 583

Dewey adopted an ‘*analyse consequences, not antecedents*’ approach to empirical data, but Peirce favoured a more abductive approach that is drawn towards the impact of ‘*what happens*’ combined with knowledge garnered from experience (Star 2007). Peirce saw an abductive approach as a logical inference drawn from the data capable of producing new knowledge that incorporated both the spontaneous input from social actions together with grounding in existing knowledge. Pragmatism views knowledge as an experimental process as opposed to an exact replication of reality. Knowledge is experimental but reality is composed. A robust understanding knowledge is given added value by grounding experience generated by knowledge (Post and Andrews 1982, Locke 2001).

Creativity is a fundamental component of grounded theory (Strauss 1987 and Strauss and Corbin 1990) and an abductive approach to the data highlights this dimension to theorising (Locke 2007). Pragmatism views ‘modes of thinking’ as actions in themselves and Locke argues that whilst the interpretation of the data needs to be grounded in the data itself, an abductive approach to the data that allows spontaneity and opportunism to flourish will, in turn, encourage a more imaginative theorising of the data. Strauss does not categorically endorse an abductive approach to the interpretation of data but his focus on knowledge nurtured by experience and derived from theoretical knowledge sits comfortably with an abductive approach.

Pragmatism addresses the issues of responsibility, location, consequences and ownership by reflecting on the nature of experience (Star 2007). Strubing argues that, without any prior ontological status, theories are only conceptual thinking derived from observing social interactions. Theory development is about understanding actions as well as the motives and causes behind those actions. In grounded theory the process of theorizing starts with *“the active transformation of experienced aspects of the ‘world put there’ into conceptual objects and their interrelation”* (Strubing, 2007 p 586).

The role of previous and existing knowledge in grounded theory is contentious. Glaser and Strauss (1967) advise the grounded theory researcher to *“literally ignore the literature on theory”* (p 37) but this contradicts their earlier, profoundly pragmatic comments in which they encourage the researcher to *“have a perspective that will help him see relevant data”* (p 3). Pragmatism adopts an approach that encourages the researcher to actively relate existing knowledge with empirical data. Theory and reality exist in an intertwined means /end relationship. Strauss and Corbin adopt a clearly pragmatic position in their work:

“Theories are interpretations made from given perspectives as adopted or researched by researchers. To say that a given theory is an interpretation – and therefore fallible – is not to deny that judgments can be made about the soundness or probable usefulness of it”

Strauss and Corbin 1994 p 279

Dewey refers to the interplay between data and conceptual thinking in grounded theory as ‘theorizing’. Both Dewey and Peirce were drawn to the notion of unplanned and spontaneous ideas emerging from factual conditions with possible solutions. This pragmatic correlation of facts with possible solutions translates into the grounded theory building processes of data collection, analysis, and coding and category formation.

4.6 Ontological Assumptions of Grounded Theory

The ontological assumptions underpinning a research process interpret the nature of the social entities under study and addresses issues of ‘what can be known?’ about a social entity. Objectivism views social entities as a reality independent of its social participants. An organisation is a tangible object with processes, people and functions which represents a social order with rules and routines. It symbolises a world existing independent of our knowledge of it (Hatch 1997). Constructionism adopts a social science perspective to address and interpret social realities and which adheres to the notion that people construct the realities in which they participate. Knowledge is relative and can only be created and understood by those directly involved in it (Hatch 1997).

Glaser’s approach to grounded theory identifies with a modernist, objective ontological position in which the researcher adopts the role of a dispassionate, neutral observer who remains distant from the research participants. Post 1967 Strauss diverged from Glaser and favoured a constructionist, subjective position in which the constant interplay between the social entities and the social actors results in continual change (Bryman and Bell 2003). Grounded theory draws on this pragmatist conception of reality as a scenario of interacting perspectives (Strubing 2007). Social reality is a reflection of changing and evolving scenarios and influences as a result of experiences and interactions that happen over time (Locke 2001). A measured approach to the ontological assumptions in grounded theory is drawn to the social environment in which the change takes place. Charmaz (2000) rejects the view of constructionism offered by Strauss and Strauss and Corbin and suggests that most grounded theory research is objectivist, derived from positivism. She advocates a more socially interpretive, constructivist approach with an emphasis on the role and actions of the individual actors that *“assumes people create and maintain meaningful worlds through dialectical processes of conferring meaning on their realities and acting within them...Thus, social reality does not exist independent of human action”* (p 521).

Similarly Suddaby (2006) maintains that grounded theory should not be used to make knowledge claims about an objective reality but should instead be applied to build an understanding of complex social scenarios. He argues that it is an approach that *“is most suited to efforts to understand the process by which actors construct meaning out of intersubjective experience”* (p 634). Interpretive social research has a focus on the subjective reality of a social phenomenon of experience shared by those who exist within it. It recognises that different interpretations will occur across different social contexts (Isabella 1990, Locke 2001). A wholly subjective approach is inconsistent with the idea that external stimuli alone can explain situations. Recognition must be given to the social context within which the research takes place (Locke 2001).

Contemporary organisational and management research is dominated by work on recurring action patterns such as routines and practices. The literature provides a range of perspectives and ‘labels’ for these patterns. Nelson and Winter (1982) refer to ‘routine’ with an organisational framework, whilst Orlokowski (2002) prefers the term ‘practices’. Cohen (2007) cautions against labeling ‘routine’ as synonymous with ‘mundane’ and ‘rigid’ and rejects the assumption that routine necessarily implies an isolated ‘stand alone’ practice. He adopts Dewey’s pragmatic approach and argues that it is ‘unnatural’ to make assumptions about a word or action:

“It is extremely easy to fall into assuming that routines are rigid in their execution, that they are mundane in content, that they are isolated from thought and feeling, and /or that their underlying action patterns are explicitly stored somewhere”

Cohen, *ibid.* p 774

For Dewey, ‘habit’ is the most powerful human faculty and it shapes and empowers both cognitive and emotive faculties in humans. As organisational research was drawn towards assessing the importance of organisational decisions and the anticipated consequences of those decisions, ‘habit’ and ‘routine’ became synonymous with decisions of lesser importance. However Cohen (2007) argues that when these decisions or actions are grounded in habit or routine, then the consequence of those actions itself becomes more significant. The objective /

subjective nature of the approach to the research directs the emphasis of the research process either towards the formal qualities of an organisation and the rules and routines within which its members function (objectivism), or alternatively a more constructionist approach will direct the research aims towards understanding the interaction of people within a social order. Bryman and Bell (2003) describe this research strategy as “*a general orientation to the conduct of business research*” (p 25).

Ontological assumptions directly influence both the research questions and the research process (Bryman and Bell 2003). Charmaz (2000) addresses the role of the researcher in the research process and argues for a constructivist approach that endorses the researcher’s immersion in and interaction with the data as a role that is a critical input in the analysis of the data. Locke (2001) argues the interpretivist researcher must engage with and participate in a social setting in order to better understand it but such close involvement raises concern for the ability of the researcher to be objective. The degree of involvement of the researcher is sensitive and should be at a level of ‘*immersion*’ but stop short of ‘*drowning*’ (Langley 1999, Suddaby 2006).

4.7 Grounded Theory: Management Research and Process Research

Qualitative methods are the most appropriate for grounded theory building with its emphasis on the generation of theory and the description of the processes involved (Eisenhardt 1989, Pettigrew 2002, O’Mahoney 2003). Glaser (1978) and Strauss and Corbin (1990) acknowledge the influence of process theory in management research and adopt a strict approach to incorporate process in grounded theory studies but these views are challenged by Langley (1999) who is drawn to a more informal strategy that seeks out several distinct processes to allow in depth comparison. Grounded theory orientates towards micro level processes reflected in both activity and interaction in social realities and these processes must be built into a grounded theory approach (Corbin and Strauss 1990, Locke 2001). Grounded theory research

is especially suited to generating theories on social processes (Glaser and Strauss 1967). Management and the process of 'becoming' a manager is a generic and socially pervasive process (Glaser 1978). Understanding both social interaction and the context in which it occurs requires the researcher to comprehend the dynamic nature of organisational activity (Langley 1999). In her research on the social process of organisational sensemaking, Maitlis (2005) portrays a scenario which embraces a grounded theory approach and which justifies the use of interpretative research using qualitative methods to understand more both about the social reality and the social actors within it:

“Qualitative methods are well suited to the study of dynamic processes, especially where these processes are constituted of individuals’ interpretations.

Furthermore, because of its sensitivity to organisational center and its potential for focusing upon activity sequences as they unfold, qualitative research is a valuable means of investigating dynamics processes in organisations”

Maitlis, 2005, pp 23 - 24

Bryman and Bell (2003) describe research on the changes in organisational and managerial realities as a *‘sense of dynamic process through the analysis of events over a period of time’* (p 296). They cite the work done by Isabella (1990) as an example of research that illustrates the dynamic nature of such organisational activity:

“Isabella found that managerial interpretation of key events evolves through a series of stages as they relate to past experience and try to make sense of them in terms of their current frame of reference. Furthermore, the process whereby individuals move from one interpretive stage to another is informed by certain ‘triggers’ that cause the individual to rethink their current frame of reference, to assess what the change will mean to them, and how it will affect their job role”

Bryman and Bell, *ibid.* p 296

Locke (2001) argues that at an organisational level, the different stages of a process can represent both the analytic and theoretical outcome in grounded theory. Just as

research in management and organisations is presented in a wide variety of form and shape so too does ‘process’ have different interpretations in grounded theory. These stages are significant and emerge either as the result of purposeful action or as the consequence of deliberate, progressive changes (Corbin and Strauss 1990). Process research involves defining the basic structure of the process in order to better understand the phenomena under research. Pisano (1994) described organisational learning as an iterative, problem solving process. Similarly, in their research on organisational improvisation Moorman and Milner (2005) recognise organisational learning as a process embracing the discovery, retention and exploitation of stored knowledge.

‘Recurring action patterns’ or ‘routines’ comprise actions that are central to most organisations and that may be embedded in organisational processes. Cohen (2007) defines ‘routine’ as a general term embracing actions and activities that can be ‘flexible, important and thoughtful’. Inevitably routines must adapt to prevailing circumstance and changes to routines may require a degree of fundamental alteration in the context of the social reality within which they operate. Managers are often key participants in such change processes. In their study on the influences involved in initiating strategic change within an organisation, Gioia, Thomas, Clark and Chittipeddi (1994), make two assumptions:

1. *organisational reality is essentially socially constructed and*
2. *attempts to change that reality should be studied in a way that taps into processes used to fashion understanding by the participants themselves” (p 367)*

Organisational and management research is often emergent and cannot be accurately predicted or defined. It encompasses understanding processes that involve both knowledge and learning that can generate innovation and creativity (Nelson and Winter 1982, Mahoney 1995). Routines are an integral part of organisational processes and the interplay between the social actors performing these routines generates familiarity and knowledge (Feldman and Rafaeli 2002).

Writing grounded theory can “*tell a story, paint a picture*” (Locke 2001 p 115) but it must do so within a sound theoretical framework. Grounded theory requires the identification and establishment of a strong, close relationship between data and theory that researchers develop in order to define and classify the ‘groundedness’ in the theoretical framework of the research (Isabella 1990 and Locke 2001). Locke (2001) calls the product of this close relationship between the analysis and interaction of the data a ‘*field based story*’ in contrast to a ‘*theoretical based story*’, which represents the product of contributions of new theories to existing concepts. As a methodology the term ‘grounded theory’ encapsulates not only the theoretical underpinning to the research but also the process of the collection and analysis of the data. An inductive/abductive approach to the data collection supports the emergence of theory that is grounded in supporting evidence. The researcher’s knowledge and familiarity with the area of research is important and significant in assisting in the data collection process (Strauss and Corbin 1998, Finch 2002, Suddaby 2006). The systematic processes of grounded theory whereby the data directs the research also provide guidance for the researcher (Glaser and Strauss 1967, Finch 2002). An understanding of knowledge is given added value by grounding the experiences generated by knowledge.

4.8 Summary

This chapter has conducted a rigorous examination of the philosophies and assumptions attached to an inductive approach to research and the iterative processes of qualitative methods. The conclusions drawn from chapter two provide a theoretical framework of resource theory, drawing on the Penrose influence of the resource based view of the firm, on which the developing and emerging theories and ideas from the data analysis may be ‘grounded’. In chapter three the discussions in chapter two are developed and it explores the consequence of the successful processing and allocation of resources in respect of organisations’ abilities to innovate, internally adapt and embrace external change. Chapter three also assesses the influences of professional, social and institutional contexts in shaping and

processing those resources. Grounded theory is an appropriate methodological approach to address these issues and reflects recent research in management and organisations that are drawn towards process oriented theories and the social realities and changes they embrace (Locke 2001).

A grounded theory approach is entirely appropriate for this research. Its application sits well with the generation of theory from research into both management and processes that is often emergent and unpredictable. Furthermore it will address the aims of this research to gather knowledge in order to develop new and robust understanding in social phenomena and to ground the theory and conclusions in empirical evidence and experience obtained through the data collection process (Post and Andrews 1982, Locke 2001).

Chapter five will build on these methodological principles and address, in detail, both the fundamental issues and guiding principles central to a grounded theory approach.

Chapter 5

Research Design and Process

5.1 Introduction

The broad aim of this research project is to explore the relationship and strategic interaction between resources and services and, within the context of professional legal services, to understand the inter-dependencies with processes that drive innovation in the delivery of those services. The research aims do not seek to make knowledge claims about an objective reality but rather to explore and better understand social phenomena and to interpret the role and actions of the actors within a social process. This chapter presents the detail of the research design and the conduct of the research process. The research process was guided by Strauss' (1987) interpretation of grounded theory that describes it as a qualitative research method that adopts a systematic set of procedures to inductively develop theory about social phenomena and a formal, prescriptive analysis process (Strauss and Corbin 1990, Locke 1996, Suddaby 2006).

Grounded theory in research is a process that commences without a predetermined theoretical basis but yet with a clearly defined research purpose, although even this may be subsequently altered in response to the nature of the data collected. The research design is not constrained by restrictive theoretical propositions but is an exploratory research process that involves lengthy data collection and analysis that explores relationships and seeks meaning and understanding in the data. A conceptual framework develops as part of the research process and guides the process. Charmaz (2006) describes the guidelines for a grounded theory method as "*a set of general principles and heuristic devices rather than formal rules*" (p 2).

The absence of any strict guidelines ensures that theorising is guided and shaped by the themes and patterns that emerge during the continuing processes of data collection and analysis.

The methodological approach adopted in this project adheres to the two key concepts that are fundamental to grounded theory, namely, theoretical sampling and the constant and concurrent processes of data collection and analysis (Glaser and Strauss 1967). Suddaby (2006) advocates that such an approach “*is most suited to efforts to understand the process by which actors construct meaning out of intersubjective experience*” (p 634). Grounded theory demands that the researcher has some knowledge of the area of research: “*Grounded theorists do not jump into a subject without a competent level of knowledge about that area*” (Saunders, Lewis and Thornhill 2000, p 396).

A researcher’s familiarity with the knowledge base, combined with adherence to the core principles in grounded theory for collection, categorisation and analysis of data, informs the empirical evidence. Grounded theory supports the notion that developing an understanding of knowledge is giving added value by grounding the experiences generated by existing knowledge (Locke 2001). Grounded theory research is formative and the ability of the research itself to adapt to change is aided through the inclusion of processes that reflect the changing social scenarios: “*A grounded theory should explain as well as describe*” (Corbin and Strauss 1990, p 5).

Grounded theory data per se does not fit within an established paradigm: “*It is not the descriptive detail that concerns the grounded theorist but the abstract concepts that lie within the data*” (Holton 2007 p 268). Nevertheless the methodology is guided by principles that inform the research process although the degree of commitment to these principles lies with the discretion of the researcher. The approach adopted in this research follows Strauss’ (1987) interpretation of grounded theory that identifies it as a qualitative research method that uses a systematic set of procedures to inductively develop theory about social phenomena and combines with a more formal, prescriptive routine in analysis (Strauss and Corbin 1990,

Locke 1996, Suddaby 2006). **Figure 5.1** shows the processes and outcomes in grounded theory.

5.2 Literature Review

The principle that a research process pursuing an inductive orientation should commence devoid of either a predetermined theory or a conceptual framework implies that the researcher should not seek to test or influence the research through knowledge of the literature on existing theory and research in similar subject areas (Saunders, Lewis and Thornhill 2000). Nevertheless the literature review presents opportunities not only to establish a competent knowledge of the current literature and work within the subject area but it also can be a useful tool in highlighting potential sources of evidence relevant to the research question (Eisenhardt 1998). The overriding principle behind any research is the rationale that the research findings will be important and add value to a subject area and they do not merely replicate or verify similar interpretations and findings previously made.

Glaser and Strauss (1967) suggest that any review of the literature take place after the data collection has been completed. Their reasoning lies in the pursuit of pure and untainted categories emerging from the research. The focus of the grounded theory researcher is to ensure that the emergence of categories from the data is the primary aim. The categories should emerge as a consequence, not of the data collection but of the insight and understanding of the researcher in interpreting the data. The focus on the emergence of categories, free from preconceptions leads them to the recommendation that a review on the existing literature be delayed beyond both the collection of the data:

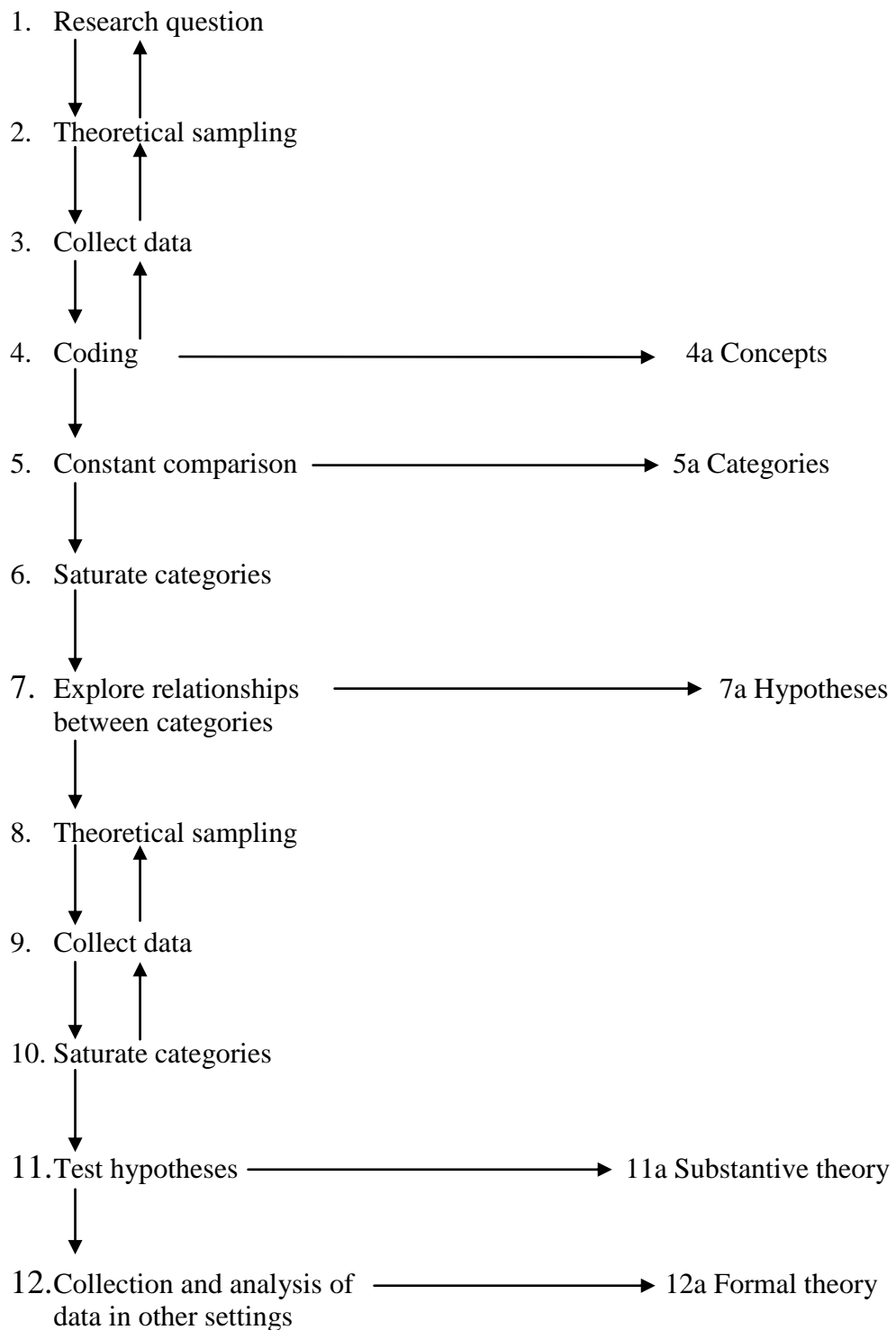
“An effective strategy is, at first, literally to ignore the literature of theory and fact on the area under study, in order to assure that the emergence of categories will not be contaminated by concepts more suited to different areas”

Glaser and Strauss, *ibid.* p37

Figure 5.1 (Adapted from Bryman and Bell, (2003), p 431)

Processes

Outcomes



The argument for delaying the literature review is vested in the desire on the part of the researcher to divest him/her self of any preconceptions and bias that may develop through a study of the literature (Pettigrew 2002, Stern 2007). Whilst acknowledging the importance that new research can relate to the existing literature and can make a contribution to a theoretical framework, Glaser (1978) argues that given the nature of a grounded theory approach this may not become apparent until the research is well progressed. The inherent nature of a grounded theory project implies that the findings can be assumed to make a contribution to the existing theory (Locke 2001).

In contrast to this position, Suddaby (2006) argues vehemently against delaying a review of the literature and believes that the emerging theory basis of grounded theory does not sufficiently justify proceeding with a research project without reference to the existing knowledge base in similar areas. He contends that Glaser and Strauss (1967) “*never intended to encourage research that ignored existing empirical knowledge*” (p 635) but he does concede that the researcher must be mindful of the need to ensure that the existing literature does not influence the research objectives: “*The reality of grounded theory research is always one of trying to achieve a practical middle ground between a theory-laden view of the world and unfettered empiricism*” (p 635). Strauss and Corbin (1990) argue that the effective researcher can ensure that the diligent analysis of data will result in new findings and emerging theories.

There is a clear conflict between the single-minded attitude to the role of a literature review in grounded theory advocated by Glaser and Strauss (1967) and subsequent arguments that acknowledge the inevitability that a researcher will, at the very least, possess a limited knowledge and understanding of the relevant existing literature (Strauss and Corbin 1990). Indeed some grounded theorists look to the literature review as a valuable source of comparison and analysis. With due diligence to the need to avoid ‘contaminating the empirical data’ the researcher can draw on the existing literature to inform without influencing, to highlight weaknesses in the research area, to identify connections in the data and potentially to even identify avenues for developing new ideas which subsequently may or may not be justified by

the empirical evidence (Charmaz 2006). A grounded theory approach necessitates the identification and establishment of a close relationship between the data and the theory in order to both define and clarify the ‘groundedness’ of the theory but inevitably this makes a literature review difficult (Locke 2001).

In this research the literature review was carried out both before and during the data collection. The focus was initially on the existing literature on the established theory on the resource-based view of the firm with particular reference to the work of Penrose (1959). The implications of the resource-based view of the firm significantly influence the theoretical perspective from which this research derives its validity and credibility. Further review of the literature generated greater understanding and knowledge of existing theories and ideas on the resource based view. Consequently questions were asked and issues were addressed regarding potential links between resources and capabilities such as knowledge, experience and expertise, in the emergence of productive services and further, the applicability of the resource-based view in relation to the coordination of knowledge within and across firms (Richardson 1972, Mahoney 1995, Loasby 1998, Colbert 2004).

The context of the data collection is the provision of professional legal services and the literature guided the researcher to questions about the theoretical implications of a resource-base view of the professions and, in particular, the role of existing and prior knowledge contextualised with regard to the unique and idiosyncratic resources of professionalism and professional organisations and the services they provide (Drazin 1990, Starbuck 1992, Robertson, Scarbrough and Swan 2003). The ultimate aim is the emergence of a theoretical framework that frames the research questions and tests the categories and codes drawn from the empirical data.

5.3 Theoretical Sampling

The purpose of sampling is to aid the quest to understand the research aims although conversely, the research question and its objectives may both determine the

sampling method. A purposive sampling approach not only guides the researcher to use his/her judgment in the selection of samples but also allows the researcher to focus on the aim of selecting samples that will both answer the research questions and meet the objectives of the research (Saunders, Lewis and Thornhill 2000). Grounded theory demands a sampling approach that is both relevant and meaningful and that will discover categories and suggest interrelationships between categories (Glaser and Strauss 1964). Theoretical sampling as advocated by Glaser and Strauss, and later adopted by Strauss and Corbin (1998), is guided by the research aims of generating new theory. For Locke (2001) *“the rationale of theoretical sampling is to direct all data gathering efforts towards gathering information that will best support development of the theoretical framework”* (p 5).

The sampling procedures in this research were guided by those discussed by Glaser and Strauss (1967), Corbin and Strauss (1990) and later Strauss and Corbin (1998) with the aim of conceptualising the ideas and themes emerging from the data and constructing theoretical categories. The process of theoretical sampling is described by Cutliffe (2000) as: *“an integral part of the process of grounded theory”* (p 1477). In this research the process of theoretical sampling reflects its contribution in promoting and defining ideas and concepts (Charmaz 2006). The choice of groups and subgroups were selected on the basis that they would each provide opportunities to the researcher to generate conceptual categories across the data.

A purposeful, non-random sampling approach identifies categories within the chosen sample population and allows the researcher to then select samples from those categories. Such an approach sits comfortably in a sample population inhabited by different categories. The researcher may justify the selection of a sample for a variety of reasons. They may be chosen to replace previous samples that have been discarded (for whatever reason), to extend emerging theory, fill theoretical categories or just provide examples (Eisenhardt 1989). This highly selective approach to sample selection reinforces the overriding aim of theoretical sampling to enable the emerging theory to be applied to a broad range of categories within an identified population.

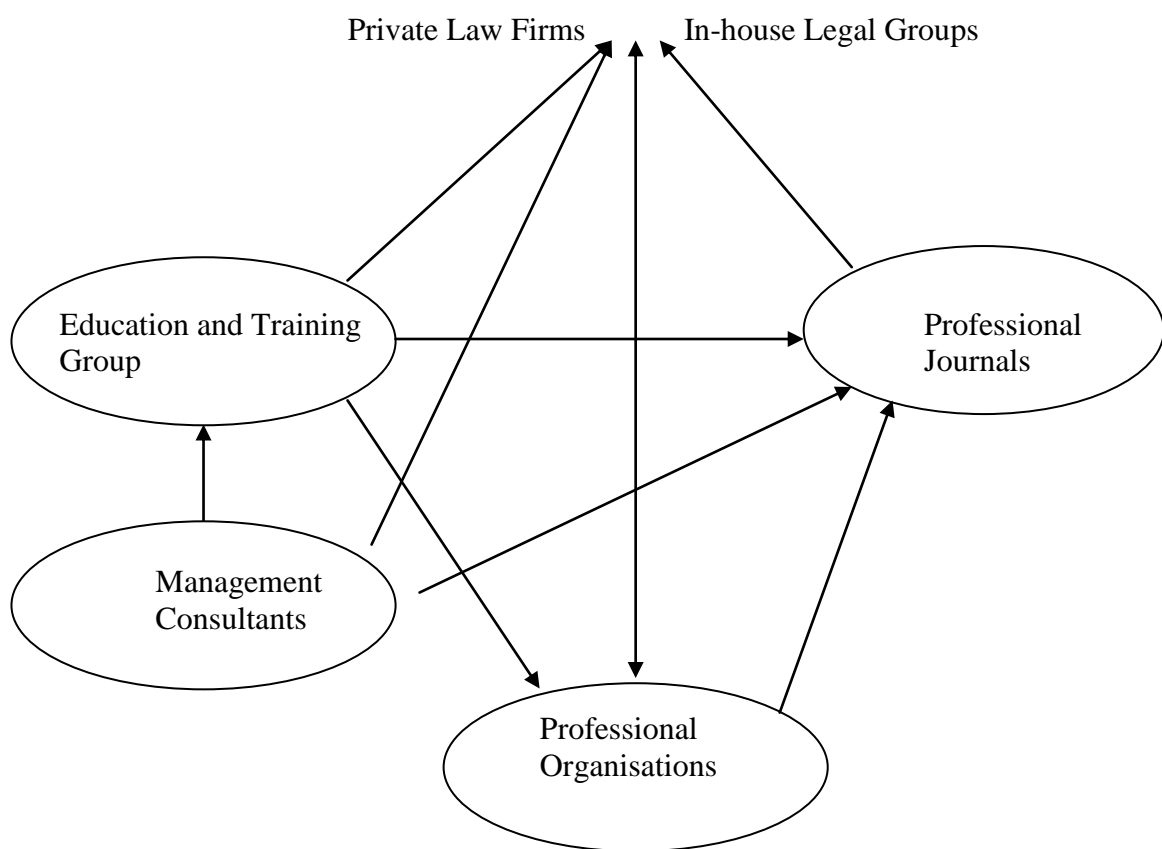
The core focus of this research is the provision of services by the legal profession and the management of that profession within both private law firms and in-house legal groups. Strauss (1987) concedes that whilst the researcher in grounded theory adopts an analytical basis for choosing which data to collect, the theoretical sampling process requires the research topic is examined from a range of approaches and dimensions and the sampling procedures must necessarily reflect this. In addition to sampling across the lawyers working in these two contexts, data was also collected from a range of complementary sources and six descriptive categories were identified during this initial conceptualisation process. Two core categories named ‘Private Law Firm’ and ‘In House Lawyers’ reflected the core focus of the research and a further four categories were named at this stage. **Table 5.1** lists the six descriptive categories and the number of samples sourced across each category. In grounded theory the concurrent analysis of the data directly impacts on the theoretical sampling procedures. Grounded theory follows a set of fundamental processes or stages that direct the analysis of the data (Goulding 2002).

Table 5.1
Descriptive Categories

Category Name	Number of samples per category
Professional Groups	6
Private Law Firms	8
In House Legal Groups	5
Management Consultants	8
Education and Training Groups	5
Journals	6

The six descriptive categories are the consequence of the initial open coding process and represent the results of dissecting and sorting the data into discrete concepts. The constant comparison and analysis of the data that continued through the data collection process highlighted evidence of existing relationships and interconnections between these descriptive categories and they are illustrated diagrammatically in **Figure 5.2**. These relationships were subsequently re-evaluated and higher order categories developed in the second and third coding stages.

Figure 5.2.



It is important to acknowledge that, because the sample selection in theoretical sampling is driven by both theoretical purpose and relevance by focusing on the need to generate theory, the researcher may have to compromise on issues of validity (Glaser and Strauss 1964). Theoretical sampling directs not only the data collection but also allows the researcher opportunities to construct ideas and consider aspects of

the data that contribute to the refinement of the emerging categories (Charmaz 2006). The flexibility that is central to theoretical sampling ensures that continuous adjustment is possible in the research process. The focus on the need to access ‘rich data’ to best serve the research aims must not be compromised:

“The basic criteria governing the selection of comparison groups for discovering theory is their theoretical relevance for furthering the development of emergent categories”

Glaser and Strauss, *ibid.* p 49

This rationale is best served by the purposive selection of a research sample. Glaser (1978) rejects any arguments for purposeful sampling which he sees as a ‘calculated decision’ and not in line with the principles of theoretical sampling described by himself and Strauss in 1967. Cutcliffe (2000) explains Glaser’s approach towards the initial decisions on sampling as one based on a “*general sociological perspective and on a general subject or problem area*” (p 1477) but points out that there is potential for such decisions to themselves be ‘inadvertently purposeful’ given the subconscious influence of the researcher’s background knowledge. However the purposefulness of the choice of the initial sample as a source of relevant data is justified by the desire to generate theoretical categories and a theoretical framework. Cutcliffe explains the argument:

“When a grounded theorist is commencing his/her data collection, it appears that they do enter a process of purposeful sampling, which is then superceded by theoretical sampling as the data/theory highlight the direction which further sampling needs to follow” (p 1477).

Following the initial category conceptualisation process, the researcher can then focus on gathering data from more specific samples. Samples that generate several properties in each category help develop an interrelationship between categories. Patton (1990) favours an approach that maximises variety in the sample selection arguing that sampling across diverse contexts may result in higher levels of generality. Locke (2001), whilst not dismissing this approach, counters that rather than encouraging the generation of emerging theory such a sample will instead serve to enhance the development of substantive theory into more abstract and potentially

formal theory. Although the data collection process in grounded theory is controlled and directed by the emerging categories and theoretical implications, examining the research issues from different perspectives and through sampling from a range of approaches, different dimensions on the data will emerge and enhance the comparison and category conceptualization processes (Strauss 1987). Theories and the theoretical framework develop from the conceptualisation of the data and not the data per se (Corbin and Strauss 1990).

5.4 Sampling Process

Yin (1994) stresses that research design should always be flexible and adaptable. Pilot studies can maximise this flexibility and lessons can be learnt from them that should then subsequently be incorporated into the research design. The aim and purpose of a pilot study is not to test but to enhance the research. The initial data collection was not a pilot study per se but did reflect a degree of flexibility and allowed for adjustment whilst maintaining a focus on accessing rich data that would serve the research aims (Glaser and Strauss 1967). The main aim of the sampling process in grounded theory is to obtain data and empirical evidence from which theories may be generated.

The focus of this research is the delivery of legal services across a range of contexts. At the commencement of the data collection an approach was made to The Law Society of Scotland, the professional regulatory organisation for Scottish qualified and practicing lawyers. A face to face interview took place with the Secretary and Chief Executive. The interview was both an opportunity for the researcher to assess both the viability and the relevance of the research area and also introduced options for the direction of further sampling that would both fulfill emerging categories and provide examples. Not only did the interview transcript provide a full and rich account from this professional organisation on the issues central to the research, useful guidance was also provided by the interviewee of potential other interviewees and direction given towards other sources of data collection.

Case studies were chosen to fill the emerging categories and to provide examples (Eisenhardt 1989) but, mindful of the advice given by Ghouri and Gronhaug (2002) not to ignore practical issues, those sampled were also accessible and feasible. The sampling choices were never indiscriminate. The focus of the sampling was selective in pursuit of the aim to fulfill and refine the emerging categories, but this was balanced by a relational approach aimed at ensuring new opportunities to gather data about properties within the categories were fully investigated (Strauss and Corbin 1990, 1998). In the 'Private Law Firm' category, those firms sampled comprise a broad range of private law firms in the United Kingdom. In sampling a diverse range of firms the sample represents the wide diversity of private law firms, both domestic and international, that presently operate in the UK. **Table 5.2** outlines the profiles of the Private Law Firms that were sampled. Similarly a range of in-house legal functions were selected to fulfill the 'In-House Legal Group' category. **Table 5.3** details the legal groups sampled. The empirical evidence for this sample was supplemented with data from a further thirty six in-house groups that were profiled in a series of reports in a professional journal.

Table 5.2 Private Law Firm Sample

Name	Profile	Number of Lawyers	Interviewee	Interview Details	Additional Data
Viscount Stair	International Law Firm	1000 lawyers 200 partners	Senior Training Manager	Face to face 1 hour	Firm website
George Joseph Bell	International Law Firm	900 lawyers 210 partners	Director of HR and Director of Quality	Face to face 1 hour	Firm website
William Forbes	International Law Firms	600 lawyers 170 partners	Career Development Officer	Face to face 1 hour	Firm website, material in interview and journal article
George Mackenzie	International Law Firm	1800 lawyers 595 partners	Training Development Officer	Face to face 1 hour	Firm website
John Erskine	Domestic Law Firm (2 offices)	250 lawyers 36 partners	Executive Chairman	Face to face 1 hour 15 minutes	Firm website & material provided in interview
David Hume	Domestic Law Firm (2 offices)	96 lawyers 39 partners	Head of HR	Face to face 1 hour	Firm website and material provided in interview
Andrew Bankton	Domestic Law Firm (3 offices)	57 lawyers 17 partners	Managing Partner	Face to face 1 hour 45 minutes	Firm website and material provided in interview and subsequent
James Dalrymple	Domestic Law Firm (4 offices)	201 lawyers 70 partners	HR member for Training and Development	Face to face 1 hour	Firm material provided in interview and subsequent

Table 5.3 In-house Legal Group Sample

Name	Type of Organisation	Number of Lawyers	Interviewee	Interview Details	Additional Data
Agency	International oil and gas	650 approx.	Global Legal Services Coordinator	Face to face 1 hour 30 minutes	Company website and material subsequently provided
Contracts	Government Department in England & Wales	45	Chief Legal Advisor	Face to face 1 hour 15 minutes	GLS website, department website and material subsequently provided
Delict	Division of Government Legal Service for Scotland	80	Chief Legal Advisor	Face to face 1 hour 15 minutes	Department website
Jurisprudence	Public Service Group	40	Chief Legal Advisor	Face to face 1 hour 15 minutes	Organisation website
Succession	Non Ministerial Government Department	80 -90	General Counsel	Telephone interview 1 hour	Organisation website

The central focus of the sampling process towards identifying ideas and themes (Pettigrew 2002) combined with the paramount aim of accessing rich data (Swan, Scarbrough and Newell 2007), directed the researcher to sample further within specific areas that were emerging and labeled as descriptive categories. Locke (2001) recommends focusing the data collection on specifically chosen areas with the aim of category development and to sample within those categories until theoretical saturation is achieved. Theoretical sampling directs the researcher which data to collect next and where to find it (Glaser and Strauss 1967). Details of the samples chosen within the categories, 'Management Consultants' 'Education and Training Groups' and the 'Professional Groups' are presented in Tables **5.4, 5.5 and 5.6** respectively. The interviewees each hold positions of authority within their respective organisations and in their respective roles have knowledge both specific and general that informed the research topic. Sampling was also directed by aims of theoretical relevance to further the development of these categories: *"As the categories are developed the researcher deliberately seeks out data that will enable verification of the properties of emerging category systems"* (Langley 1999 p 700).

A range of data sources can add rigour and robustness to research (Glaser and Strauss 1967, Strauss 1987, Corbin and Strauss 1990, Maitlis and Lawrence 2007, Gibbert, Ruigraak and Wicki 2008). The empirical data across the sample selection was collected from a combination of interviews and additional, complementary sources: *"...the data for a grounded theory can come from various sources. The data collection procedures involve interviews and observations as well as such other sources as government documents, video tapes, newspapers, letters and books – anything that might shed light on questions under study"* (Corbin and Strauss 1990 p 5).

This pragmatic approach was adopted by the researcher. Data was sourced not only from face to face and telephone interviews but also from government publications, websites, books, journal and newspaper articles and documents provided by the sample groups.

Table 5.4 Management Consultants Sample

Name	Profile	Interviewee	Interview Details	Additional Data
Chitty Associates	Sole Consultant /Lawyer / Lecturer / Author	Consultant	Face to face 1 hour	Website, books, journal articles and material provided at interview and subsequently
Meston Associates	Sole Consultant /Lawyer / Lecturer / Author	Consultant	Face to face 1 hour	Website, books, journal articles
Rankine Associates	Consultancy Firm	Two Consultants	Face to face 1 hour 30 minutes	Website and material subsequently provided
Kemp Associates	Sole Consultant /Lawyer / Lecturer / Author	Consultant	Face to face 1 hour	Website, books, journal articles and material provided at interview
Walker Associates	Sole Consultant	Consultant	Face to face 1 hour	Website and journal articles
Forte Associates	Consultancy Firm and LETG Training Organisation	Director	E-mail correspondence	Website and journal articles
Grier Associates	Sole Consultant	Consultant	Telephone	Website and journal articles
McBryde Associates	Consultancy Firm	Consultant	E-mail correspondence	Website, books and journal articles

Table 5.5 Education and Training Group Sample

Organisation	Interviewee	Interview Details	Additional Data
Legal Education & Training Group	Chairman	Face to face 1 hour	Website and journal articles
College of Law and Legal Services Policy Institute	Professor of Strategy and Director of LSPI	Face to face 1 hour	Website and documentary
Centre for Law Firm Management, Nottingham Law School	Professor of Strategy	Face to face 1 hour	Website and documentary
Local Government Group (Solicitors in Local Government)	Director of Training	Face to face 1 hour	Website, journal article and documentary
BPP Professional Education Law School	_____	_____	Website and documentary

Table 5.6 Professional Group Sample

Organisation	Interviewee	Interview Details	Additional Data
Law Society of Scotland	Secretary and Chief Executive	Face to face1 hour	Website and documentary
Law Society of England and Wales	Council Member for Education and Training	Face to face1 hour 15 minutes	Website and documentary
Law Management Section, Law Society of England & Wales	Chair	Telephone interview	Website and documentary
Writers to the Signet Society	Chief Executive	Face to face1 hour 15 minutes	Website, journal articles and documentary
In House Lawyers Group, Law Society of Scotland	Board Member	Written and telephone	Website journal articles and documentary
Commerce and Industry Group, Law Society of England & Wales	Board Member	E-mail	Website and documentary

In their comparison of two professions Montgomery and Oliver (2007) sourced data from issues of two relevant professional journals: “*Both journals contain a wealth of multi – level information about the activities of the emerging professions*” (p 668). The legal profession is served by a range of published journals (weekly, monthly and quarterly). A total of six professional journals were scrutinised over a period of four years for information relevant to the research issues. They are listed in **Table 5.7**

In grounded theory, data is collected until *theoretical saturation* is achieved. Successive interviews and the data collection from other multiple sources were continued until the researcher was satisfied that neither new nor relevant data was seen to be emerging within each category. Establishing with certainty the point of theoretical saturation is almost impossible to define but a range of pointers combined with a level of intuition guided the researcher to a conclusion:

“The signals of saturation, which include repetition of information and confirmation of existing conceptual categories, are inherently pragmatic and depend upon both the empirical context and the researcher’s experience and expertise”

Suddaby, *ibid.* p 639

During the data collection and analysis processes categories began to emerge. Open coding of the data generated the identification and articulation of categories. Theoretical memos serve as a means of tracking and clarifying categories. They serve as a focus for revisiting and revising the themes and theories emerging from the data:

“Sorted and resorted during the writing process, theoretical memos provide a firm base for reporting on the research and its implications”

Corbin and Strauss 1990 p 10

Table 5.7 Professional Journals Sample

Name	Format	Publication	Circulation
Journal of the Law Society of Scotland	Hardcopy and archive online	Monthly	Practising solicitors on the roll of the Law Society or by subscription
Law Gazette: Journal of the Law Society of England & Wales	Hardcopy and archive online	Weekly	Practising solicitors on the roll of the Law Society or by subscription
In House Perspective	Hardcopy	Quarterly	Subscription
Managing for Success: Journal of the Law Management Section of the Law Society of England & Wales	Hardcopy	Quarterly	Membership or by subscription
Managing Partner Journal	Archive online	Monthly	Subscription
The Lawyer	Hardcopy and archive online	Weekly	Subscription

Memos were recorded by the researcher and revisited periodically during the data analysis process. At some point in the process it became clear that not only were the categories credible and well established but, importantly, a relationship existed between the categories (Strauss and Corbin 1998) and it became possible to identify similarities in characteristics from the sample selection.

5.5 Interview Process

The interview process must be addressed within the social process in which it occurs and the information obtained contextualized in the environment in which it was divulged (Alvesson and Deetz 2000). Both structured and unstructured interviews are appropriate but “*there is no typical grounded theory interview*” (Wimpenny and Gass 2000 p 1488). Highly structured interviews often result in data which is essentially quantifiable but in contrast, less structured, more informal interviews result in the fuller, richer data essential for grounded theory. Instead of prescribed guidelines the overriding influence of the interview process is the on-going analysis of the data which influences the questions asked and drives the direction of the interview. The influence of data collected from preceding interviews may impact on subsequent ones. Adjustments can and should be made to the interview protocols that reflect ideas or themes emerging as a consequence of the concurrent data analysis. Analytical questions asked by the researcher about the emerging categories and relationships between them will drive the focus of successive interviews (Strauss 1987). The benefits to the interview process deriving from this flexible approach are referred to by Eisenhardt (1989) as one of: “*controlled opportunism in which researchers take advantage of the uniqueness of a specific case and the emergence of new themes to improve resultant theory*” (p 539).

It is of paramount importance that the researcher is able to identify with the ‘right’ people’. Locke (2001) acknowledges difficulties of access and cites ‘*formal organisations and managers in particular*’ (p111). Alvesson and Deetz (2000) similarly identify ‘managers’ as potentially difficult interviewees: “*One of the*

characteristics of senior managers compared to many other people is that they tend to be heavily occupied; this makes interviewing difficult” (p 192). In this research project, with few exceptions, access was not an issue. An opportunistic approach was adopted by the researcher which ensured that those interviewed were specifically chosen because the nature of their role meant they were not only inter-facing with the issues of interest in their daily workplace but were often instrumental in conducting reviews of procedures and instigating changes and consequently were informed and able to provide rich and complex data on a range of issues. The ‘depth’ of the interview is of course subjective and the researcher acknowledges that the empirical evidence is qualified by the knowledge that not all information may be shared.

A total of twenty nine interviews took place of which twenty five interviews were conducted face to face. Where this was not possible, telephone interviews were set up at pre-arranged times. All interviews (with one exception where permission was refused) were taped with the prior consent of the interviewee and then transcribed and coded. The interviews were conducted on a semi structured basis. An interview protocol was always prepared before. It reflected not only the pertinent issues but also new and emerging ideas from the preceding data collection.

Example:

The interview protocol for the meeting at the firm ‘John Dalrymple’ on 6/12/05 included the question: *“What is the ‘ideal’ management training programme for a lawyer at John Dalrymple?”* The protocol prepared for an interview conducted on 16/02/06 with the firm ‘Andrew Bankton’ included this question but also a further follow – up question that was considered appropriate in light of the responses in the earlier interview: *“Is it a requirement for all lawyers to continually update their management skills or is this left to personal choice?”*

The protocols were also amended to include specific questions relating to topics that were individual to the interviewee. In a number of instances articles written by the

interviewee in a professional journal or a topical book on issues relevant to the research aims had instigated the initial approach to the interviewee:

Examples:

Interview with the Director of Training of the Local Government Group (Solicitors in Local Government) was arranged in response to an article by the Director: **'Lawyers are being sidelined in local government'**; *The Lawyer*, 04/06/07.

Interview with Chief Executive of Writers to the Signet Society arranged in response to a published interview with the Chief Executive: **'Signet badge takes wing'**; *Journal of the Law Society of Scotland*, March 2007.

Mindful that *"the two most common reservations which can block research access concern time and confidentiality"* (Buchanan, Boddy and McCalman 1988 p 19) it was conditional upon those approached that an interview was granted on the basis that information would be used solely for the purposes of this research and would be referred to entirely on a non attributable basis. It is for this reason that the samples in the three categories (Private Law Firms, In-House Lawyers and Management Consultants) are cited under 'nom de plumes' thereby protecting their identity. However it was not felt necessary to do so for the samples in either the Representative Group or the Education and Training Group as their function and role is to provide a service to members of the legal profession and their remit is in the public domain.

The interview process is an ordered one that: *"includes setting the tone, seeking information in depth, feeling and reflection, searching for the narrative and ending on a positive note"* (Wimpenny and Gass 2000 p 1488). The interviewer always took time to explain the research project and to outline its aims, thereby engaging the interviewee directly in the focus and aims of the research. It was important to ensure a degree of openness pervaded the interview creating opportunities for the

interviewee to share his/her own personal experience or ideas on the issues under discussion and the implications of ideas under review (Konecki 1997).

The interview transcripts were analysed using grounded theory methodology and, together with the other empirical data initially coded by open coding aimed at identifying and articulating categories (Strauss and Corbin 1990) and then further coded and analysed in line with the constant data collection, coding and analysis processes of grounded theory.

5.6 Coding Process

Following the principles of grounded theory, analysis of the data began as soon as the data collection commenced. The concurrent analysis of the data began as soon as the data collection commenced. Grounded theory advocates a set of procedures to be followed in the analytic process to ensure that the data analysis is sufficiently rigorous to substantiate the development of theory (Glaser and Strauss 1967).

Charmaz (2006) describes the coding process as *“the pivotal link between collecting data and delivering an emergent theory to explain these data”* (p 46). This research follows a set of fundamental processes or stages that directed the analysis of the data adopted by Strauss and Corbin (1990, 1998) whereby the data in grounded theory is coded in a three step process of data focused activities. Glaser (1992) argues against this codification strategy arguing that it detracts from the ideology of theoretical sampling by introducing a degree of rigidity into the coding process but for Strauss and Corbin generating categories and reorganising the data is part of the analysis process (Saunders, Lewis and Thornhill 2000).

The initial coding stage (Open Coding) is an unstructured process that is essentially a process of labeling and clustering the data into potential variables of interest (Graebner and Eisenhardt 2004, Bazeley 2007). This first stage is a descriptive and interpretive process that aims to identify and articulate concepts and categories as a consequence of analytically breaking down the data. Events, actions and experiences are all compared and analysed for similarities and differences. Maitlis and Lawrence

(2007), (whilst not overtly grounded theorists), adopt a similar approach in their research and describe this initial coding stage as one “*designed to create categories broad enough that each captured an issue*” (p 60).

Theories are built from conceptualizations of the data and the process of open coding directs the researcher towards identities or labels for these concepts. Strauss and Corbin (1998) describe them as: “*the building blocks of theory*” (p 101) which may then be grouped together to form categories. Labeling the categories ensures that the data is more manageable and assists in the identification of broader related groupings or categories (**ref Figure 5.1**). Goulding (2002) describes the initial coding process she adopted in her grounded theory research project on nostalgic behaviour:

“Methods of analyzing the data followed the principles described by Glaser and Strauss (1967). This included the full transcription of interviews, which were then analyzed line by line in order to identify the range of possible codes. This stage was associated with open coding and was followed until a recurring pattern was noted across the data sets.Open coding does little more than describe what is in the data; it is theory-free until a sequence or theme is observed. Once patterns were identified, open coding was forsaken for more focused axial coding.”

Goulding, *ibid.* p 573

The QSR NVivo 8 programme was used to assist in coding and analyzing the rich and varied qualitative data collected. Bazeley (2007), whilst endorsing the use of computer software in grounded theory, counsels that its use must be balanced with a mixture of “*reading, reflecting, linking, noting and doodling*” (p 9) to reflect the analytic and interpretive focus of the methodology.

Descriptive or ‘in vivo’ codes (Glaser and Strauss 1967) reflect the researcher’s initial examination of the data. Initially all the empirical evidence was analysed and coded under four principal in vivo codes within tree nodes in the NVivo 8 programme viz:

- 1. Changing focus for the legal profession**
- 2. Combining legal with other skills**
- 3. Diversity of skills**
- 4. Understanding both legal and business skills**

The second coding stage (Axial Coding) focuses on identifying dimensions across variations in the categories may be organised and, in doing so, will test the relationships between those categories. Strauss (1987) describes axial coding as a process that builds “*a dense texture of relationships around the ‘axis’ of a category*” (p 64). The data is put ‘back together’ after the open coding process but in new and unique ways that will highlight the connections between categories (Strauss and Corbin 1990, 1998).

In this stage of coding the data were analysed for evidence of initiatives and trends adopted that would reflect how lawyers had organised themselves to address a changing focus for their professional role from the demands of their organisational position. The coding process also uncovered indicators of how lawyers are adapting and adjusting their services and in doing so, diversifying their remit and demonstrating innovative practices. Locke (2001) reminds the researcher that questions asking “*who, what, when, why, how much, what for, what if or with what results?*” (p 74) are helpful in generating codes (Strauss and Corbin 1990 and 1998).

Charmaz (1990) advises the researcher to use codes and categories to “*reflect emerging ideas rather than merely describing topics*” (p 1167). The tree structure in the NVivo 8 programme was used to classify the ideas and concepts and the emerging ‘family’ nodes was both to create organisation and order amongst the data and also to assist in identifying patterns of association between the nodes.

A node is “*a way of connecting a theoretical concept or idea with passages of text that in some way exemplify that idea*” (Gibbs 2006 p 57) and guidelines written by Gibbs on good practice in creating nodes were helpful in ensuring meaningful coding:

1. *Become thoroughly familiar with the data*
2. *Always be sensitive to the context of the data*
3. *Be flexible – extend, modify and discard nodes*
4. *Consider connections and avoid needless overlaps*
5. *Record the criteria on which coding decisions are to be made*
6. *Consider alternative ways of categorizing and interpreting the data*

(Adapted from **Good practice in creating nodes**, Gibbs, 2006 p 67)

Bazeley (2007, p 74) advocates a three step process to follow in generating concepts to be stored within a node:

1. *Identify – what is interesting?*
2. *Ask – why is it interesting?*
3. *Ask – why am I interested in that?*

These questions became intuitive overtime but aided the coding process and ensured that coding was not merely a descriptive labeling process but a more holistic, considered process. The data were coded within a hierarchy of ‘family’ nodes to establish a picture of how both private firm lawyers and in house lawyers are addressing conflicts between demands on their professional role and wider organisational roles that they are embracing. Further coding was used to analyse how lawyers, the profession and organisations respond to and deal with the positioning of lawyers within an organisational context, how the remit of that role is influenced not only by its professional role but also by the organisational demands made on the delivery of its services.

The final coding stage (Selective Coding) establishes theoretical categories and unifies them around the ‘core’ category or categories. The on-going collection of empirical evidence is fundamental in challenging or verifying causal explanations for connections between the core categories and other categories that are the foundation for emerging theory:

“As the categories are developed, the researcher deliberately seeks out data that will enable verification of the properties of emerging category systems”

Langley 1999, p 700

At this stage of the coding process the emphasis is drawn towards a more reflective analysis of the data that will validate and contextualize relationships between categories and develop the conceptual, theoretical categories from which theoretical propositions emerge that may be tested against the research questions.

5.7 Categories

Theories are built from concepts arising from the data. As the sampling and data collection progressed so too did the conceptualisation of the data and over time, categories emerge. Dey (2007) describes this path leading to this categorisation process: *“We identify similarities between various features of objects and events which we use as a basis for formulating categories and assigning phenomena to them”* (p 169). Categories are the product of grounded theory principles of theory development and constant comparison of the data.

Suddaby (2006) stresses that grounded theory is an interpretive process and cautions against adopting an overly ‘mechanical’ approach to the data: *“The researcher must make key decision about which categories to focus on, where to collect the next iteration of data and, perhaps most importantly, the meaning to be ascribed to units of data”* (p 638). Grounded theory has a creative component which needs to be reflected in the researcher’s role in the data analysis. Locke (2007) insists that the imperative in grounded theory is to ‘stay close to the data’ and to derive meaning from the data. Theoretical sensitivity is critical to the emergence of theoretical categories that adequately represent empirical phenomena (Kelle 2007). Categories must not be ‘forced’. Nevertheless arguments by early grounded theorists (following the lead of Glaser and Strauss 1964) that categories should be allowed to ‘emerge’ are now countered with the more pragmatic philosophical approach that recognises the role of both existing theory and previous research in establishing a contextual

background as an anchor on which to develop empirically grounded categories (Strauss and Corbin 1990, 1994, Dey 2007). Such an approach allows the researcher to seek explanations for the interactions and consequences of a social process. Categories may subsequently demonstrate several sub categories, properties and/or dimensions and such emerging features are refined and systematically coded and further analysed and compared.

Charmaz (2006) comments that: “*Grounded theories dig deep into the empirical and build analytic structures that reach up to the hypothetical. Thus, straightforward categories about ordinary experience shine with bright meanings*” (p 151). The constant analysis, coding and comparison processes of grounded theory brought order and sense to the empirical data. Categories were created and subcategories emerged and, overtime, the researcher was able to pursue theoretical possibilities from the connections between categories and ideas.

Three categories ‘emerged’ as a consequence of the data analysis and coding processes. Once identified, these categories were named and used as a basis on which emerging theoretical concepts could be grounded (Langley 1999). The names for the categories were derived from terms that emerged from the data (Strauss and Corbin 1998). An imperative is that the named categories should indicate significant themes and issues and as a consequence draw a focus on the research questions.

The categories were named:

- 1. Fundamentals of law today**
- 2. Professional socialisation**
- 3. Service delivery**

In grounded theory the emergence of theory from the data analysis process is sought to resolve the questions defined by the research. Three research questions were identified as a consequence of the literature reviews undertaken in chapter two and three:

RQ 1 How do legal firms and law professionals process and mobilize resources as they both seek to develop services?

RQ 2 How do legal professionals encounter and resolve managerial challenges to their professional identity?

RQ 3 How does the role of the legal manager offer new ways to identify and shape opportunities for developing and delivering legal services?

These research questions encapsulate not only issues pertaining to the research aims but also tacit meanings discerned from the final interpretive analysis of the data and the theoretical possibilities within the named categories. The grounded theory approach that was adopted, and in particular the process of theoretical sampling conducted in this research, captured a range of dimensions to the research aims that are reflected in the research questions. **Appendix E** outlines the connections between data coding processes and makes transparent how the coded data links to the research aims and the contribution to theory in this thesis.

Strauss and Corbin (1994) emphasise the relationships and connections that are observed across the data are the basis of any emerging theory. Their description of theories as “*interpretations made from given perspectives as adopted or researched by researchers*” (p 279) reflects the combined influences of an inductive approach to the analysis and the role of the researcher in the constant collection and comparison processes of the methodology. The analysis of the empirical data is presented in chapters six, seven and eight and follows a grounded theory approach to qualitative research that develops context-based and process-orientated explanations of the social phenomena under research. The categories subsequently contained several sub-categories that were, in turn, systematically coded and compared. These multi-dimensional theoretical categories are discussed in detail in the subsequent chapters and empirical evidence is presented to illustrate the connections and patterns that emerge.

5.8 Summary

Grounded theory in the tradition of Glaser and Strauss (1967) represents a challenge across the spectrum of social science research from empiricism to relativism and provides a methodology that aims to address the interpretive realities of social setting and their participants. Martin and Turner's (1986) description of grounded theory as "*an induction theory discovery methodology that allows the researcher to develop a theoretical account in empirical observations or data*" (p 143) fits well with the research purposes of this project that are explored within the context of professional legal services across both private law firms and in-house lawyers. The research methodology adheres to a pragmatist underpinning in its approach and, adopting their views on social interaction and human activity, follows Dewey's recommendations to "*analyse consequences not antecedents*" (Star 2007, p 79). In line with grounded theory methodology, multiple techniques were used for collecting empirical data viz: interviews, archival research, journals, and company documents (Swan, Scarbrough and Newell 2007). The conventional criteria of reliability and validity cannot be applied to a grounded theory approach to interpretive research but Maitlis (2005) counsels that "*it is nevertheless essential to show that the findings of a qualitative study are representative of the phenomenon of interest*" (p 30).

Grounded theory is directed at the development of categories and the researcher must ask analytical questions about the emerging categories and the relationships that are observed between them (Langley 1999). The collection of empirical data was on-going during the research process and the data was subjected to constant and rigorous analysis, coding, further analysis and recoding procedures. Open coding began the conceptualisation of the empirical data and the conceptual labels that were created using the NVivo 8 programme were then further analysed and compared before the conceptual categories were created. Although these categories were subsequently refined and sub-divisions created from them it was at this stage that the emphasis turned to recognising, developing and understanding the relationships that were emerging across the categories in order to develop explanatory theories (Goulding 2005).

Suddaby (2006) robustly defends the use of a grounded theory approach to qualitative research and cites four criteria that should be adhered to by the researcher choosing to adopt such methodology. The principle analytic tenets of theoretical sampling and constant comparison of the data must be rigorously followed. The researcher must demonstrate evidence of sensitivity and receptiveness to the interpretive nature of the research process, consistency between the research questions and the methods used to answer them and the appropriate use of technical language (p 640).

Strauss and Corbin (1994) describe grounded theory as: “*a way of thinking about and conceptualizing data*” (p 275). Grounded theory has provided opportunities in this research to extend the analysis beyond the descriptive detail and has drawn the researcher towards a clear focus on developing abstract interpretations that reflect the diversity of the research aims. The following three chapters will present the empirical evidence to address the research questions, and in doing so, will demonstrate the application of grounded theory to the research process and will draw on the concepts and categories created during the analysis process to develop evolutionary theories in line with grounded theory.

Appendix E

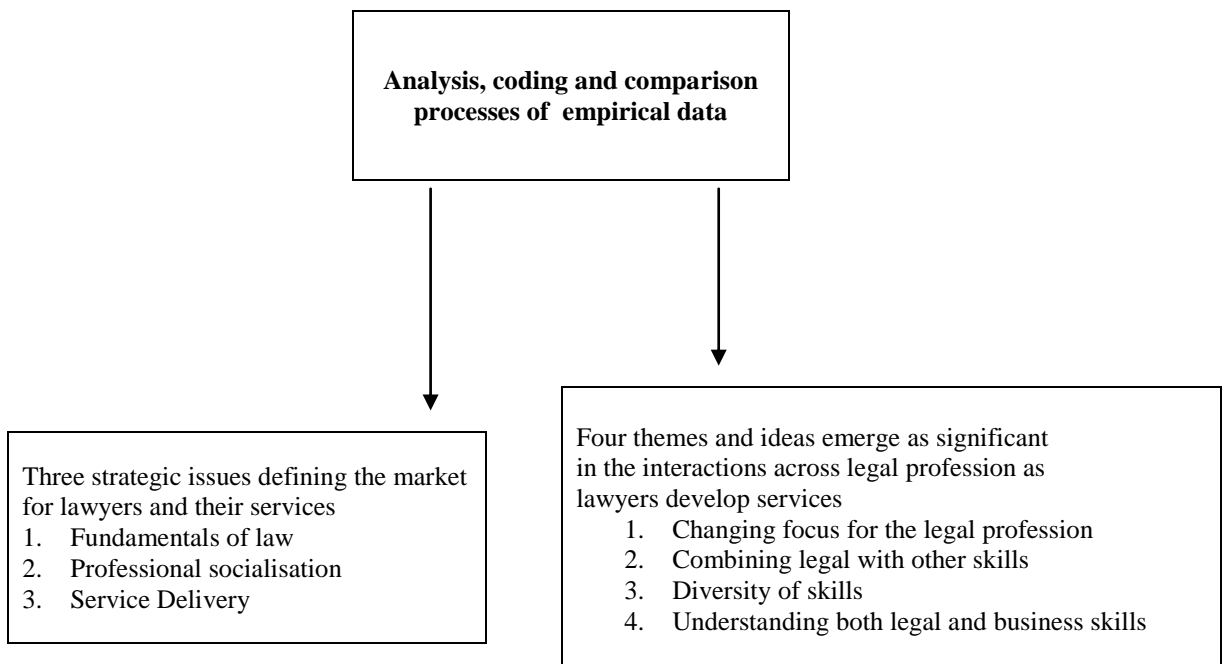
Patterns of data coding

Research aims

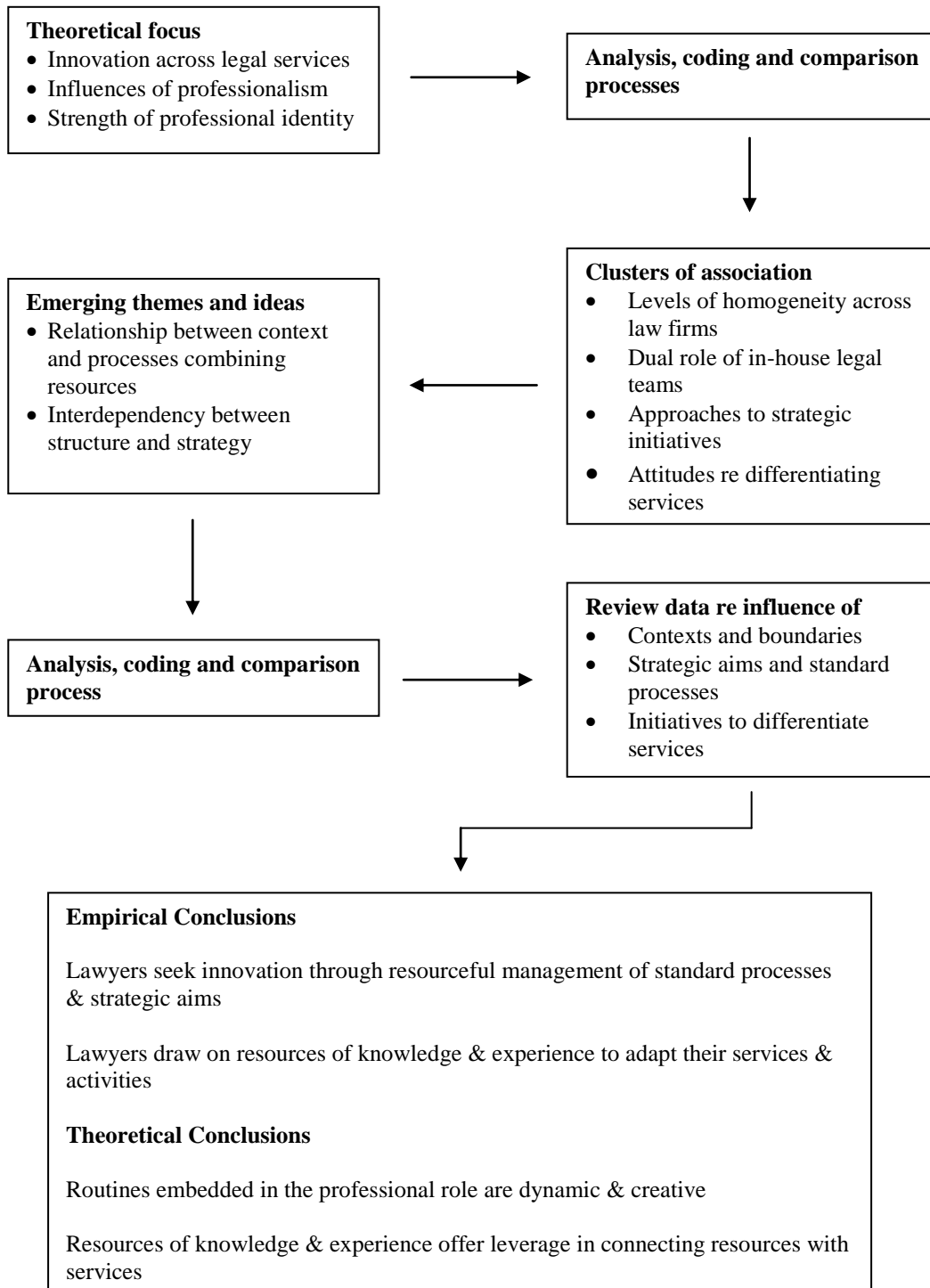
1. to contribute to understanding how firms identify and shape opportunities for developing and delivering professional services and
2. to contribute to understanding how the role of professional and manager are reconciled across the processes that shape and deliver professional services

Research Questions

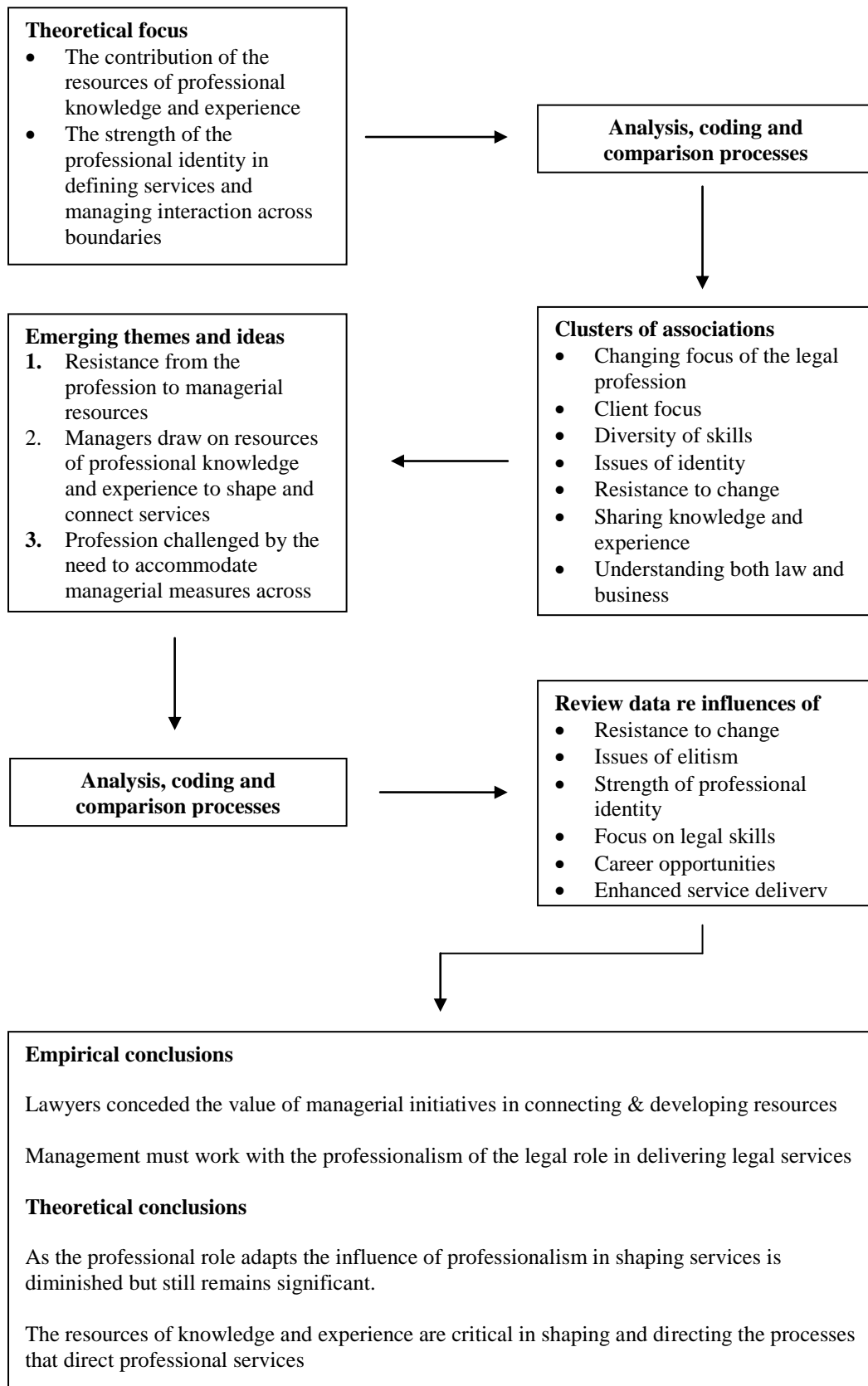
- RQ 1** How do legal firms and law professionals process and mobilise resources as lawyers seek to develop their services?
- RQ 2** How do legal professionals encounter and resolve managerial challenges to their professional identity?
- RQ 3** How does the role of the legal manager offer new ways to identify and shape opportunities for developing and delivering legal services?



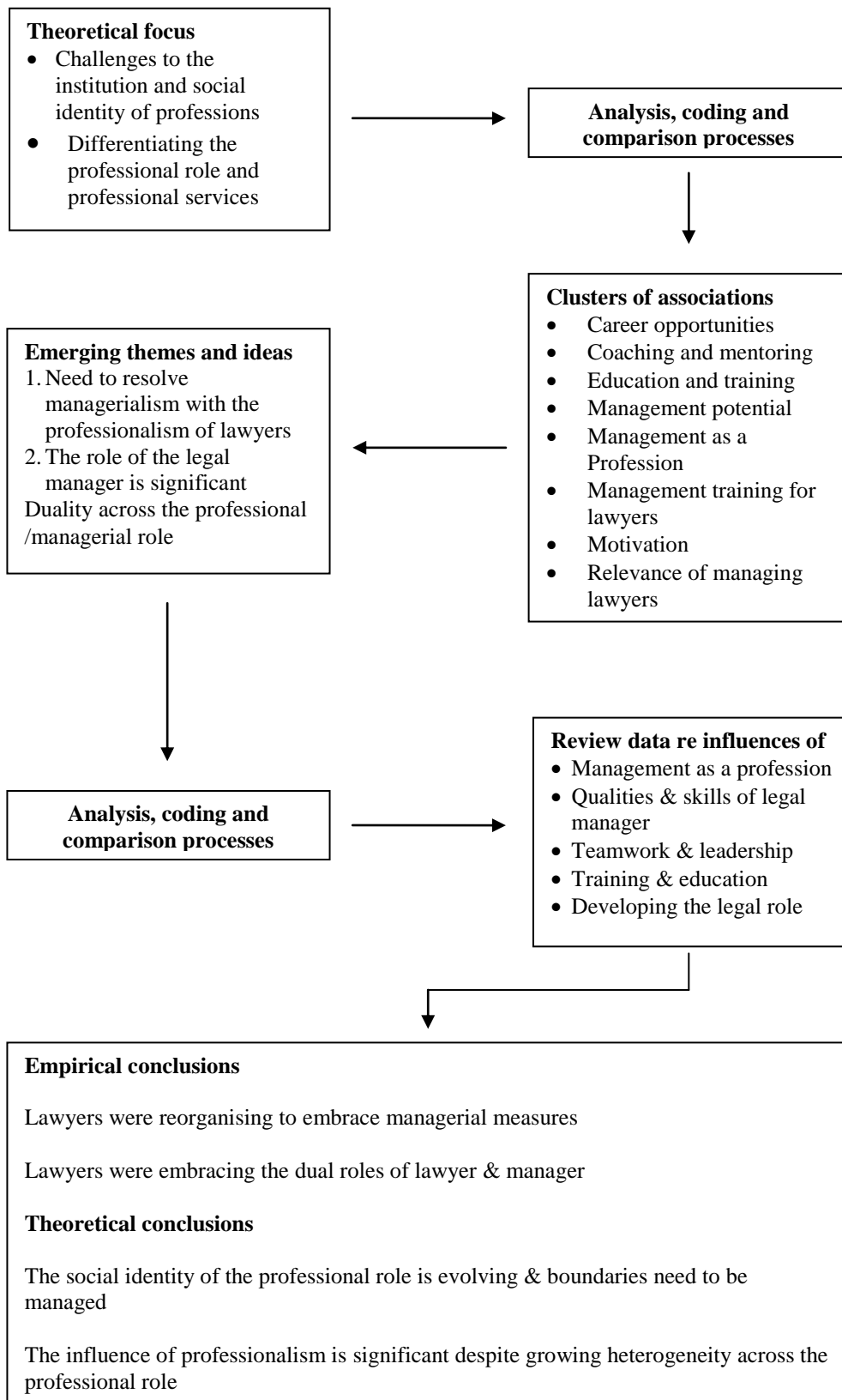
RQ1: How do legal firms and law professionals process and mobilize resources as they both seek to develop legal services?



RQ2 How do legal professionals encounter and resolve managerial challenges to their professional identity?



RQ3 How does the role of the legal manager offer new ways to identify and shape opportunities for developing and delivering services?



Chapter 6

The Delivery of Legal Services from Private Law Firms and In-House Lawyers

6.1 Introduction

This chapter commences the introduction of the empirical evidence gathered during the course of the research. The analysis of the literature reviewed in chapters two and three set the foundations of the emerging ideas that are informing this research and in doing so identified three research questions. This chapter addresses the first of those questions (**RQ1**) namely: “How do legal firms and law professionals process and mobilize resources as they both seek to develop legal services?”

Three important categories of empirical data (the fundamentals of law today, professional socialisation and service delivery) provide a framework to locate the discussion of this and the other two research questions discussed in chapters seven and eight. The interpretations and tacit understandings drawn from the array of statements, experiences and observations in the data were the focus of connections pursued across emerging themes and ideas. The legal profession exists across a range of contexts and this research reviewed private law firms and in-house legal groups as two different contexts from which legal services are delivered.

The research question derives from resource theory (in the tradition of Penrose 1959) that recognises the value to a firm from leverage drawn from a combination of resources and capabilities from which services may derive. It is framed in the knowledge that firms may gain value as processes demonstrate the ability to imaginatively deploy resources. The delivery of legal services is the consequence of

such processes and the research question implies levels of innovation in the ways through which lawyers are differentiating their services and seeking to develop their role and their services. The empirical evidence is presented across three themes that reflect not only the issues fundamental to the research question but also possible connections between emerging ideas and theoretical possibilities.

The contribution of innovation and innovative ideas emerge from the early stages of analysis as influential in the delivery and shaping of legal services. Interpretations of the evidence explore abstract ideas about the interdependent relationship observed between firms and professions. The literature reviewed in chapters two and three concluded that in a service delivery that is process driven there is a strong interdependency with resources. This research builds on that position and the ideas emerging from the data analysis data suggest that the complex relationships between firms and legal professionals is shaped by strategic interaction across processes that deliver services. However the influence of these strategic interactions is constrained by the standard processes that also direct and shape legal services.

The influence of professionalism in delivering legal services is seen as significant whilst acknowledging that professions may be challenged by the introduction of innovative measures that threaten to compromise or undermine their traditional identity and role. The culture of the legal profession and the knowledge gap that exists between lawyers and client were both highlighted in the early stages of data analysis as influential in framing and shaping legal services. This chapter will present analysis of the data across a range of recorded experiences to understand why these aspects of professionalism remain important in legal services and the extent to which their influence continues to shape legal services.

Professions exist across a range of organisational contexts but, regardless of the context in which they exist, a defining feature of professions is their tendency towards elitism and individuality which can undermine the ability of a firm to deliver innovative and professional services. Historically professions have exhibited resilience against external influences that challenge their core values but, as

discussed in chapter three, they have responded positively to pressures to innovate and compromise their traditional identity.

The initial analysis and coding of the data drew attention to the role played by the social context in shaping legal services and how those services are defined by experience and learning processes. The interpretation of these descriptive experiences presents opportunities to consider connections and implicit meanings that develop understanding and explanation in respect of changes being introduced as lawyers seek to differentiate their services.

The research question develops the focus on the processes involved in delivering services by addressing both the relationship between social context, namely firms and professions, and also an interdependency with resources that is process driven. The delivery of a legal service is carried out across a range of contexts but as law firms and lawyers seek to innovate and generate demand for their services the influence of context is balanced against the strategic aims shaping the processes that are influential in driving innovation in the delivery of a service.

6.2 Introducing the Empirical Evidence

Evidence is presented from empirical data that was collected, coded and analysed using a grounded theory research methodology and followed the principles of grounded theory discussed in chapters four and five. This chapter will present analysis of the coded data using statements and observations from the empirical evidence as the basis of interpretations of the meanings and experiences captured in the collection and coding processes. Interpretive analysis of the data will pursue theoretical possibilities as connections are made across the categories and emerging concepts.

The empirical evidence derives from a combination of in-depth face to face and telephone interviews, six professional journals (which were scrutinised over a period

of four years for information relevant to the research issues) and other complementary data sources. Grounded theory encourages collecting data from a range of sources but the interpretation of the data must reflect the research context (Goulding 2005). The legal profession in common with other professions is served by a range of professional journals that provide a forum for discussion and exchange of topical issues. Articles published in these journals provided valuable insight and direction for the research. The articles referred to in this chapter are detailed in **Appendix F**.

Two distinct organisational contexts were selected as sources from which to gather evidence to address the research question, namely private law firms and in-house legal groups operating within a wider organisational framework. The evidence from the research into private law firms and in-house lawyers was reviewed and analysed to gain a perspective on interaction across these social contexts. More specifically, the data was scrutinised for evidence that changes in organisational context had on the ability of professions to generate demand for their services and the consequences of such changes for the professions themselves.

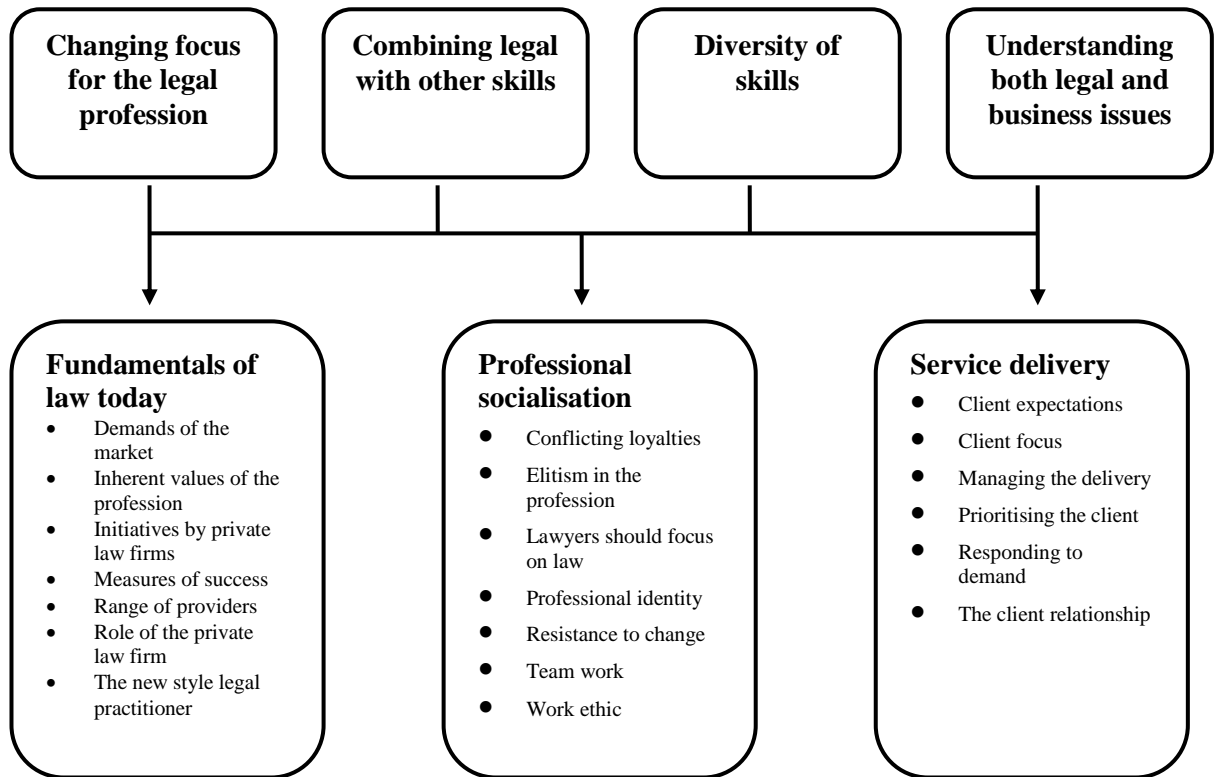
The data gathered was coded in line with a grounded theory approach using the NVivo 8 programme. Initially the data was coded within four free nodes that represented emerging themes and ideas (Graebner and Eisenhardt 2004). This initial coding is an important first step in the analytical process (Bringer, Johnston and Brackenridge 2006) and the NVivo 8 programme provided the means to organise and code the data (Turner 1983). The detailed coding processes and constant synthesis of the data highlighted four specific areas for comparison across the empirical evidence that identified with the issues explaining interactions across the profession as they sought to deliver their services (i.e the four 'free nodes' shown in **Table 6.1**). These free nodes do not presume any relationship or connection but they do represent themes and ideas relevant to the research issues. The data was then further analysed for and scrutinised for any recurring patterns and then often recoded within a family of tree nodes to reflect more definitive concepts and ideas that were emerging during

the coding process. **Table 6.1** details the free nodes and tree node ‘families’ that were used in the early stages of the analysis process.

As patterns emerged across these nodes the process of ‘theorising’ from the data could begin (Glaser 1978, 1992, Strauss 1987). The three principal ‘tree nodes’ shown in this table represent three key elements of the strategic issues that were identified as significant in defining the niche market for lawyers and their services (i.e. fundamentals of law today, professional socialisation and service delivery). Further relevant areas for comparison emerged through the constant analysis process and the synthesis of the data. These embrace issues involving opportunities to generate demand and innovate both at organisation and individual level, managing both the delivery of a service and the client focus of that service, and the role of processes that direct strategic aims.

Table 6.1

Free nodes and tree node ‘families’ used in the initial coding processes



Private law firms and in-house legal functions represent very different environments for the delivery of a legal service and within each group further distinctions exist. In order to capture an accurate picture of how both private law firms and in-house legal groups organise themselves to manage their resources and deliver services and to understand their responses to demands for their services the empirical evidence from each firm / group within the sample was reviewed across three broad themes namely:

1. Understanding the internal structure within firms / groups
2. Approaches towards strategic aims and standard processes
3. Attitudes and initiatives aimed at differentiating their services

Two different sets of coding criteria were adopted when analysing the data from private law firms and in-house legal groups. The codes reflect both the issues that emerged during the coding that were most pertinent to each context and they acknowledge the challenges and opportunities these diverse contexts present. **Table 6.2** details the named nodes used during this coding process. The constant analysis and comparison across the data identified patterns that were emerging across the empirical evidence allowing conclusions to be drawn and commentaries made in respect of the issues raised by the research question (Goulding 2005). The results of the analyses across the codes outlined in **Tables 6.1** and **6.2** are presented and discussed firstly in respect of private law firms and then with regard to in-house legal groups.

Table 6.2
Nodes used in the second stage coding processes

Private law firms	In-house legal groups
Career development	Attitude of the business to its legal team
Development role	Career development
Internal organisation	Integration into the business
Issues of autonomy	Internal organisation
Managing partner role	Level of autonomy
Managerial responsibility	Managerial responsibility
Management training	Management training
Mentoring	Mentoring
Strategic aims	Position in the organisation
Training programmes	Responsibilities of the legal team
	Role of the head of legal
	Strategic aims
	Strength of the legal identity
	Training programmes
	Value of the legal team to the business
	Value given to legal knowledge

6.3 Law Firms: a Niche Market for Legal Services

Law is a profession embedded in tradition and the delivery of legal services is the primary focus of the value driven processes within a private law firm (Hitt, Bierman, Shimizu and Kochbar 2001). Law firms are professional service firms that are in the business of providing legal services (Spar 1997). They represent a resource pool in which knowledge and expertise are the most important strategic resources but those resources must be delivered in a manner that adds value and creates opportunities for the firm (Hitt, Bierman, Uhlenbruck and Shimizu 2006). The abilities that define a professional are a combination of ‘being a professional’ and exhibiting ‘professionalism’ in their work (Fournier 1999, Hodgson 2005). If the private law firm is to flourish the legal professionals within it must be able to not only demonstrate that they are good lawyers but that they can also meet the demands of their clients and deliver to them the services they seek. A Council member on the Education and Training Board of the Law Society of England & Wales described the position thus: *“Lawyers need to be able to dance not just follow the steps”* (Interview).

The research question address the complexities and contradictions in the delivery of a service that is shaped by a combination of strategic initiatives and standard procedures which must both work with the innovative measures driving differentiation across legal services. Using data obtained from research into private law firms the relationship between context and the process of combining resources for the delivery of a professional service is examined and, within this specific social context, the issue of interdependency between structure and strategy explored.

6.3.1 Understanding Law Firms

The sample from which the empirical evidence on private law firms was gathered comprised eight law firms (both UK firms and international firms) which all operated across multiple offices. The rich and in depth empirical evidence that was obtained

from all the firms in the sample was initially coded across the codes contained in **Table 6:1** and then further coded using the codes in **Table 6:2**. Comparing the results of this initial analysis of the data a level of homogeneity was found across private law firms (**Table 6:3**). Each firm, regardless of size, was internally organised in departments or divisions along areas of legal specialism and had a firm wide strategic plan in place. With the exception of one firm (which had no management team in place), the remaining seven firms were run by a management board or team which reported to a managing partner or chairman.

Table 6.3

Indicators of levels of homogeneity found across the private law firms sampled

Eight Firms	4 UK firms of 50 - 250 lawyers across multiple offices	4 International firms of 900 – 1500 lawyers across multiple offices
Internally organised within Department or Divisions per legal specialism	✓✓✓✓	✓✓✓✓
Led by Managing Partner and/or Chairman	✓✓✓✓	✓✓✓✓
Management Board and/or Management Team in place	✓✓✓	✓✓✓✓
Strategic Plan in place	✓✓✓✓	✓✓✓✓

In order to capture an accurate picture of the issues that define the interaction between firms and professions, and lawyer and client, a more in-depth profile of each firm in the sample was compiled in respect of both the internal structures of the firms and the management of their strategic aims. The results are presented in **Table 6.4**. Reflecting the size and complexity of the four international firms in the sample, the

level of detail available for these firms was limited and the research concedes that across such global organisations the internal structure may differ and these firms will be managed both at local and global level. Nevertheless sufficient evidence was obtained to permit a profile to be created.

The private law firm is evolving from the traditional definition of a professional firm and is becoming more engaged with the processes that drive a firm's strategic aims:

“To be competitive today, we have to do more than deliver a quality professional service. That is the minimum clients expect, and rightly so. We need to provide that additional ‘something’ which makes us better than our competitors and adds value to the client relationship”

*(“Be both commercial and professional”,
Journal of the Law Society of Scotland, 1999, p 26)*

This imperative suggests that law firms should be seeking ways in which they can redefine themselves and yet adhere to the functional aspects synonymous with their profession. The coded data was analysed for evidence of a relationship (if any) between the management of the strategic aims of the firm and the internal organisation and the lines of responsibility within the firm. The aim was to determine the levels of interaction between the firm as an organisation delivering legal services and the professionals working within it and to this end it was important to compare and contrast the different internal structures in place across the sample.

Table 6.4 Profiles of Private Law Firm Sample

UK Domestic Firms	International Firms
<p>‘Andrew Bankton’</p> <ul style="list-style-type: none"> • 57 lawyers • Headed by Managing Partner • 4 Units led by a Unit Head and Business Development Partner • Management Team = Managing Partner+ Unit Heads + Director of Finance & Director of H.R 	<p>‘George Joseph Bell’</p> <ul style="list-style-type: none"> • 900 lawyers approx. • Headed by Managing Partner • Each office is headed has its own management structure led by a Managing Partner • Each Department led by Head
<p>‘David Hume’</p> <ul style="list-style-type: none"> • 96 lawyers • Headed by Managing Partner • 6 Divisions led by a Divisional Manager who report to Managing Partner • No structured management board • Strategic Plan introduced to implement changes 	<p>‘George Mackenzie’</p> <ul style="list-style-type: none"> • 1500 lawyers approx • New Governance Structure introduced April 2009 • Management Committee = Chairman + 6 partners • Partnership Board = Chairman + 12 members
<p>‘James Dalrymple’</p> <ul style="list-style-type: none"> • 200 lawyers approx. • Headed by Chief Executive • 8 Divisions led by Director • Management Board = Chief Executive + 8 Divisional Directors + 3 Management Services Directors • No Strategic Plan 	<p>‘Viscount Stair’</p> <ul style="list-style-type: none"> • 1000 lawyers approx • Headed by Chief Executive • 5 Departments led by a Lead Partner • Management Team = Chief Executive + Chairman + Chief Operating Officer (a non lawyer)
<p>‘John Erskine’</p> <ul style="list-style-type: none"> • 250 lawyers approx. • Headed by Executive Chairman • 3 Departments led by Head • Management Board = Chief Executive + 3 Department Heads + Director of Operations + Director of Business Dev. • 5 year Strategic Plan in place with 8 strategic objectives • Heads of Department to present a Business Plan 	<p>‘William Forbes’</p> <ul style="list-style-type: none"> • 600 lawyers approx. • Headed by Managing Partner • 5 Departments led by a Practice Group Head and a Work Group Head • Management Board = Managing Partner + 5 Department Heads

Evidence is presented using data from two firms within the private law firm sample. The firms ‘John Erskine’ and ‘Andrew Bankton’ had each introduced measures to restructure their internal organisation away from the traditional partnership model in which the decision making authority was shared horizontally across the partners.

‘John Erskine’

(Interview conducted with the Executive Chairman)

The firm is led by an Executive Chairman who expressed enthusiasm for his role and demonstrated a genuine desire to embrace innovative initiatives aimed at providing competitive opportunities for the firm: *“I want to be able to facilitate change across thirty six partners and two hundred and fifty staff in the firm in line with our strategic aims.”*

The firm is run by a Management Board that comprises four lawyers and, significantly, two non-lawyers, namely a Director of Operations and a Director of Business Development. The focus for the Management Board is to address strategic issues designed to fulfill the *“need to match the expectations of our clients”* but the Executive Chairman reported strong resistance for this role:

“The truth is I still have frustration with my Board that it is still easier for them to deal with operational issues rather than tackle strategic ones. It took me six months to get the Partners to accept the Strategic Plan.”

The inclusion of two non-lawyers on the Management Board was an initiative introduced to encourage a more strategic approach to developing the business but despite this the primary focus remains firmly on the professional identity of the firm with the three Heads of Department retaining responsibility for feeing and business development thereby ensuring that the barometer for measuring success within the firm remains firmly embedded in the respective department’s legal specialism. When asked if the lawyers and non lawyers on the Management Board were given equal respect from the lawyers in the firm the negative answers given by the Executive

Chairman reflected the challenges faced against the inherent dominance of the legal identity within the firm:

“They are both excellent professionals and as good in their professions as our best lawyers but yet they are not seen as equals. They have to work hard to gain credibility. If anything is not going well it is never a Head of a legal department to blame. The blame is always put on the operational side of the business. They always have it in for them.”

In an effort to refocus the direction of the Management Board he established an Operational Committee comprising himself as the Executive Chairman (legal) and the heads of all the non legal functions within the firm. Whilst clearly this was a decision taken to divert the focus of the Management Board back towards the firm’s strategic objectives it also re affirms the division between the legal and non legal professionals within the firm.

‘Andrew Bankton’

(Interview conducted with the Managing Partner)

The Managing Partner described his responsibilities within the firm thus: *“I see my role as Managing Partner as one that oversees the implementation of the whole vision and strategy for the firm.”*

This firm has put in place a Management team comprising the five senior lawyers in the firm and the Directors of Finance and Human Resources to oversee the implement of the firm’s strategic plan but the Managing Partner experienced frustrations in implementing the plan:

“This is our organisational aim but it is difficult to ‘sell’ this idea to some of the partners. This vision for the future is a difficult one for many of the lawyers. They do not want to move into unchartered waters. They want to do what they have always done.”

The firm is structured across four units each led by a Unit Head and Business Development Partner who together enjoy a substantial level of autonomy for managing their department and whose “*principal responsibility is to develop business*” thus ensuring that the imperative for growth lies firmly with the legal specialists.

Lawyers join law firms to practice law and therefore inevitably law firms compete on the technical knowledge of their lawyers and the manner and performance of the delivery of their services. The skills and expertise in a firm direct the capabilities of that firm but in order to innovate or diversify they may need to develop those skills further. The evidence suggests a trend amongst the profession away from the traditional professional firm model but nevertheless there remains an undercurrent that reflects a dichotomy between professional and commercial approaches and concern that elements of the professional identity may be compromised as a result. These tensions were observed across all the firms although the focus on professional status was more noticeable in some. The importance of managing both the lawyers and the business was consistently acknowledged but nevertheless positioned behind the delivery of legal knowledge and expertise. All the firms in the sample acknowledged difficulties in introducing new management structures, specifically from “*partners who continue to work to their own agenda*” (‘Andrew Bankton’ Interview). The firm ‘George Joseph Bell’ related that despite having a highly structured management team in place difficulties were still encountered: “*The reality is the partner will think, this is my business and I’m not having somebody tell me how to run it*” (Interview with the Director of Human Resources).

6.3.2 Strategic Initiatives v Standard Processes

If legal firms and law professionals are to successfully develop their service they must reconcile strategic initiative introduced to drive change against the standard processes in place across law firms. As the processing of resources becomes increasingly strategy driven the implications for the social relations within the private law firm framework are significant but nevertheless the strength of the professional context for managing those processes remains an obstacle that needs to be addressed. Evidence sourced from the professional journals reviewed during the research highlight and reflect the current mood across the profession:

“Unfortunately for the legal profession, many lawyers don’t have a great deal of experience coping with change nor does embracing change come easily. It is a profession rooted in the past and tradition”

*(“The future in your hands”,
Journal of the Law Society of Scotland, 2002, p 22)*

This view was reflected in comments made by the management consultant ‘Kemp Associates’ who observed: *“Sadly there are still too many lawyers who think that being in a profession is totally inconsistent with being in a business”* (Interview). A professional identity imbued with tradition and specialist knowledge is acknowledged by the profession as counter-productive and does not fit easily with the modern firm’s strategic initiatives to embrace a more business orientated approach to delivering legal services:

“In law firms, there are many obstacles to any form of planned approach, not least the reluctance of partners to give up some fee earning time to think about long term objectives. But, in the context of service delivery, new and anticipated trends – whether industrial, technological, economic or legislative – need to be filtered and synthesized almost on a daily basis. Different ways of doing things need to be identified and piloted”

(“Doing it in bulk”, Managing Partner Journal, 2004)

As firms seek to adapt their services they are looking to their lawyers to continually sharpen or acquire new skills, and to improve their overall performance and to adopt a more commercially driven approach to their work. The changing focus of law firms towards a brand consistent with a more competitive and responsive service nevertheless continues to be shaped by their relationship with the client and it is the expectations of the client that defines their strategic objectives: *“Most lawyers around the country will say the number one thing the clients want is results”* (Journal of the Law Society of Scotland June 2002, *ibid.*). Law firms are mindful that *“they (the client) want the job done and value for money”* (‘William Forbes’ Interview with Career Development Officer) and the producer/user relationship in the legal service market is defined by those demands: *“Client expectations are based upon the quality of service provided and value for money as well as recognising that the firm is putting the client needs first”* (Managing Partner Journal, 2004, *ibid.*).

Professor Stephen Mayson (Professor of Strategy and Director of Legal Services Policy Institute, The College of Law of England and Wales) in his paper on Legal Services Reform, *“Catalyst, Cataclysm or Catastrophe?”* (2007) observed that in response to demands on their services within an increasingly competitive market *“lawyers are required to ‘add value’ in the delivery of their services”* (p 1). But lawyers belong to a profession that is embedded in tradition, practices and routines that have rarely been challenged and consequently change is difficult to embrace. Nevertheless understanding issues of ‘service delivery’ and the strength of the client relationship are important both in terms of the clients’ expectations of a service and also how law firms respond to those demands (Spar 1997, Malhotra and Morris 2009).

The evidence highlights that although lawyers working within private law firms are identifying with these issues and are engaging with a more strategic approach to their services they remain constrained by the functionalism of the profession. The challenges faced by private law firms in balancing these conflicting demands were explored and a consistent pattern across the data reaffirmed that, for the private law firm, the client relationship remains the defining focus of their strategic aims. The

firms in the sample each demonstrated their commitment to a service that reflects a more standardised approach to processing their resources whilst maintaining their loyalty to their client base. At ‘David Hume’ the firm is: *“keen to generate an organisational culture across our offices”* (Interview with the Head of Human Resources) and similarly the firm ‘Viscount Stair’ commented that:

“Consistency and continuity across the firm is very important. It is inevitably a focus for an international firm to ensure its reputation” (Interview with the Senior Training Manager).

Rich and detailed evidence from the firms ‘John Erskine’ and ‘Andrew Bankton’ is again used to illustrate how private law firms are reconciling their standard processes with strategy driven aims and objectives. The quotes are taken from the interviews conducted with the Chief Executive of John Erskine and the Managing Partner at Andrew Bankton.

‘John Erskine’

During the interview with the Executive Chairman the strategic initiatives adopted by the firm were discussed. The firm introduced a four year Strategic Plan in 2005 with eight clear objectives. Interestingly the plan was adopted despite the acknowledgement that up to that time; *“we had been very successful but it was more through default”*. There was no direct imperative to implement a short term strategic plan but the Executive Chairman adopted a view that: *“When I was appointed in January 2005 I thought the business was at a size that we had to work out where the business was going”*. The rationale behind the move was drawn from acknowledging the evolving role for the private law firm: *“As law has become less of a profession and more of a business more firms are run as a business and less as a law firm”*.

This changing role required a refocusing within the firm where the imperative remained the generation of value through the delivery of services. The remit of the Heads of Department within the firm illustrates a shift in the boundaries of their role

that acknowledges this change:

“Myself (the Executive Chairman) and the Heads of Department recognise that they have been charged with the responsibility for running a business. In the past it was always assumed that you did the same amount of feeing and still managed a department. It is only fairly recently that we have recognised officially that in terms of targets the head of department will do less fee earning.”

The firm is keen to adopt a model that redefines the role of partner as a manager for a number of fee earners *“looking at what their team is generating rather than what they are individually doing”* but acknowledges that such change is difficult and counter intuitive to the professional role:

“The partners still do too much work rather than stepping back and dealing with the strategic direction of a transaction. They tend to get involved in too much detail.”

‘Andrew Bankton’

The interview was conducted with the Managing Partner who was appointed in 2002 with the remit; *“to raise the firm from its lowest ebb following a recent de –merger”*. The loss of a major client due to intransigence by some of the partners signaled an opportunity to introduce some radical change. A report commissioned by the firm *‘Moving Forward with Confidence’* laid out the strategic aims for the firm and a new internal structure was put in place in January 2005 to implement these aims recognising that: *“a joined up approach could provide lots of opportunities”*.

The focus of the firm is to build and develop the business reflecting the view of the firm that *“a law firm is a business providing legal services”*. The firm aims do so beyond the specialist remit of the four individual units or departments in the firm: *“We have tried to make the focus of our Partners’ meetings to be principally about*

strategy". Yet the focus remains an awareness of client expectations of the service they can provide: "*It's about getting to know and understand the client's business. The aim is to identify new opportunities*".

However the firm combines innovative measures with organisational aims that promote consistency across the firm and to deliver a same standard of service across the firm in what was referred to as the "*Andrew Bankton Way*":

"The more you can standardise the more the systems and processes work. We see this as part of developing the business. We aim to be innovative, responsive and offer a quality service. It is about offering a standardised but recognisable level of service to the client.

There is an organisational strategy that the Unit Head is required to put in place to ensure that the same standard of service is offered across the firm. This is our organisational aim but it is difficult to 'sell' this idea to some of the partner."

These firms had both introduced initiatives and encouraged changes that are counter-intuitive to the independence and specialisms that define the work ethic of the lawyer. This evidence confirmed a pattern reflected across the rest of the sample that law firms are increasingly rejecting the idealism of the traditional law firm, and, in doing so, uniformity is replacing individuality as the primary focus of in the delivery of a service in which "*the client always comes first*" ('James Dalrymple' Interview with a member of Human Resources).

6.3.3 Differentiating Services

If, as the evidence suggests, the delivery of a legal service from a law firm can no longer rely solely on the individual knowledge and expertise of the lawyer, then opportunities arise for firms to adopt a more integrated, organisational approach that

recognises the strengths of a firm and is not confined to the legal expertise alone. Competitive advantage may derive from differentiating their professional services. A commitment by firms to identify and promote new and more formal planned measures aimed at improved client service is nevertheless consistent with a diminished professional identity. Lawyers are struggling to reconcile their professional role and identity with strategic aims that are demanding innovation and creativity in the delivery of their service. The challenges of these conflicting demands perhaps account for a lack of evidence that private law firms have been successful differentiating the delivery of a service that derives its credibility and demand from its professional values.

In managing the relationship between resources and services private law firms are re-evaluating their internal systems and processes to achieve their strategic aims. However despite directions for the lawyers to challenge their traditional roles and to embrace innovative ideas many firms continue to exhibit a resistance to redirect their role and prefer to maintain the status quo.

At 'John Erskine' the firm attaches considerable importance to the departmental business plans that each department head is required to produce to support the firm's strategic objectives. However these plans fall short of innovative ideas to address new opportunities and the realistic interpretation of these plans is that they represent "*a bit of a wish list for each department*" and not the bold, innovative plans the Chief Executive aspires to that "*demonstrate they have a vision for that team*" (Interview with the Chief Executive).

The firm 'Andrew Bankton' looks to the department head to deliver their strategic aims. The focus within this firm is on teamwork within each departmental unit to create value for the business: "*It's about the right level with the right people and a link with the strategic plan for the future*". However notwithstanding this directive the reality reflects a similar position to 'John Erskine' and affirms an entrenched approach to delivering services that is resistance to a diminution of the legal role: "*Unfortunately the Unit Heads continue to work as they done for years. They select*

the best and most interesting jobs for themselves. They don't get that they have got to work as a team that has to move forward towards implementing the Unit Strategy. This vision for the future is a difficult issue for many of the lawyers” (Interview with the Managing Partner).

6.3.4 Emerging Picture of Law Firms

The internal structure of private law firms sets the context for the social interactions that take place within this framework. Regardless of size and internal complexity all the firms researched have introduced governance structures designed to move the firms from the traditional partnership model of shared decision making towards a more corporate hierarchal structure. Internally all the firms are departmentalised in areas of legal specialism reflecting a continued focus on the valued resources of knowledge and experience. The firms continue to be managed at partner level but levels of accountability have been introduced beyond the Managing Partner/Chief Executive role to a wider management team or board whose function is to coordinate the departments across the organisation. The evidence referred to from the firms ‘John Erskine’ and ‘Andrew Bankton’ highlights changes that are the consequence of interaction involving structuring and strategising. The structure of the different management teams across the sample suggest that, as private law firms strive to deliver their strategic aims they adopt a more integrated approach to processing their resources that favours a more integrated style of management ideas and practices. The existence of formal business plans was a natural assumption with respect to the five larger firms (reflecting their size and diversity) but significantly it was an initiative that was relatively new to the three smaller, domestic firms. However an unwillingness to embrace initiatives to adopt a more integrated, firm wide decision making approach reaffirms a degree of reluctance by lawyers to concede any part the authority or autonomy of their professional role that may be demanded of them and the law firm must defer to the influences of a profession within the firm whilst managing the objectives of their strategic aims.

Although some private law firms are presenting themselves as professional organisations that are willing and ready to embrace changes to their structures and processes and thereby differentiate themselves their focus remains on the delivery of a range of professional services demanded by their clients. Nevertheless they increasingly rely on standard processes that presume quasi-legal authority that derive from managerial initiatives that focus on consistency and efficiency at the expense of creativity.

6.4 The In-House Legal Group: an Integrated Forum for the Delivery of Legal Services

The in-house legal group represents a niche forum with a resource pool of specialist knowledge and skills from which a professional service is demanded and delivered. They are unusual, being distinct by virtue of their members' qualifications, career trajectories and continuing involvement in a profession as well as a company. Evidence gathered from a range of in-house legal groups presented opportunities to explore the influence of the relationship between the dual contexts of firm and profession and the level of interaction across these contexts and the consequences for processing resources to deliver a legal service that is driven by the demands of an organisation whilst still shaped by the values of a profession.

Traditionally the in-house legal team exists to provide a legal service to an organisation. However as the business environment becomes increasingly regulated and driven by legal issues the role of the in-house legal function is emerging as not only a forum for delivering legal services but as a function that is integrated within the organisational framework and is closely embedded with the demands of the business. The role of the in-house lawyer has become a delicate balancing act and one that demands a more commercial approach to legal issues. The data was analysed for evidence of the impact this changing role has had in respect of both the structures and processes used by in-house lawyers to process their resources and deliver their services and to determine the implications for the interaction across resources across the contextual framework that shapes those services.

6.4.1 Understanding In–House Legal Groups

Data was gathered from in depth interviews held with five in-house legal groups. These groups comprise four in-house teams which each operate within public, government funded organisations and one from a large, global organisation which has a substantial legal team functioning across many different countries and accountable to a number of different subsidiary companies worldwide. Researching such a large and diverse legal function presents valuable opportunities to understand how such diversity can be managed but does not provide substantial evidence about the organisational / in-house relationship under discussion. The data gathered from this sample was rich and provided opportunities for additional and more detailed analysis across codes from which comparisons could be made and similarities identified. Data was also obtained from a series of reports in ‘**the Lawyer**’ which profiled thirty six in–house legal functions across a spectrum of business sectors (**Appendix G**). Each report included an interview with the head of the legal function. Further evidence was provided from other journal and complementary data sources.

In contrast to the private law firm where the service delivered offers a range of options as the norm, the services delivered by the in-house team must address commercial realities and be specific and responsive to the demands of the business. The in–house legal team must present itself as a group that is in touch with the day to day issues of the business and is closely embedded with their clients. Traditionally, the in–house legal team existed to provide a legal service to an organisation but as they integrate into organisations they embrace increasingly diverse and strategising roles that demand a more business and commercial orientation. Succinctly, there is a demand for “*more sophistication in the in-house legal specialists in the primary fields of company business*” (“*In-house counsel in a globalising world*”, In-house Perspective Journal, 2008, p 25).

In–house lawyers enjoy levels of autonomy and authority that is supported by self imposed regulations and adherence to a set of accepted ‘professional norms’. They also remain within the exclusive jurisdiction of either the Law Society of England &

Wales or the Law Society of Scotland and, more specifically, they belong to the respective representative group within these regulatory authorities, namely, in England & Wales, the Commerce and Industry Group and the Scottish In-House Lawyers Group. Inevitably as the in-house lawyer becomes embedded in the business the more problematic it is to remain professionally detached and to maintain a level of independence that derives from their professional role. Clearly an in-house team needs to be focused on their clients but the distinction between business and legal advice remains a priority for them and derives from the values embedded in their professional identity. Nevertheless they must demonstrate willingness to adjust and adapt to meet challenges to demands on their services:

“The last decade has seen dramatic changes to both the status of in-house lawyers and the structure of the legal functions in which they operate. Companies have increasingly recognised the importance of the role of the in-house lawyer to the success and reputation of the business”

(“The In-House Legal Function – a Decade of Change”, In-house Perspective Journal, 2005, p 7)

In 2005 the Commerce and Industry Group Corporate Governance conducted a review of the role of the in-house lawyer and their Report (**Reconciling the Irreconcilable: Best Practice Guidelines for In-House Lawyers in England & Wales in the New Corporate Governance Environment**) confirms its consensus on the position of in-house lawyer that identifies with a new more integrated role:

“You will not be surprised to learn that our in-depth consultation with our members confirmed that the 21st Century in-house lawyer has a unique role to play in business life which encompasses being both employee and adviser, keeper of the conscience and trusted adviser, as well as the privilege of being an of the court” (p 3)

“The need for an in-house legal service is dictated by the need for businesses to have legal experts of top quality available within their corporate structure at all times” (p 14)

In a subsequent report published the following year (**A Fine Line: Further Guidance to the In House Lawyers in England & Wales on ensuring good**

corporate governance in your organization 2006) the Commerce and Industry Group acknowledge that as in-house lawyers are being given increasingly prominent roles with greater responsibilities, (specifically in areas of corporate governance) issues of identity and value commensurate with their role become confused and they urge their members to ensure their remit is clearly defined.

In the first stage of open coding, the data were analysed for evidence of initiatives and trends adopted across the groups that would reflect how each had organised themselves to address a changing focus for their professional role from the demands of their organisational position. Initially all the empirical evidence was coded under the nodes detailed in **Table 6.1** allowing for comparison and commentary on emerging patterns across the different organisational contexts of private law firms and in-house groups. Further coding using the nodes set out in **Table 6.2** enabled a more detailed understanding of the role and demands on the services of an in-house legal team to be drawn. This coding also revealed indicators of how the in-house lawyers are adapting and adjusting their services and in doing so, diversifying their remit and demonstrating innovative practices. The remit of an in-house group is influenced not only by its professional role but also by organisational demands made on the delivery of its services. Reflecting the dual role of the in-house legal group the data was analysed for answers to questions from both a professional and organisational perspective i.e:

What is the attitude of the business to its legal team?

How has the legal team integrated into the business?

How is the legal team positioned within the organisation?

What are the responsibilities of the legal team?

What is the strength of the legal identity within the business?

What value does the legal team bring to the business?

What value does the business attribute to legal knowledge?

Analysis of and comparisons drawn across the coded data highlighted three key dimensions that are influential in shaping and organising an in-house legal function:

1. the internal make up of the legal group
2. the focus of its principal responsibility and
3. the role of the head of the group as the administrator of the internal group and as the principal link with the wider organisation.

Reviewing these themes across the sample of the five groups gave insight into the consequences for the in-house legal role as in-house groups adapt and diversify their role. **Table 6.5** details the internal structure and hierarchy found within these groups and outlines their roles and responsibilities in both the legal function and the wider organisation.

1. The internal profile of the group

Each group is organised into teams or divisions, each led by a senior lawyer, along similar lines to the departments identified in private law firms. The significant difference however is that the remit of these teams was dictated by the demands of the wider organisation and their make up reflected this although there were some notable exceptions when the legal specialism was the defining feature of the team e.g. Litigation.

2. The primary responsibility of the in – house legal team

Each group described their principal responsibility to provide a service of legal advice to the business.

3. The role of the senior legal advisor within the group

A number of titles were used by the head of the various functions but each reinforced the legal identity of the group and its leader viz: Head of Legal, General Counsel, Director of Legal Services, and Legal Director. Despite the variation in choice of title the role for the head of legal function is always a clear mark of authority not only with regard to managing the department but also as the final decision maker on legal

issues. A range of other senior management positions enjoyed by the respective senior legal advisors reflects the high profile of a role that embraces not only authority and responsibility for its professional remit but also a wider, more strategic role in the wider organisation.

**Table 6.5
In House Legal Groups: Organisational Set Up**

<u>In-House Group</u>	<u>Internal Profile</u>	<u>Role of the Senior Legal Advisor</u>
<p align="center">‘Delict’</p> <ul style="list-style-type: none"> • A Division of the Government Legal Service for Scotland (GLSS) • Headed by Solicitor to the Scottish Executive • Provides legal advice to the Ministers of the Scottish Executive 	<p>Legal staff: 80 3 Groups split into 10 Legal Divisions reporting to the senior legal advisor Group A: 3 Divisions, led by a lawyer Group B: 3 Divisions, led by a non lawyer but the legal work is supervised by the senior legal advisor Group C: 4 Divisions, led by a lawyer</p>	<p>Reports to the Lord Advocate and Solicitor General in Scotland</p> <p>Chairs ‘Delict’ Management Board</p>
<p align="center">‘Contracts’</p> <ul style="list-style-type: none"> • Legal Group for a Gov. Dept. in England & Wales • A Division of the Government Legal Service for England & Wales (GLS) • Headed by the Chief Legal Advisor • Provides statutory and legal advice to the Secretary of State and the Department 	<p>Legal staff: 45 7 Divisions led by a senior lawyer reporting to the senior legal advisor</p>	<p>Director of the Department Director of Treasury Solicitors (TSol)* Sits on the Management Executive Board of TSol Legal Advisor to the Department Board Member of the Human Resources Group for the GLS Chairs the Recruitment Group for the GLS</p>

* TSol is the largest legal team within the GLS and employs lawyers across a range of Government departments, including this Department

Table 6:5 continued

<p style="text-align: center;">‘Jurisprudence’</p> <ul style="list-style-type: none"> • Central Legal Office for public service organisation • Headed by Legal Advisor • Provides legal advice to organisation network across Scotland 	<p>Legal staff: 40 8 Teams led by a senior lawyer reporting to the Legal Advisor</p>	<p>Director and Board member of ‘Jurisprudence’ Scotland Chairs Management Team Member of the ‘Jurisprudence’ Executive Management Team</p>
<p style="text-align: center;">‘Succession’</p> <ul style="list-style-type: none"> • No distinct legal group but teams of lawyers (all members of GLS) work across Divisions within Policy & Strategy, Markets & Projects & Litigation Functions • Headed by General Counsel • Provides legal advice to ‘Succession’ 	<p>Legal staff : between 80 -90 2 Functions, each employing several teams of lawyers & other staff in distinct Divisions reporting to the Head of the Division (non lawyer) Litigation Division led by General Counsel</p>	<p>Head of Profession within the ‘Succession’ Legal advisor to ‘Succession’ Board Head of Litigation Division</p>
<p style="text-align: center;">“Agency”</p> <ul style="list-style-type: none"> • Global Legal Services • Headed by Group Legal Director • Provides legal advice to all functions across the company 	<p>Legal staff – 650 approx In house functions across various subsidiary companies, headed by legal manager</p>	<p>Member of Executive Committee of ‘Agency’</p>

Comments from the five in-depth interviews (conducted with the senior legal advisor from each group) are presented below and reveal how these groups each view themselves and their role and position within their respective organisations.

'Agency'

"Lawyers in 'Agency' see themselves as microcosms within the organisation and want to run themselves like that. Different organisations within 'Agency' now operate on a global business and they represent the client serviced by 'Agency' lawyers so as they have changed this has effected how the legal function has changed."

'Contracts'

"We are essentially organised in client – facing groups but the slight difficulty is that the department re-organises itself more often and more rapidly than we can keep up with."

We are co – located with the clients and intimately involved with them. We count as specialists in terms of being a lawyer and we must have key professional skills as lawyers and then, depending on the work we are doing; we require a certain number of key skills."

'Delict'

"We are the only professional group within the organisation which has a separate professional structure and its own separate organisation. All other professions are distributed and integrated across the department. Our Divisions are not flat structures – there are hierarchal. We have resisted a number of attempts to have the lawyers embedded in Departments. The main incentive for our lawyers is recognition."

We try to measure ourselves against something – I think it helps people understand there is more than just being a good lawyer. Increasingly our clients want the lawyers to remain in their jobs - the clients like the continuity and they distrust change."

'Jurisprudence'

"We are regarded as 'non – core' but we are an essential part of the business set up in the organisation. Most of the other Divisions within Jurisprudence have an 'Executive' in charge but here (in the legal division) we would find it quite difficult to have someone who is not a lawyer in charge because traditionally lawyers like to be in charge of what they are doing – they like to have ownership of their work load."

‘Succession’

“My view is that the way the organisation has gone is the way lots of other organisations operate and they too want a different style of lawyer. It is a high profile organisation that needs good lawyers. The lawyers are embedded with their clients and the idea is that they should become more familiar with the day to day issues. At the same time they want to be able to say that they are still lawyers, still specialists and we have some value to add and we want to have thinking space.”

In addition to levels of homogeneity expected from their professional identity these in-house lawyers are embracing their additional organisational role and addressing its influence in defining their responsibilities to the business in which they are located. In developing the relationship between the legal function with its role and responsibilities to the business they support in-house legal groups have been able to adjust and adapt the ways in which they make legal services for others in their organisation, often becoming integral to that organisation’s prospecting and strategising.

Notwithstanding evidence of their strong focus on integration with the wider organisation and emphasis on building a close working relationship in-house lawyers continue to identify with the professionalism derived from their profession as fundamental to legitimising their role (Fournier 1999, Hodgson 2005). In-house legal groups represent a collective of legal professionals that embody a bank of specialist knowledge that enables decisions to be made and services delivered. Their professional identity remains a status that sets the framework of the social context within which they work, regardless of their organisational role. The legal adviser at ‘Jurisprudence’ described this embedded attitude as “*a defence mechanism*” (Interview) reflecting the individualism enjoyed by their role. The group head of ‘Delict’ explained that his group had resisted steps to integrate his lawyers within the organisation and were unique within the business as the only professional group to maintain a separate professional structure and functional group. He acknowledged that attempts had been made to co-locate the lawyers across the business but

explained the rationale for maintaining their distance was “*the strength of the professional badge*” (Interview). Distance ensured not only a loyalty to the professional standards expected of them but also reinforced the boundary across the professional and organisational context of their role (Tushman and Scanlon 1981) and provided the lawyers with reassurance of the value of their professional identity within the organisation. In-house lawyers prove to be both inspirational and resourceful in identifying a role to provide a legal service that meets their client’s expectations that is delivered from a framework defined by its professional context and that retains a degree of autonomy (Pinnington and Grey 2007).

6.4.2 Service Demanded of the In–House Legal Group

As in–house lawyers strive to retain a degree of independence that derives from their professional role conflicts arise with the demands made on them in an organisational role. Clearly an in-house team needs to maintain a focus on their clients but the distinction between business and legal advice remains a priority for them and derives from the values embedded in their professional identity.

The primary role of the in–house lawyer is to provide a legal service that is defined by their levels of knowledge and experience and shaped by the processes that engage with these resources (Scarborough 1988) and focused on delivering a service to meet their client’s expectations. Such services are delivered from a framework defined by professional context and within boundaries that serve to reinforce a degree of detachment for the legal function from the wider organisation but conversely also shape the processes that act as a conduit to the wider organisation. Describing the in-house role as necessarily “*being able to handle the demands of the business*” (‘Succession’ Interview) suggests a pressure on in-house groups to rationalise their services as a business operative. The in–house team has to balance the contradictions of their dual identity, as both professionals and organisational ‘team’ members, in delivering their services. An in-house lawyer must “*be a real world citizen with an*

open, flexible and cosmopolitan mind” (“*In-house counsel in a globalizing world*,
ibid., p 25).

Although the professional drivers behind legal services remain the primary focus in their delivery the picture emerging across the evidence indicates the profession is conceding that an understanding of business issues enhances that service and requires decisions to be taken on how to manage that work effectively. In-house lawyers must present themselves as being in touch with the day to day issues of the business closely embedded with their clients. They must demonstrate an ability to balance a role that is defined by a professional status that is both pervasive and significant with broader organisational responsibilities.

Table 6.6 presents a sample of responses taken from the series of in-depth reports on in-house groups in professional journal ‘the Lawyer’. Comments taken from reported interviews with the respective interviewees reflect not only how each in-house team view their role within the organisation but also reveal the attitude of the wider organisation on the contribution of the in-house team. The comments on the nature and remit of in-house legal services from both the business and lawyers perspectives portray a more integrated, less isolated role for an in-house function and a service that is focused on the business imperatives and is driven by the strategic aims of the business. Some groups willingly embraced the opportunities for diversity and innovation and the evidence suggests that a level of interaction across the professional/organisational framework was a consequence of greater integration and was contribution productive in processing resources and generating opportunities for innovation and development.

Table 6.6

The role of the in-house legal group

<u>Amec</u>	Interview with Head of Legal reported 18/10/04	<p><i>“It is the in – house lawyer’s responsibility to understand Amec’s commercial policies and procedures and the boundaries of commercial acceptability.”</i></p> <p><i>“The in – house lawyer has a detailed knowledge and understanding of what is commercially acceptable.”</i></p>
<u>AOL Europe</u>	Interview with General Counsel reported 30/04/07	<p><i>“Legal’s completely embedded in strategic thinking.”</i></p> <p><i>“All our lawyers are completely embedded in the corporate strategy.”</i></p>
<u>Astra Zeneca</u>	Interview with Group General Counsel reported 13/06/05	<p><i>“The philosophy of the Company is to ensure that legal expertise is in place where it is needed.”</i></p> <p><i>“Hopefully we’ve got lawyers in the right places to do what we need to do.”</i></p>
<u>Axa UK</u>	Interview with Head of Legal reported 19/02/07	<p><i>“Having legal professionals within an enterprise gives a company ‘added value’.”</i></p> <p><i>“Working within a business means that you have to take on its commercial approach to the legal issues you face and so you can provide the right solution the first time around.”</i></p>
<u>Cable & Wireless</u>	Interview with Group General Counsel reported 04/09/06	<p><i>“The ultimate goal of the company is to use the legal group to improve the level of service that clients receive”.</i></p> <p><i>“We’re looking at being more customer- focused, more accountable, rapidly accessible and a highly integrated part of the business.”</i></p>

Table 6.6 continued

<p><u>Capital One Bank</u></p>	<p>Interview with International Chief Legal Counsel reported 06/09/04</p>	<p><i>“It’s important that our lawyers are close within the business rather than being simply an independent function.”</i></p> <p><i>“We work as a team - the lines of reporting are based on a type of matrix, where horizontal and vertical lines of communication run across the business and business functions.”</i></p>
<p><u>GE Commercial Finance</u></p>	<p>Interview with General Counsel reported 09/04/07</p>	<p><i>“The role of the GE lawyer is different. Lawyers are brought in at all levels, not just to advise and manage risk but they’re also seen as partners and leaders in a growing business.”</i></p> <p><i>“We’re lucky not to be seen as an overhead for the company but as a group of people who can add experience and knowledge to help a growing business.”</i></p>
<p><u>London & Europe</u></p>	<p>Interview with Head of Legal & Compliance reported 11/12/06</p>	<p><i>“I’m looking for someone to be able to give specific, commercial advice. Private practice lawyers tend to send a report with various different options rather than telling you what to do.”</i></p> <p><i>“I’m looking to grow and enhance the team and to support the business from the legal and compliance side.”</i></p>
<p><u>Standard Chartered Bank</u></p>	<p>Interview with Group Head of Legal reported 23/07/07</p>	<p><i>“The bank has as strong focus on emerging markets, so the legal team has to have experience and knowledge of an extremely diverse range of regulatory environments and jurisdictions in general.”</i></p> <p><i>“When something at Standard Chartered is changing, ‘legal’ is included in the discussions and have much more of a pivotal role.”</i></p>

The evidence from the sample of in-house groups researched in-depth similarly revealed lawyers who identified with a role as specialists with the resources to deliver services derived from their specialist knowledge and expertise but who nevertheless also demonstrated a willingness to embrace a wider and more integrated organisational role. The groups had introduced steps to embed themselves with their clients and there were surprising but significant levels of compromises resulting from interdependencies across the dual contexts of profession and organisation.

The head of legal at 'Contracts' articulated this position very succinctly: "*We count as specialists in terms of being a lawyer and we must have key professional skills as lawyers and then, depending on the work we are doing we require a certain number of other key skills*" (Interview). So too the head of legal at 'Delict' acknowledged that the in-house legal role demands "*more than just being a good lawyer*" (Interview) and in this organisation benchmarks have been set to measure the services of his group against both professional and organisational standards. The organisation 'Succession' had recently undertaken a major internal reorganisation and the consequence for the legal group was highly significant. They no longer exist as an individual entity but they are co located across the new structure and now function as integral team members within separate divisions. The chief legal counsel was sanguine about the inevitable consequences for the lawyers: "*The organisation has revolutionised the way it is organised to be more progressive and as a result the role of the lawyer within the organisation has changed too. Under the old structure lawyers saw their role as 'providing a service' but the protection of the 'legal status' has broken down. Lawyers need to develop themselves to be able to handle the demands of the organisation*" (Interview). Nevertheless he also insisted that regardless of the changes in both their social and contextual backgrounds, the lawyers' role remains one that is primarily defined by their professional not organisational responsibilities and "*they want to be able to say that they are still lawyers, still specialists and we have some value to add and we want to have thinking space.*" Reflecting this, the lawyers still identify themselves as part of a professional group within the organisation and have a line of reporting to the senior

lawyer who performs what he describes as a ‘pastoral role’ as the Head of Profession.

Uncertainty about the role of the in-house lawyer inevitably raises questions about the nature of the service they offer. Their services come from their legal background and as such must derive from their resources of specialist knowledge and skills but as the processes that shape these services are increasingly driven by strategic aims that are commercially focused the professional dimensions to their service comes under increased scrutiny and raise legitimate concerns over issues of context.

6.4.3 Emerging Role of the In-House Legal Group

The **2005 Commerce and Industry Group Report** (ibid.) contains advice for the in-house lawyer:

“The in – house lawyer does need to stay alive to the distinction between business and legal advice, in part for reasons of privilege and in part, because it may not be in the in – use lawyer’s interest that colleagues rely on comments which are effectively proffered as good business sense (or even common sense) as if they had the character of robust and definitive legal advice” (p 19)

The imperative to embrace wider organisational issues seems very immediate and processing the resources of professional skill, knowledge and expertise in isolation now seems inadequate to meet the demands for a professional service. The ability to deliver a service that matches not only the demands of the business yet remains focused on the legal issues ensures that the role of the in house lawyer is multi dimensional and that inevitability brings with it conflict and a need to resolve issues between their combined roles. The data provided evidence of measures taken to address these issues to facilitate meaningful interaction across the professional boundary with organisational aims. Initiatives include the appointment of ‘relationship partners’ from the legal team to liaise with the heads of business divisions and the adoption of a ‘partnership scheme’ in which key senior figures

in the business were allocated a dedicated lawyer for a direct line of communication. Across the sample, feedback sought from senior management on the role of the lawyers was encouraged as a means to reinforce the role of the legal group as a support function.

The diversification of the in-house legal role reflects not only a repositioning but also a refocusing of their services that involves strategising across the business. Lawyers are demonstrating a strong sense of commerciality and an awareness of the business combined with an ability to deliver a professional service that addresses both business and legal issues. The picture emerging from the evidence suggests that if an organisation is to have confidence in the advice given by its in-house lawyers then, as legal groups seek to respond to the demands made on them, their role must evolve into one that becomes integrated into an organisation's strategising.

At 'Agency' the lawyers acknowledged that in order to work effectively within the organisation a strong sense of commerciality and an awareness of the business are essential but so too is the ability to deliver a professional service that addresses both the business contexts and legal issues in their services: *"The risk is that if the legal function always follow the business decisions, which may be right in terms of the Company, it may be open to challenge if it is right within the law"* (Interview). The attitude of the group at 'Contract' reflects their approach that whilst the lawyers recognise the need to acquire new and diverse skills to address the demands of the organisation this must not be at the expense of their legal skills and expertise which remains, for them, the defining attributes of their group: *"We count as a specialist in terms of being a lawyer and we must have key professional skills as lawyers and then, depending on the work we are doing, they (the lawyers) require a certain number of key skills that (other 'Contract' members) will need to have"* (Interview).

Organisations reorganise and reshape and so too in-house lawyers must reorganise and adapt their role. As the in-house lawyer is increasingly drawn into an organisation the influence and integrity of the role of legal professional becomes diluted and they embrace many of the features of an organisational member for

whom the professional identity has no credibility. The legal group at 'Delict' faced such challenges: *"They (the organisation) are looking for a professional service in the sense that 'this is a problem' but (following changes to the organisation) our business has been focused on a different nature of legal advice because we then moved into a core 'competence driven' administration... and increasingly we have been trying to involve more people with the strategic decision"* (Interview).

Involving the lawyers in strategic decisions demonstrates their contribution to the business and yet, notwithstanding these pressures, the professional dimension to their role remains an over arching feature of a business function whose remit is often to provide options or solutions but not to make decisions. At 'Jurisprudence' the head of the legal group was comfortable that in a potential conflict in locating a dual role for the lawyers the professional dimension to their role remains an over arching feature of a business function whose remit is often to provide options or solutions but not to make decisions: *"We are not in the normal think tank of taking the strategic 'Jurisprudence' forward but that doesn't mean we are not involved in the process so we are required to contribute sometimes on a level of 'what do you think?' etc. Often we are consulted by head office on certain aspects – but we are not involved in the whole picture – but that is fine because it is not our job to run the service"* (Interview).

Whilst in-house lawyers are reorganising themselves to embrace challenges from demands expected of their role they continue to relate to their professional influences. The in-house lawyers work hard to maintain a complex status quo for their group, confident that they are part of: *"is a high profile organisation that needs good lawyers"* ('Succession' Interview).

6.5 Analysis

As law firms and lawyers seek to develop their services they do so in ways that both balance the dual imperatives of firm level strategic aims and the standard processes

synonymous with legal services and acknowledge the strength of the interdependent relationships between firms and professions and lawyer and client that continues to influence the delivery of legal services. These issues are the focus of the analysis and discussion of the empirical evidence presented in this chapter.

The research question addressed in this chapter asks: “How do legal firms and law professionals process and mobilize resources as they both seek to develop legal services?” They do so by addressing the strategic aims demanding innovation in their services whilst simultaneously working with the standard processes that remain fundamentally core to legal services. Whilst potential conflict balancing these two conflicting processes might have been expected, law firms and lawyers have proved resourceful and demonstrated that as they seek to diversify their services beyond their traditional remit innovation may be successfully introduced. Private law firm lawyers and in-house lawyers are restructuring and reorganising themselves by adjusting and adapting themselves to meet the challenges presented to them and in doing so they differentiate themselves and consequentially the processes that deliver innovative services. As their services diversify and become more integrated lawyers are being introduced to policy and decision- making opportunities.

However any initiatives introduced to innovate legal services are challenged and constrained by the cultural values that legitimise the profession and which remain highly influential in shaping those processes whereby lawyers seek to restructure and differentiate themselves. The research found common characteristics and features across both private law firms and in-house legal groups. All lawyers, irrespective of where they are located, offer services that embrace their valuable resources of expert knowledge and skills and are shaped by the values that legitimise their role. As lawyers participate in increased levels of interaction across organisations they adapt their activities but do so in ways that they retain authority over their day to day work.

Resource theory defines the firm in terms of its resources and understands that firms differ in their resources and may derive aspects of their identity from differences in their resources. Ahuja and Katila (2004) observed elements of heterogeneity in firms

that were the product of their resources and the consequence of their responses to idiosyncratic situations but such distinctions are not immediately apparent in the sample in this research. This was perhaps surprising given the pressures faced by lawyers to fulfill the challenges of strategic drivers to innovate and develop their structures and services. Nevertheless legal services are delivered from a framework within which there is an embedded and implicit knowledge base that is resistant to change (Montgomery and Oliver 2007). This was reflected in the significant levels of homogeneity found across the sample and demonstrated both by common characteristics and features and through adherence to familiar structures and processes in the delivery of their services. Scarbrough (1998) and (Baker and Nelson 2005) recognised that firms are empowered by their ability to connect with their resource base. This research concludes that both private law firms and in-house lawyers demonstrate capabilities to manage their resources and, significantly, thereby generate processes that effectively combine their resources and deliver innovative and creative services.

The essence of a profession is the nature of its work and not the organisational framework within which it operates (Abbott 1988) and, regardless of context, the legal profession continues to be defined primarily by its legal abilities derived from its specialist knowledge and skills and by the services it provides. Whilst expertise and specialist knowledge distinguishes the profession (Abbott 1988) it nevertheless is the processes by which those skills are delivered that define it. As anticipated evidence was found of historical and idiosyncratic processes that have developed through a combination of resources and interaction across social functions and shaped by the subjective influences of experience and context (Rugman and Verbeke 2002, 2004 and Ford and Hakansson 2006). These present the lawyers with established and familiar routines and systems on which they can build a relationship with their resources in a manner that is strategically valuable (Araujo and Spring, 2006). The influence of professional barriers and differences in norms and values were evident and were recognised as inhibiting the promotion of new and creative ideas (Rashman, Withers and Hartley 2009) across the processes for service delivery although their influence was discreet and rarely openly confrontational.

The analysis of the data identifies with the argument that, whilst the nature of a professional's work does not determine and shape all aspects of their work, the nature and conduct of their work does explain the structure within which it is delivered (Malhotra and Morris 2009). Malhotra and Morris observed that as lawyers integrate into non-professional organisations their activities are not framed exclusively by the scope of their expert knowledge and skill and the evidence from the in-house lawyers confirmed this. Pinnington and Gray (2007) argue that restructuring occurs partly to meet to meet changing requirements and the initiatives adopted across the sample reflect a degree of responsiveness by the lawyers that embrace such demands on their services.

As private law firms restructure and introduce more strategic approaches to their services, they too have introduced measures to further integrate lawyers in policy and decision-making. The expectation is that the legal professional should deliver not just a professional service borne out of their legal knowledge and expertise but also to participate in delivering on strategic aims, and innovations. The analysis highlighted clear levels of interaction and interdependency between the dual contexts of firms and professions that have emerged as a consequence of these new drivers but, despite the underlying imperatives to break down institutional barriers to processing resources across the social divide, they remain a powerful and important feature in shaping and processing the resources.

6.6 Concluding Remarks

The research question addresses the role of professions in mobilising resources as lawyers seek to develop and innovate their services. This chapter has found that legal firms and lawyers are naturally resistant to change yet they demonstrate a resourcefulness to adapt and diversify their role and their services within a framework of professionalism that continues to define them. Lawyers are instructed by clients demanding a competitive and responsive service yet those same clients remain committed to the expectation of a service that is defined by a level of

specialist knowledge and experience that is the essence of their relationship with the profession.

The literature recognises that firms are able to innovate, adapt internally and embrace external changes as a consequence of the successful processing and allocation of their resources and acknowledges that, whilst the influence of both social relations and institutional context are not critical, they are nevertheless significant in shaping and processing resources. This chapter has sought to build on the existing theoretical position and to explore ideas around interdependency arising from interactions across two co-existing contexts (firms and professions) and the impact of that relationship for processing resources and to also examine the empirical evidence for the impact of changes in social context on the demand for professional services and the implications for processing the resources that define and shape those services.

Regardless of the context within which they are located lawyers continue to identify with their primary role and responsibilities in making and delivering legal services. High levels of specialisation and an imbalance in knowledge in the producer/user relationship combine with the experience and learning processes that define both the mode and context of legal services. The emergence of signs of innovation and creativity in these processes suggests that as lawyers embrace new and differentiated roles their influence will extend beyond the framework of their traditional remit and raises interesting questions as to how they will respond to the challenges presented to them.

Appendix F

List of journal articles referenced in Chapter Six

Journal of the Law Society of Scotland

“Be both commercial and professional” (1999), November, p 26.

“The future in your hands” (2002), June, p.22.

Managing Partner Journal (www.mpmagazine.com)

“Doing it in bulk. Lessons in service delivery from the bulk providers” (2004), Vol. 7 (3), posted 27 July.

The In-House Perspective Journal

“In – house counsel in a globalising world” (2008), Vol. 4:3 pp. 23-27.

“The In House Legal Function – a Decade of Change” (2005), Vol.1:2 pp.7-13.

Appendix G

In-House Legal Groups reviewed in ‘The Lawyer’

Organisation	Sector	Legal capability	Title of Head of Legal
Amec (The Lawyer 18/1/04)	Management & Services	10	Head of Legal
AOL Europe (The Lawyer 30/04/07)	Media & Technology	16	General Counsel
Astra Zeneca (The Lawyer 13/06/05)	Pharmaceuticals	85 lawyers & 65 patent attorneys	Group General Counsel
Axa UK (The Lawyer 19/02/07)	Insurance	27	Head of Legal
Barclays Bank (The Lawyer 04/07/05)	Banking & Financial Services	250	Head of Legal
BEA Systems (The Lawyer 30/10/06)	Software IT	10	General Counsel
BMA (The Lawyer 02/10/06)	Medicine	6	Director of Legal Services
British Energy Group (The Lawyer 19/09/05)	Utilities	10	General Counsel
Cable & Wireless (The Lawyer 04/09/06)	Telecommunications	54	General Counsel
Canon Europe (The Lawyer 22/01/07)	Technology	28	General Counsel
Capital One (Europe) (The Lawyer 03/04/06)	Finance	20	Head of Legal
Capital One Bank (The Lawyer 06/09/04)	Banking	12	International Legal Counsel
Christian Salvesen (The Lawyer 27/11/06)	Logistics	4	Head of Legal and Company Secretary
Collins Stewart Tullett (The Lawyer 20/03/06)	Finance	6	Legal Director
De Beers (The Lawyer 14/08/06)	Mining & Minerals	14	Manager of Legal Services
Gartmore Investment Management (The Lawyer 20/08/07)	International asset management	9	General Counsel
Hackney Learning Trust (The Lawyer 12/02/07)	Education	5	Head of Legal
GE Commercial Finance (The Lawyer 09/04/07)	Financial Services	65	General Counsel
InBev (The Lawyer 20/02/06)	Brewing	70	General Counsel
Kirklees Metropolitan Council (The Lawyer 16/04/07)	Local Government	60	Head of Legal Services
London & Europe (The Lawyer 11/12/06)	Financial Services	4	Head of Legal

Monsoon (The Lawyer 27/06/05)	Retail clothing	2	General Counsel
Naval Legal Service; Royal Navy (The Lawyer 05/02/07)	Defence	40	Head of Legal
Northwest Urban Development Agency (The Lawyer 23/04/07)	Public Sector	3	Head of Legal Services
Philip Morris International (The Lawyer 18/10/04)	Tobacco Industry	100	Head of Legal * Non lawyer
Reuters (The Lawyer 17/07/06)	Media	31	Legal Director
Rexam (The Lawyer 29/01/07)	Packing	13	Director of Legal Affairs
Royal Bank of Scotland (The Lawyer 22/05/06)	Banking	330	General Counsel
Royal & Sun Alliance (The Lawyer 10/03/08)	Insurance	12	General Counsel
Sainsburys plc (The Lawyer 03/03/08)	Retail	25	Head of Legal Services
Scottish Water (The Lawyer 14/03/05)	Utilities	6	Head of Legal
Standard Chartered Bank (The Lawyer 23/07/07)	Banking	170	Group Head
Starbucks (The Lawyer 10/07/06)	Retail	45	Legal Director
Sun Gard (The Lawyer 09/10/06)	Technology	10	General Counsel
T Mobile (The Lawyer 30/01/06)	Mobile Communications	20	Legal Director
Transport for London (The Lawyer 30/07/07)	Transport	33	Director of Legal & Compliance

Chapter 7

Professions Encountering Managerial Challenges

7.1 Introduction

This chapter addresses how, in response to challenges from the introduction of managerial initiatives across their services, legal professionals are redefining their traditional role and institutional identity without comprising the legitimacy of their role. The second research question (**RQ2**) asks: “How do legal professionals encounter and resolve managerial challenges to their professional identity?” As lawyers face challenges from increasing levels of managerialism across their services the research question examines: (i) the implications for the relationship that exists between lawyer and client, (ii) the value of their specialist knowledge and experience and (iii) the inevitability of increased managerial processes in shaping and delivering legal services.

The service demanded of the legal profession is “*directed at perfection not creativity*” (Quinn, Anderson, and Finkelstein 1996 p 72) and, regardless of its orientation, remains client focused and defined by the social interaction in the lawyer/client relationship. As the legal profession adapts and responds to the demands and influences of changing societal contexts it has conceded the authority and constraints of some functional aspects of its profession (these were discussed in detail in chapter three). Such concessions have made the profession vulnerable to the managerial processes that drive the strategic processes delivering services. The emergence of increased managerial processes may be the inevitable consequence of client driven demands that are shaping the manner and mode of professional legal

services. The research question is drawn to the issues of delivering a service that addresses both the professional dimensions of the services and the essence of the lawyer/client relationship.

The conventional services demanded of the legal professional provide limited opportunities for leverage. The literature discussed in chapters two and three is clear that, although different professions exist across a range of contexts and are organised in different ways, it is the professional dimension to a service that shapes both the conduct of the work and the service provided (Suddaby and Greenwood 2005, Malhotra, Morris and Hinings 2006, Malhotra and Morris 2009). The influence of professional barriers and differences in norms and values may inhibit the promotion of new and creative ideas (Rashman, Withers and Hartley 2009). Embracing Weber's rationalist approach to professions that describes knowledge as the driver for growth within a firm, this chapter will address the resources of knowledge and experience, each generated from professional capital, and will review the value to a firm that can be created from leverage and interaction across these resources.

Whilst institutional identity remains important to professionals in reinforcing "*the desire of individuals to enhance their distinctiveness*" (Montgomery and Oliver 2007 p 676) as the legal profession grows increasingly heterogenic the identity of the professional derives not only from the institutional context but also from the social environment in which it exists. The consequence of repeated interactions across the social and institutional boundaries has influenced changes in both the nature of the demand and the mode of delivery for legal professional services. The external influences of regulatory bodies and professional associations, together with the guidelines of professional rules and codes of conduct, remain influential in directing professional knowledge. Significantly their contribution across a profession that is adapting and diversifying its role provides opportunities whereby these organisations can assist in legitimising such changes (Robertson, Scarbrough and Swan 2003). The analysis of the empirical evidence presented in this chapter addresses the complexities and challenges of balancing the potential that changes to

legal service delivery have introduced against the focus of retaining levels of professionalism that are synonymous with the role and identity of lawyers.

7.2 Introducing the Empirical Evidence

As outlined in the preceding chapter the empirical evidence was collected from both private law firms and in-house lawyers, representing two distinct contexts from which legal services are delivered. In deference to the issues fundamental to the research question under review, empirical evidence obtained from additional sources, namely samples across professional organisations and regulatory bodies (**Appendix G**) and also a selection of management consultants (**Appendix H**) whose knowledge and experience is specific to the legal profession is also presented here. The professional organisations researched are a collective representation of the public persona of the legal profession whose activities and contributions, whilst perhaps not widely known, are nevertheless carried out in the public domain and are therefore open to scrutiny and challenge. These organisations also play an important and significant role as the regulatory and disciplinary authorities for the profession monitoring acceptable standards, norms of behaviour and codes of conduct. Aside from these roles they represent and promote the interests of the profession. In this capacity they are closely in touch with the pertinent day to day issues of the profession and instigate reviews and audit opinion, both internally and externally, and their reports and commentaries provide useful insight. Similarly data obtained from the sample of management consultants, derived from a combination of interviews, journal articles, books and website information, collectively provided useful empirical evidence with reference to the research issues. In particular the evidence obtained from this section of the data sample provided insight from a slightly ‘detached’ viewpoint. Whilst closely aligned to the profession their role is nevertheless external and as such the evidence introduced a contrasting dimension to the research issues and specifically highlighted how lawyers derive their identity and role from both the nature and place of their work.

Similarly the articles from the professional journals referenced in this chapter (**Appendix J**) provided a useful source of data on topical discussions highlighting the experiences of the profession as lawyers encountered the introduction and imposition of management initiatives to their services.

All the data was coded, analysed and, where necessary, recoded, and comparisons drawn across the findings, in line with the grounded theory methodology adopted. Initially the data was coded under free nodes (**Table 7.1**) that specifically searched the data for evidence of the level of awareness amongst the profession to issues raised by the research question and also for evidence of a range of responses. These free nodes did not presume any relationship or connections across the data but they served as useful storage for ideas and raised awareness of emerging concepts and themes across the data.

Table 7.1

Free nodes used in the analysis of the data
<ul style="list-style-type: none"> • Changing focus of the legal profession • Client focus • Diversity of skills • Issues of identity • Resistance to change • Sharing knowledge and experience • Understanding both law and business

7.2.1 Emerging Themes and Ideas

A recurring theme emerging from the analysis of the data suggested that not only was there considerable resistance from the profession to managerial initiatives but, where measures had been introduced and accepted, lawyers were often unsure how to

either respond to or alternatively accommodate these changes in managing their service delivery. The NVivo 8 programme allows for flexibility in the coding process encouraging further, deeper analysis of the data and the creation of an organisation of coded data within a family of tree nodes (Bazeley 2007). The constant analysis and comparison of the data identified more emerging themes and ideas which provided points of reference for coding the data within a ‘family’ of tree nodes (**Table 7.2**).

In grounded theory the focus is not on ‘identifying’ codes but on theoretically coding the data to explain how codes may relate to each other (Glaser 1978, 1992, Strauss 1987). Mindful of the rationale behind the coding process in a grounded theory approach, the final stages of coding embraced a reflective analysis of the data in order to build multi-dimensional theoretical categories. Resistance from within the profession was identified across issues of elitism, resistance to change and a strength of feeling that, having trained for a professional role, they, the lawyers, should maintain a focus on legal skills in their work. However these attitudes were balanced by evidence that the introduction of managerial measures were positively reflected in terms of service delivery and enhanced career opportunities for the lawyers. The picture emerging across the data suggested that whilst the legal professional role remains defined by specialist knowledge and experience and its services continue to be shaped by aspects of professional socialisation that define its identity, it is nevertheless being challenged by increased levels of interaction across boundaries that may diminish the contribution of these assets.

Table 7.2
Families of tree node ‘families’ used in the analysis of the data

<p>Career Opportunities</p> <ul style="list-style-type: none"> • Attitudes and initiatives • Combining legal and management skills: <ul style="list-style-type: none"> ○ leadership skills ○ pre eminence of legal skills • Diversifying • Support and encouragement • Thinking strategically 	<p>Education and Training</p> <ul style="list-style-type: none"> • Acknowledgement of value • Initiatives by private law firms: <ul style="list-style-type: none"> ○ developing future leaders ○ training and development support • Learning from experience • Sharing knowledge and experience: <ul style="list-style-type: none"> ○ resistance to sharing • Transferability of skills
<p>Fundamentals of law today</p> <ul style="list-style-type: none"> • Conflicting loyalties • Elitism in the profession • Lawyers should focus on law • Professional identity • Resistance to change • Team work • Work ethic 	<p>Service delivery</p> <ul style="list-style-type: none"> • Client expectations • Client focus • Managing the delivery • Prioritising the client • Responding to demand • The client relationship
<p>Managing the delivery of services</p> <ul style="list-style-type: none"> • Managing a team • Team work • The role of the partner in private practice • What is needed from leadership 	<p>Professional socialisation</p> <ul style="list-style-type: none"> • Demands of the market • Inherent values of the profession • Initiatives by private law firms • Measures of success • Range of providers • Role of the private law firm • The new style legal practitioner
<p>In House Lawyers</p> <ul style="list-style-type: none"> • Attitude of the business • Integrating lawyers into the business • Strength of legal identity • Value of lawyers’ knowledge 	

7.3 Knowledge and Experience

The early stage coding process ‘captured’ the role of knowledge and experience as significant players in the delivery of service that is bounded by aspects of professional socialisation. Data is presented to illustrate the connections across categories and to develop emerging theoretical concepts and, in doing so, explore the issues around the research question.

A resource theory perspective that “*encourages a shift in emphasis toward the inherent characteristics of employee skills and their relative contribution to value creation*” (Lepak and Snell 1999 p 34) provides the framework to understand the implications for the delivery of a service generated from the resources of knowledge and experience that resonates with professions and professionals. Knowledge comprises not only skill and ability but also a range of experience based learning and taught knowledge that is shaped by both context and external influences. Notwithstanding the evolving role of the legal professional the concepts of professionalism that are tied into their specialist knowledge remain inseparable from their roles and responsibilities (Malhotra and Morris 2009).

The data was analysed for evidence to explain the role of the resources of knowledge and experience (derived both directly and indirectly from the role of a legal professional regardless of organisational or social context) and to explore their influence on the processes that drive the delivery of legal services. Moreover the data was scrutinised for signs of any change in attitude towards professional knowledge and experience and if so, how these changes are influencing the processes delivering services.

7.3.1 Contribution of Professional Knowledge and Experience to Legal Services

Lawyers compete on their knowledge and their performance. The skill and ability demanded of them derives from a combination of both taught, codified knowledge and experience-based learning (Hitt et al 2001). The Law Society of Scotland's 2008 consultation paper, "**DISCUSSING THE DETAIL...Paper 1: A consultation on the future of pre-qualification legal education and training in Scotland**" provides a useful précis of the role and value of knowledge in the context of the legal profession:

"Knowledge and skills must be taught within the value system of the profession. Values such as integrity, industry, service and duty, wisdom, compassion, accountability and responsibility, all of which underpin professional relationships and activities – these values are part of the essential context of knowledge and skills, and must be acknowledged as such. Knowledge and skills are part of professional behaviour" (p 31)

Knowledge in this context derives from the role of the legal professional and the value of the knowledge is directly correlated to its 'professional' status. There is considerable value in the resource of knowledge and potential for processes to be shaped through the imaginative and creative contribution of knowledge (Spender 1996). Traditionally law has been a knowledge-intensive profession and the processes whereby assets derive from knowledge are embedded within the systematic routines of the professional role (Starbuck 1992, Quinn et al 1996). The professional codes of practice (**Law Society of England & Wales: Solicitors Codes of Conduct 2007, Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008**), combine with routines and informal codes of conduct that are often entrenched and difficult to challenge but they nevertheless reinforce legitimacy for professional conduct and behaviour.

The range of data sources was reviewed in order to gather a wide and diverse range of opinions and views on the role and application of knowledge within a professional context. The journal sources provided useful topical insight on the role

of knowledge reflecting current attitudes within the profession. Valuable empirical evidence was also obtained from those who are on the periphery of the profession but nevertheless have vested interests in the professional role and services, specifically data collected from management consultants who advise and train lawyers in service delivery and are well positioned to comment on the client perspective of professional knowledge. Similarly the analysis and constant comparison across the coded data revealed patterns in the data that highlighted the sphere of influence attributed to experience in the delivery of legal services.

The second stage of the coding process using the families of tree nodes in **Table 7.2** was influential in identifying patterns across the data that highlight the value and contribution of both knowledge and experience in the delivery of legal services. **Table 7.3** records these observations and provides examples from the empirical evidence to affirm them. The evidence suggests that clients have recognised and are taking issue with complacency amongst the profession that extends across their knowledge base and that may result in levels of mediocrity in their services. Clients' expectations of a legal service are directed towards seeking solutions: "*They (the clients) are looking for a professional service in the sense that **this is a problem***" ('Delict' Interview with the Head of Legal). Lawyers acknowledge that and recognise that: "*They (the clients) want the job done and value for money*" ('William Forbes' Interview with Career Development Officer). Demonstrations of their knowledge and experience reassure clients' expectations in respect of the quality and standard of service provided.

Table 7.3
Observations on the contributions of knowledge and experience

Observation	Evidence	Source
<p>Knowledge in the context of the legal profession not only shapes the role of the professional but also distinguishes the lawyer and differentiates the professional role</p>	<p><i>“In legal practice there has traditionally been a focus on explicit knowledge”</i></p> <p><i>“The lawyer’s knowledge of how the law works in practice helps them judge the business big picture, find solutions quickly and give sensible direction to business”</i></p> <p><i>“It is the ability of professional advisers such as lawyers, to fashion a solution to the most complex challenges that marks the best from the rest”</i></p>	<p><i>“Knowledge – management tools in legal practice”</i> Managing Partner Journal 2004 Vol. 6 Issue 9</p> <p><i>“Switching Channels”, Journal of the Law Society of Scotland 2006, July p 22</i></p> <p><i>“Lessons in service delivery”, Managing Partner Journal 2004 Vol. 7 Issue 3</i></p>
<p>The value attributed to knowledge connects both to the professional role that embraces knowledge and the professional capacity in which it is used</p>	<p><i>“It is a truism that the competitive advantage for professional service firms lies in the abilities of its people”</i></p> <p><i>“We don’t compete on the basis of technology or products but on the performance and technical knowledge of people”</i></p> <p><i>“The intellectual capital of these organisations is what differentiates them from each other and presents the value proposition to clients”</i></p>	<p><i>“Opportunity knocks”, Journal of the Law Society of Scotland 2004 September p 32</i></p> <p><i>“Leading and learning”, Managing Partner Journal 2007 Vol. 10 Issue 3</i></p> <p><i>“People are our key assets – really?” Managing Partner Journal 2003 Vol.5 Issue 10</i></p>
<p>The client (as both the receiver and benefactor) views knowledge as a dominant feature of and validation for the lawyer’s role and an essential contributor to its professional identity</p>	<p><i>“Lawyers are rewarded for their professional legal competence, for getting things done and demonstrating professional expertise”</i></p> <p><i>“The firm’s fee earners have to be both competent and credible based on their knowledge, skills and experience”</i></p> <p><i>“They have had a monopoly on a body of knowledge and title and status that has allowed them to say I am the expert”</i></p> <p><i>“When clients complain or compliment the firm, it is rarely about a lawyer’s knowledge”</i></p>	<p>‘Rankine Associates’ Interview with management consultant</p> <p>‘Kemp Associates’ Interview with management consultant</p> <p>‘Mc Bryde Associates’ archive</p>

Table 7.3 continued

<p>Changes in attitudes towards the influence of knowledge in the professional role are initiating a re - evaluation of its contribution</p>	<p><i>“The firms and lawyers who do well are those who combine many different attributes and have many different areas of knowledge and expertise”</i></p> <p><i>“Although the emphasis is still on legal skills they (the clients) are beginning to look for other skills”</i></p>	<p>Law Society of England & Wales Interview with the Council Member for Education and Training</p> <p>‘Rankine Associates’ Interview with management consultant</p>
<p>All knowledge demands a tacit element that draws on experience that is context dependent and often ad hoc</p>	<p><i>“Learning as we go along is not formalised or regulated in any way and this means we often are not able to appreciate what we have actually learned”</i></p> <p><i>“In the context of service delivery, new and anticipated trends need to be filtered and synthesized almost on a daily basis. Different ways of doing things need to be identified and piloted”</i></p>	<p>Leader of the Continuing Competence and Professional Development Project quoted in Law Society of Scotland in Journal of the Law Society of Scotland, 2008 April p 34</p> <p><i>“Maximising the benefits”</i>, Managing Partner Journal 2002 Vol. 4 Issue 8</p>
<p>A lawyer’s experience is the visible means by which the functional role of the professional is validated</p>	<p><i>“Lawyers are generally quick on the uptake and well used to lots of things being thrown across their desk at one time. The lawyer’s knowledge of how the law works in practice helps them judge the business big picture, find solutions quickly and give sensible direction to the business”</i></p> <p><i>“Lawyers have this two-edged sword, On the one hand, they benefit from a regulated society because they advise and prosecute and defend. On the other hand, they are victims of this regulated environment. And we’re regulating the sense of enterprise and entrepreneurial flair out of our society”</i></p>	<p><i>“Switching Channels”</i>, Journal of the Law Society of Scotland 2006 July p 22</p> <p><i>“Keeping up with Jones”</i> The Lawyer 23/01/06 p17</p>

The inferences drawn from theorising across these emerging themes suggest that professional status does not of itself embrace the degree of ‘resourcefulness’ in knowledge that may enhance or differentiate a service. Lawyers’ knowledge, both tacit and codified, is often framed within processes that are repetitive and are not naturally inclined towards initiatives aimed at innovation or creativity. The processes that embrace both the resources of knowledge and experience are a synthesis of the skills and abilities of the legal professionals in delivering services. There is a high degree of respect and awareness from both the profession and its clients for the resources of knowledge and experience.

7.3.2 Sharing Knowledge and Experience

Historically lawyers were rewarded for demonstrating professional expertise and consequently they remain protective of their individual knowledge and experience in a culture where such assets are traditionally associated with power and authority and the introduction of any level of knowledge management is seen as a challenge to the professional socialisation of the profession (Hodgson 2005). However a profession that is seeking to diversify and adapt its role must embrace a culture that acknowledges the value and strategic potential in acquiring and improving skills and performance through the sharing of their knowledge and experience (Cheetham and Chivers 2005). Using the conclusions drawn on the role of knowledge and experience from across the themes and ideas presented in **Table 7.3** the data from the sample of private law firms and in-house lawyers was reviewed again to determine if and how lawyers across these two contexts were addressing issues around sharing their knowledge and experience. In particular evidence was sought of any initiatives that had been introduced or that were in place to facilitate this process. The interviewees across the samples were asked the following question:

“Is the sharing of knowledge and experience across the firm/ and or divisions/ departments within the firm / your department actively encouraged and if so how?”

The responses were coded, analysed and comparisons drawn. **Table 7.4** sets out responses from each of the interviewees to the question and makes reference to examples given of specific measures that were in place to encourage the transfer and sharing of knowledge.

Surprisingly, given the strength of professional socialisation identified across the legal profession, and the reticence observed amongst some lawyers, the evidence points to a vibrant and enthusiastic culture of sharing and transferring knowledge amongst lawyers. Across the profession there is a consensus that sharing and communicating knowledge and experience offers value and credible benefits to the delivery of their services. Furthermore a range of initiatives in place to encourage the easy transfer of knowledge affirm a commitment to the transfer and sharing of knowledge and experience amongst lawyers working within an organisational framework. In private law firms particularly the initiatives were informal, ad hoc arrangements but there were positive responses registered by the lawyers to these arrangements and, as routines, they were effective.

Table 7.4

Source	Responses from interviewee
‘Agency’	<p>“The legal manager will spend a lot of time with the legal staff on individual cases and as a result is sharing his/her expertise. There isn’t much interaction amongst the lawyers and sharing of knowledge. This is much more common in private law firms In reality ‘Agency’ operates a group of lawyers doing very different thing.”</p>
‘Contracts’ (part of the GLS)	<p>“We actively encourage experienced Government lawyers to share their expertise with those working in similar areas .A position within the GLS is short term and therefore it is important for them to share and also to learn from others ...nobody resists it. We are good at sharing but we are less good at being organised about it.”</p> <p>*Initiative for the transfer and sharing of knowledge LION: Legal Information Online Network- accessible to Government lawyers across the GLS</p>
‘Delict’	<p>“We are getting better at team working so holding onto information has diminished.”</p>
‘Jurisprudence’	<p>“The way we operate...each Division has a number of teams within it and each Division meet as a unit and they discuss the current issues. People will also e mail others with information on changes and how they have dealt with them. There is continual discussion”</p>
‘Succession’	<p>“There is a philosophy of everybody owns everybody else.”</p>
‘Andrew Bankton’	<p>“We did an internal survey on communication and 90% of the staff was confident about speaking about the services in their Division but only about 40% about the services offered by other Divisions. Each partner wants to maximise credit for his / her success and there is a culture of not wanting to share in that success”</p>
‘David Hume’	<p>“There is some sharing of knowledge across the Divisions but it tends to be very informal and ad hoc. There is positive encouragement for knowledge sharing from within the organisational culture”</p> <p>*Initiative for the transfer and sharing of knowledge “We run lunchtime training seminars which all fee earners are encouraged to attend and we have found these are good for sharing experiences.”</p>
‘George Joseph Bell’	<p>“It’s about on the job training and learning from experience. You cannot replicate that on a course.”</p>
‘Viscount Stair’	<p>“Both the sharing of knowledge and specialist learning is actively encouraged across the firm...it is part of the ethos of the firm.”</p> <p>*Initiative for the transfer and sharing of knowledge “There are opportunities for this across the intra – net services in the firm and also at the various training forums.”</p>
‘William Forbes’	<p>“In this firm it is also important that you are seen to be sharing your knowledge and experience with others. As a firm we encourage sharing knowledge and experience and so if a lawyer wants to progress within the firm it is important to buy in to that philosophy. Generally I think the lawyers can see the benefits of this approach.”</p>

7.4 Professional Socialisation

Although a profession may derive credibility from a combination of professional characteristics (specialist education, professional standards of work, peer review and the adherence to a code of conduct) it cannot be assumed that these features will of themselves deliver a professional service. Professional socialisation is assisted by the contribution of norms of knowledge, behaviour and conduct that derive from processes and reinforce legitimacy for the professional role (Malhotra, Morris and Hinings 2006).

Further analysis was undertaken to explore the attitudes and approaches of the profession in private law firms and in-house legal groups towards aspects of professional socialisation viz: issues on conflicting loyalties, elitism in the profession, the role of professional identity and its influence and the work ethic within the profession were addressed. These themes were identified in the early stage coding as fundamental features of the professional legal service (**Table 7.2**) and further, more detailed analysis of the data coded within these nodes was useful in developing a greater awareness and understanding of their influence on the role of professional socialisation in shaping and delivering legal services. It was clear that these were sensitive areas for discussion amongst the profession and the interviewees from both the private law firms and the in-house lawyers were reticent in discussing such emotive issues and their responses were often vague or evasive.

Additional searching for evidence of attitudes and opinions on these issues from sources closely affiliated with the profession made it possible to discern a broader and more comparative view. Responses across the data coded under the five aspects of professional socialisation found to be most influential in the professional role (issues on conflicting loyalties, elitism in the profession, the role of professional identity and its influence and the work ethic) were analysed and comparisons drawn reflecting the range of contrasting opinions and views. **Table 7.5** details samples of responses. Evidence from both the private law firm and the in-house legal group samples was classified as 'internal' and observations from the other data samples

were classified as 'external'. As a result it was possible to create a wider and more informed portrayal of the prevailing attitudes both in and out of the profession to the issues surrounding these themes that emerged as influential in shaping and delivering legal services. Together they present a picture that is broadly similar: internally the legal profession remains entrenched in its own idealism derived from aspects of its traditionalist history and similarly the external view remains one of a profession that is guided by rules and norms and characterised by their specialist knowledge and experience.

Table 7.5

	Internal View	External View
Conflicting Loyalties	<p><i>“The lawyers are embedded with their clients and the idea is that they should become more familiar with the day to day issues. At the same time they want to say that they are still lawyers, still specialists and we have some value to add and we want to have thinking space”</i></p> <p>‘Succession’ Interview</p>	<p><i>“Many professionals feel that there is a dichotomy between being commercial and being professional. They argue that we are being forced to compromise our professionalism by adopting a more business like approach”</i></p> <p><i>“Be both commercial and professional”</i> Journal of the Law Society of Scotland 1999 Nov p 26)</p>
Elitism	<p><i>“Lawyers fear that their lives could be taken over by man management. They fear that their legal skills might lose its credibility and its pre eminence”</i></p> <p>‘William Forbes’ Interview</p>	<p><i>“Sadly there are still too many lawyers who think that being in a profession is totally inconsistent with being in a business and being managed”</i></p> <p>‘Kemp Associates’ Interview with management consultant</p>
Professional identity	<p><i>“Once a lawyer, always a lawyer”</i></p> <p>‘Viscount Stair’ Interview</p> <p><i>“I suppose it is a defence mechanism really”</i></p> <p>‘Jurisprudence’ Interview</p>	<p><i>“They have had a monopoly on a body of knowledge and title and status that has allowed them to say; I am the expert”</i></p> <p>‘Kemp Associates’ Interview with management consultant</p>
Strength of professional identity	<p><i>“I think the professional badge is actually very strong. My passport always says ‘Solicitor’ first and ‘Civil Servant’ second”</i></p> <p>‘Delict’ Interview</p>	<p><i>“It is a profession rooted in the past and in tradition. Lawyers still have distinctive skills and talents that can’t be replaced”</i></p> <p><i>“The future in your hands”</i></p> <p>Journal of the Law Society of Scotland, June 2002 p 22</p>
Work ethic	<p><i>“We have invested quite a lot of time and energy and money in becoming lawyers and also inherited the conservatism of the profession”</i></p> <p>‘Contracts’ Interview</p>	<p><i>“It is no longer sufficient (if it ever was) to be an excellent lawyer – the successful solicitor now also has to be a highly competent manageracutely aware of the business environment”</i></p> <p>Chief Executive to WS Society quoted in Journal of the Law Society of Scotland , 2004, Vol. 49 (3) p 34</p>

7.4.1 Lawyers Shaping Themselves

Private law firms and in-house legal groups each represent a collective of legal professionals that embody a bank of specialist knowledge that enables decisions to be made and services delivered and for whom their professional identity remains a status that sets the framework of the social context within which they work (Montgomery and Oliver 2007, Malhotra and Morris 2009).

The evidence gathered from the samples provided a means for exploring further how lawyers view themselves and their professional role and the extent to which they and the profession to which they belong are each instrumental in creating an identity. Attitudes of elitism are hall marks of a professional role that differentiates ‘professionals’ from ‘non professionals’ and embraces a ‘need to be right’ (Fournier 1999) and evidence of this was prevalent across both contexts. However although this approach was a factor in shaping what it means to ‘be a professional’ the evidence highlighted distinctions in the role that lawyers are creating for themselves that reflect the influence not only of the social but also the organisational frameworks within which they deliver their services.

Drawing on the patterns across the coded data it was possible to create a portrayal of the role and identity of lawyers both within private law firms and in-house legal groups enabling comparisons to be made across these two contextual frameworks.

Private law firm lawyers

Benchmark: quality of legal skills

Lawyers demonstrate their knowledge through their legal skills Private law firms exist to practice law and to deliver legal services and for the lawyers who work there ‘being good at law’ is the natural benchmark: “*This firm values its people who have high legal skills. The lawyers want to do lawyering*” (‘William Forbes’ Interview). Although there is evidence that private law firms increasingly regard themselves as “*less of a profession and more of a business*” (‘John Erskine’ Interview) the delivery of legal services by private law firms continues to be knowledge – intensive and, as

firms, they compete on the performance and skill of their lawyers. It is the demonstrations of professional skill and expertise that differentiates them and offers value to a discerning client base: *“They (lawyers) have a monopoly on knowledge and title and status that has allowed them to say; I am the expert”* (‘Kemp Associates’ Interview). Traditionally authority within the hierarchy in private law firms was akin to seniority within the firm and although this automatic career progression is now being challenged lawyers are still protective of their professional identity in an environment where demonstrations of proficiency in the law and professional competence that carry the authority of the profession are still regarded as the fundamental measure of success. In the large international firms there were some senior positions held by non-lawyers (this was also the case in the some of the smaller firms e.g. ‘John Erskine’) but nevertheless the legal role remained paramount and of the highest order: *“Often in a team there are some very senior people working and contributing but they are not the people who take decisions on how a client is being serviced. The real power, the real leadership and the decision making authority lies with the lawyer”* (Law Society of England & Wales Interview Council Member for Education and Training).

In-house lawyers

Benchmark: contribution of the legal role to the wider organisation

Although in-house lawyers similarly practice law and deliver legal services they do not enjoy the reassurance of assumptions about their role that attach to lawyers practicing within a professional firm and instead they must strive to reassure themselves of their professional identity. They do so by establishing and affirming their professional role and seeking reassurance of its value within the organisation. *“We are the only professional group within the organisation which has a separate professional structure and its own separate organisation”* (‘Delict’ Interview). The evidence confirmed that although the professional drivers behind legal services remain their primary focus: *“We count as professionals in terms of being lawyers and we must have key professional skills. We have invested a lot of time and energy*

and money in becoming lawyers and also have the inherited conservatism of the profession” (‘Contracts’ Interview). Their benchmark is the value of their professional role and their contribution to the wider organisation: *“We work in a high profile organisation that needs good lawyers”* (‘Succession’ Interview). Their activities are not framed exclusively by the scope of their expert knowledge and skill and, as they integrate in policy and decision-making strategies, the expectation is that they should deliver not just a professional service borne out of their legal knowledge and expertise but one that contributes to the demands of the business they serve.

Despite these different benchmarks all lawyers (regardless of the context within which they work) continue to draw on their resources of expert knowledge and skills in the delivery of their services. The aspects of professional socialisation for the legal profession listed in **Table 7.5** continue to play a significant role in shaping their identity and legitimising their role.

7.5 The Legal Role

The role of the legal professional reflects not only the professional persona of the lawyer but also the service provided by that role. In its **Solicitors’ Code of Conduct (2007)**, the Law Society of England and Wales describes the legal role thus:

“A modern society needs a legal profession which adopts high standards of integrity and professionalism. Lawyers, law firms and those who work in them serve both clients and society” (p 2)

A similar code of conduct operates in Scotland (**Standards for Scottish Solicitors 2008**). Its contains a ‘**Standards of Service Guideline**’ which not only describes the role of the lawyer but also acknowledges the responsibility to the client in terms of service delivery:

“Lawyers interact with a wide cross section of our society and fulfill a critical role in meeting the interests of that society. Their clients are entitled to expect a good level of professional service from their solicitor. This means the solicitor must demonstrate the appropriate legal knowledge and skill to address the needs of the client” (p1)

7.5.1 Professionalism

Although the legal profession demonstrates its capabilities largely in terms of its cognitive capacities, (drawing on the resources of knowledge and experience) it also embraces ‘professionalism’ in the delivery of its services (Malhotra, Morris and Hinings *ibid.*) ‘Professionalism’ embodies not the resources of specialist knowledge and experience inherent in the legal role but also identifies with the *“processual enactment of professionalism where to be accepted one must learn to play the part”* (Hodgson 2005 p 52). Law is a service business that drives value by promoting professionalism and where demonstrations of experience and reputation are the means whereby levels of competence are measured.

A consultation paper on proposed changes to the pre qualification criteria in Scotland (**DISCUSSING THE DETAIL...Paper 1: A consultation on the future of pre – qualification legal education and training in Scotland 2008**) published by the Law Society of Scotland addresses the relevance of professionalism for the practicing lawyer:

“Developing professionalism is complex. A lawyer in private practice will see something in the order of many thousands of cases in a working life. Through the experience of casework, he or she gains an extensive stock of what might be termed mental schemes and performance knowledge. Solicitors know this implicitly.” (p 33)

Further guidelines on the complex concept of professionalism are detailed in a paper (**Professional Education and Training (PEAT) Stage 1 Proposals 2009**) outlining proposals by the Law Society of Scotland, Education and Training Committee on the creation of a new vocational stage of training for the legal profession. This paper

includes a list values and conduct deemed appropriate to levels of ‘professionalism’ within the legal profession (p 5) viz:

1. *The interests of justice and democracy in society*
2. *Effective and competent legal services on behalf of a client*
3. *Continuing professional education and professional development*
4. *Public service including pro bono work*
5. *Honesty and civility towards colleagues, clients and the courts*

Whilst these guidelines present a professionalism that embraces the ideals of an altruistic profession they nevertheless fail to capture the connections across the range of dimensions embraced by professionalism. This paper acknowledges challenges faced by the profession over issues of professionalism and expresses concerns over the implied levels of professional competence associated with professionalism:

“In previous years, it is fair to say that professional capacity has been assessed largely in terms of cognitive capacities. Professionalism, however, is a more complex concept, and requires a wide range of assessments to give a valid and reliable sense of professional competence” (p 38)

By demonstrating the professionalism demanded of them in their professional role lawyers should derive credibility for their services as arbiters of a professional service that demands levels of integrity and independence whilst demonstrating skill and competence. The Law Societies in both Scotland and England & Wales have responded to these challenges on behalf of their members by reviewing their recommended standards for professional competence. These are not compulsory standards but are guidelines and codes of conduct that are regulated by the respective Law Societies.

The Law Society of England & Wales Solicitors Code of Conduct 2007 states:

“You must provide a good standard of client care and of work, including the exercise of competence, skill and diligence” (Rule 1.05). In Scotland the equivalent guideline

(Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008), states: “*The standards they (lawyers) work to reflect the legal, moral and professional obligations of solicitors*” (p 1).

Despite, or perhaps because of the traditions and history of the profession, the standard of service expected of lawyers by the regulatory authorities is surprisingly straightforward and uncomplicated but nevertheless the failure by them to articulate clear defined standards for their members means there are no tangible benchmarks against which professionalism can be measured. The connections between professionalism and the delivery of services were explored to determine if and how they shape and influence the legal role.

7.5.2 Service Delivery

Data coded under ‘**service delivery**’ was further analysed and recoded under branch nodes (client expectation of a service, client focus, managing the delivery of a service, prioritising the client, responding to demand and the client relationship) in order to explore and understand the interdependence between issues of professionalism and the delivery of legal services. The coding of the data highlighted that aspects of service delivery are not only central to the legal role but are also increasingly shaped by the influences of managerial initiatives. The analysis highlighted two alternative perspectives on the influence of professionalism in service delivery i.e. in respect of client expectations and the professional view. Observations from the data were used as points of reference to search the empirical evidence gathered from private law firms and in-house groups on these dual perspectives and the interconnections with the legal role of the lawyer and their influence in shaping an identity for lawyers.

Professionalism in terms of client expectations is measured against the consequences of the services offered by the legal professional role. Clients are demanding a service that is consistent, recognisable, reliable and cost effective: “*Client expectations are*

based upon the quality of service provided, value for money as well as recognising that the firm is putting the clients' needs first" (Managing Partner Journal, "Maximising the benefits", 2002).

In private law firms lawyers acknowledge that clients are demanding increased efficiency from a cost effective service: "*They want the job done and value for money*" ('William Forbes' Interview). The clients' expectations of service and professionalism from in-house lawyers shapes their contribution to the wider organisation and lawyers must deliver a service to a client base that "*likes continuity and distrusts change*" ('Delict' Interview). Lawyers must address their clients' needs and demands and deliver on those demands in a manner that is the most effective for clients whilst also embracing pragmatic approaches that realistically satisfy that demand.

The perspective on professionalism and service delivery from within the profession was more reflective and focused on the professionalism demonstrated in the delivery of services. Lawyers recognise that how they and their services are viewed by clients is fundamental to the professionalism synonymous with their role. In its 2008 report (**DISCUSSING THE DETAIL** *ibid.*) the Law Society of Scotland observed: "*It is how the client experiences, perceives and values the profession that will be one of the key measures of its success*" (p 10). Two different interpretations were reflected across the different contexts under review. In private law firms lawyers regard their role as one that must respond to client demands. Additionally understanding and, to some degree anticipating, those demands are also highly significant in shaping the delivery of their services viz: "*We need to match the expectations of our clients. We cannot provide a sample of work to clients: we cannot easily impose quality standards. Lawyers in the firm make it their business to understand what makes the client tick and what is important to them, to and deliver what the client expects and to keep up to date with personal or business developments*" ('John Erskine' Interview with the Chief Executive).

The in-house lawyer, by the nature of their role and position within a wider organisation, is more directly in touch with their client demands and for them the focus is on presenting a cohesive and effective team to their client base: *“The lawyers we employ are all well qualified but also familiar with team working and having a customer focus to their work”* (‘Succession’ Interview with General Counsel).

7.6 Influence of Managerial Processes

A profile of the legal profession has emerged as one that regards its role (regardless of context) defined by its knowledge and experience and shaped by the processes that engage with these resources that deliver legal services. Underpinning this strong professional identity a recurrent theme across the data is the evidence that increasingly the delivery of legal services is promoted less in the professional context and more as a business operative. The profession is demonstrating that it is both inspirational and resourceful in identifying a role for lawyers that is not only shaped and distinguished by their knowledge, experience and professionalism but also is adaptable to different social and organisational environments.

Initiatives to promote and deliver client focused services have resulted in tensions between professional obligations and approaches to service delivery and increased business imperatives to use resources efficiently and competitively (Robertson, Scarbrough and Newell 2003). As challenges to the professionalism of legal services are made these tensions need to be managed across different contexts and lawyers must resolve their role as innovative providers of a client focused service with the demands of managerial processes aimed at increased efficiency. Traditionally the legal profession, most notably within private law firms, is identified with an approach that dismisses direction from out with its elite membership: *“There is often much resistance to the idea of a non-lawyer telling a lawyer (particular if the lawyer is also a partner) how to run the business.”* (Law Society of England & Wales, Interview with Council Member for Education and Training). But the evidence suggests these attitudes (whilst still influential) are being challenged by

lawyers themselves as they reconcile their professional role and identity to the influences of management structures within their professional framework. Aspects of professional socialisation that distinguish the legal profession and its services (Spar 1997) are being challenged as the profession embraces initiatives that have resulted in compromise and more radical changes to the manner and mode of delivering their professional services.

During the interview at ‘Agency’ interesting observations were recorded that reflect a view on the management of lawyers across both private law firms and in-house groups:

“In a nutshell my perception is that law firms tend to be pretty under managed because lawyers at the end of the day tend to be professionals first and foremost and they look at keeping their clients happy. I also think that management doesn’t come naturally to a lot of them. However private law firms are beginning to realise that they do not necessarily need to force management on their lawyers because they are generally receptive to the introduction of more ‘active’ forms of management. However a lot of in-house groups still have some way to go in this respect”

(Interview with the Global Legal Services Coordinator)

Attitudes across both private law firms and in-house legal groups reflect an acknowledgement amongst the profession of a need for change to embrace a more strategic and commercial approach to delivering their services. Both private law firms and in-house legal groups have responded by adopting a more strategic approach to efficiently allocating their valuable resources to capture opportunities in a competitive market. They are demonstrating that effective management is critical to successful performance. **Table 7.6** records comments from interviews with both private law firms and in-house groups that confirm these observations. The conclusions to be drawn from the evidence is that although the professional drivers behind legal services remain the primary focus in their delivery, the profession is broadly conceding that an understanding of business issues enhances that service and requires decisions to be taken on how to manage that work effectively.

Table 7.6

Acknowledging the need for change
<p><i>“We recognise that there are flaws in our current procedures and there is too much authority with individual partners. The reality is the partner will think; this is my business and I’m not having somebody tell me how to run it.”</i></p> <p style="text-align: right;">‘George Joseph Bell’ Interview</p>
<p><i>“The vision for the future is a difficult issue for many of the lawyers who do not want to move into unchartered waters. They just want to do what they have always done. But implementing strategic aims we have to overcome that. It’s about the right level with the right people and a link with the strategic plan for the future.”</i></p> <p style="text-align: right;">‘Andrew Bankton’ Interview</p>
<p><i>“The partners still do too much work rather than stepping back and dealing with the strategic direction of a transaction. I don’t think we are unique in having that problem and I know it happens in other firms as well.”</i></p> <p style="text-align: right;">‘John Erskine’ Interview</p>
<p><i>“It is important that the organisation is comfortable that it gets a good service but the system often falls down because of the inward approach of the lawyers. Lawyers see themselves as microcosms within the organization and they try to run themselves like that. There is a tendency to ring fence themselves. They know they must work within the law and the legal boundaries but they must also subscribe to the demands of the organisation and that is where tensions arise. A manager should be able to deal with such conflict but difficulties lie in a mix match of expectations between professional people and commercial people.”</i></p> <p style="text-align: right;">‘Agency’ Interview</p>
<p><i>“Lawyers hate being managed. There is an in built thing that they like to run their own case and they like to have ownership of their own work load. Traditionally lawyers like to be in charge of what they are doing.”</i></p> <p style="text-align: right;">‘Jurisprudence’ Interview</p>
Evidence of change
<p><i>“Traditionally law firms have promoted themselves on the basis of their technical skills but our senior team has worked to ensure that they are able to effectively inspire and motivate their teams.”</i></p> <p style="text-align: right;">‘William Forbes’ Interview</p>
<p><i>“The vision for the future is a difficult issue for many of the lawyers who do not want to move into unchartered waters. They just want to do what they have always done. But implementing strategic aims we have to overcome that. It’s about the right level with the right people and a link with the strategic plan for the future.”</i></p> <p style="text-align: right;">‘Andrew Bankton’ Interview</p>
<p><i>“We recently carried out an internal survey and used external researchers to interview ten clients to find out our underlying strengths and weaknesses.”</i></p> <p style="text-align: right;">‘John Erskine’ Interview</p>
<p><i>“The organisation has revolutionised the way it is organised to be more progressive and as a result the role of the lawyer within the organisation has changed too. Under the old structure lawyers saw their role as ‘providing a service’ but the protection of the ‘legal status’ has broken down. Lawyers need to develop themselves to be able to handle the demands of the organization.”</i></p> <p style="text-align: right;">‘Succession’ Interview</p>

7.7 Analysis

As professional legal services become increasingly shaped by managerial initiatives the professional identity of the lawyers delivering those services is challenged and their role potentially compromised. This chapter has examined the research question: “How do legal professionals encounter and resolve managerial challenges to their professional identity?” to address these issues.

The legal profession is a social group that is differentiated by its intellectual capital and promotes levels of accuracy and precision in its services that are framed by their specialist knowledge and expertise. The implications emerging from the empirical evidence presented and analysed in this chapter suggest that, recognising the possible consequences of challenges to their professional identity, lawyers are themselves taking steps to diversify their role and to work with managerial measures that will innovate and differentiate their services. Nevertheless the legal role remains defined by the professional socialisation of the legal profession and these characteristics must necessarily be reconciled with any management processes.

Lawyers deliver a service that is shaped and informed by the status and identity associated with membership of the legal profession and which, regardless of organisational context, maintains high levels of social closure. Their profession remains defined by certain aspects of professionalism (knowledge, elitism, work ethic, and the strength of their professional identity) but it also proving to be inspirational in creating new roles for lawyers that are shaped by the nature and scope of their services and not constrained by social and institutional boundaries. This research is reassured by compromises made by the profession that have resulted in positive responses and initiatives by lawyers designed to generate a more organisational, cross boundary approach to legal services whilst simultaneously maintaining a focus on the nature of the dependency relationship between the client and the professional and managing the expectations of that relationship. Addressing these issues many lawyers are recruiting the services of these consultants to inter alia drive initiatives drawn from the resource capacities of their specialist knowledge and

experience. That the legal profession is seeking and welcoming the input from external providers reflects not only an acknowledgement by the profession of the potential of the resources available to them but also suggests they concede they must manage the resourcefulness of these resources and demonstrate their capabilities in new and innovative ways.

The research found that, regardless of changes in both their social and contextual backgrounds, lawyers' professional knowledge is still held in high esteem. Lawyers are instructed by clients demanding a competitive and responsive service yet those same clients remain committed to the expectation of a service that is defined by a level of specialist knowledge and experience that is the essence of their relationship with the profession. If differentiated legal services are to be successful lawyers must ensure the careful management and coordination of their knowledge and experience resources and the routines and practices that are developed overtime that are not only sources of knowledge but also the means of transferring and sharing knowledge. Whilst professional knowledge does not of itself shape the activities of the legal profession it remains critical in influencing the direction of its professional services.

The application of resource theory to understanding the delivery of services presumes a level of idiosyncrasy across firms that can generate a range of performances. Araujo and Spring (2006) refer to the description of services used by Vargo and Lisch (2004a) to distinguish a service in terms of what can be experienced as a result of the delivery of the service (building on Penrose's interpretation of service implying a function or activity). As lawyers face demands to deliver services that are increasingly driven by commercially focused strategic aims the professional dimension to their services is being subjected to increased scrutiny. The challenge for lawyers is to transcend their institutional, monopoly-controlled identities and redefine themselves across the traditional demarcation lines without compromising the legitimacy of their role (Abbot 1988). The social and institutional contexts of the legal profession are changing and there are consequences for a profession that derives its identity from its professional knowledge base (Montgomery and Oliver 2007, Pinnington and Gray 2009).

The provision of legal services is a feature that, in part, defines the legal profession (Cheetham and Chivers 2005). The delivery of a professional legal service combines both social constructions and interaction between professional and client and therefore comprises an inherent human dimension that derives its characteristics from the human capital within a firm (Hitt et al 2006). Lawyers traditionally distance themselves from their client's social world but the social boundaries that link the producer and user in this relationship also define the relationship and the lawyer's experience is the visible means by which the functional role of the professional is validated (Anderson – Gough et al 2000).

Abbott (1988) theorized that professions are distinctive because of their expert and specialised knowledge and indeed lawyers' expertise and specialist knowledge continues to distinguish the legal profession. Organisations such as law firms or in-house legal groups are tangible representations of such knowledge (Kogut and Zander 1992). Although knowledge and experience do not per se define a professional role, organising these resources across a firm involves organisational routines and cultures that are also shaped by the routines and cultures of a profession (Scarbrough et al 2003). The analysis of the evidence drawn from this research suggests that changes to legal services that question the application and effectiveness of the specialist knowledge of the legal profession may undermine the professionalism that shapes legal services.

Malhotra and Morris (2009) researched professional knowledge across three different professions and concur with Abbott's position that heterogeneity across professions stems from their different knowledge bases but they also recognise the influence of external factors and suggest a profession's relationship with their client base is one such influence. Whilst they have expectations of a service and advice that assumes both knowledge and experience clients do not routinely assess or evaluate professional knowledge and experience (Spar 1997). These challenges focus on the delivery of a service that involves a relationship with clients that is shaped by their expectations of lawyers' knowledge and demonstrations of that knowledge through levels of skills and practices acquired overtime through

experience. It is the relationships and connections between the resources of knowledge and experience across processes that deliver the value from these resources. The expectations from these resources derive, in part, from the professional codes of practice and norms of behaviour and routines (Robertson et al 2003). The legal profession identifies with embedded assumptions regarding expected levels of competence and a work ethic that is framed in professional norms and codes of conduct and that offers legitimacy to the profession role (Fournier 1999 and Hodgson 2005). The research found that whilst the legal profession has adapted not only to changes in professional settings and also adopted non professional organisations from which to deliver their services lawyers, nevertheless it continues to demonstrate strong allegiance to the benchmarks set by these professional standards and the clients remain reassured by this demonstration of adherence to professional values.

The literature identifies with elements of professional socialisation that draw on social identity theory (Montgomery and Oliver 2007) to define organisational boundaries that act as socially constructed markers. These boundaries define a profession's membership and domain and, together with its knowledge base, distinguish the scale and scope of its activities. There is valuable potential within the human capital of a professional service firm but the knowledge and experience that is generated from that capital requires coordination across the organisational processes. Professional boundaries may create difficulties to sharing both knowledge and experience but if lawyers are to flourish as they diversify their services across different settings these obstacles need to be managed towards a more cohesive approach. Rashman, Withers and Hartley (2009) suggest the influences and authority of the professional role will be challenged by any such initiatives but this research suggests that lawyers recognise such measures may be necessary and as such they are willing to concede some of their professional authority and to compromise with measures that offer the potential to coordinate and manage the delivery of a professional service that is seeking new opportunities.

7.8 Concluding Remarks

The research question discussed in this chapter examines the implications for lawyers as increasing levels of managerialism are found across their services. The conclusions drawn recognise that, whilst lawyers remain loyal to many aspects of professional socialisation that define their professional identity, they nevertheless concede that managerial measures offer opportunities to enhance their services in positive and changing ways. The delivery of legal services is increasingly distancing itself from the social and institutional context more usually associated with the legal profession and moving towards a more business and commercial orientation and in doing so it becomes necessarily drawn towards opportunities to harness innovation and creativity in those services. This has resulted in lawyers embracing changes not only to aspects of professionalism that traditionally resonate with the legal role but also addressing non-specific legal considerations such as increasing the speed of response, reducing costs and minimizing mistakes. Overriding such changes however remains the focus of maintaining such levels of professionalism and integrity that are necessary both to reinforce their role as the deliverer of legal service and reassure their clients that those services continue to be shaped by processes anchored to the knowledge and experience of lawyers. The implication for the legal profession is that as lawyers differentiate themselves and their services they must embrace a role for themselves that identifies with not only the functional aspects of their role but also encompasses a more holistic approach to their skills and ability to deliver legal services.

Appendix H

Professional Organisations and Regulatory Groups

Law Society of Scotland	The Law Society of Scotland is the governing body for Scottish solicitors. It was established by the Legal Aid & Solicitors (Scotland) Act in 1949. The main aims of the Society are set out in the Solicitors (Scotland) Act 1980. The Society promotes the interests of the solicitors' profession in Scotland and the interests of the public in relation to the profession
Law Society of England & Wales	The Law Society represents solicitors in England and Wales. The 'Society of Attorneys, Solicitors, Proctors and others not being Barristers, practicing in the Courts of Law and Equity of the United Kingdom' was founded in 1825 and in 1903 the Society changed its official name to 'The Law Society'. Its regulatory powers have since been underpinned by statute: the Solicitors Act 1974, the Courts and Legal Services Act 1990, the Access to Justice Act 1999 and the Legal Services Act 2007. The Society protects and promotes the interests of solicitors across England and Wales
Law Society of Scotland In-House Lawyers Group	The In-House Lawyers Group represents the interests of Scottish solicitors employed in public service and commerce. The Group was founded in 1973 as the Public Service and Commerce Group. The name change was agreed in April 1999.
Law Management Section of Law Society of England & Wales	The Law Management Section is a representative membership association of the Law Society. Established in 1998, it provides best practice information on practice management
Commerce and Industry Group	An association (formally part of now independent but recognised by the Law Society of England & Wales) representing the interests of all legal professionals working in organisations in commerce and industry
WS Society	The Society of Writers to Her Majesty's Signet was formed in 1594 as an independent association for lawyers in Scotland. The Society's purposes include promoting the highest standards of professional competence in legal services

Appendix I

Management Consultant Firms

‘Chitty Associates’	Sole practitioner, former lawyer and partner in private law firm in Scotland
‘Forte Associates’	Legal Education and Training Group (LETG) training firm
‘Grier Associates’	Sole practitioner, former managing partner of ‘Magic Circle’ private law firm in England
‘Kemp Associates’	Sole practitioner, former lawyer, Professor of Strategy and Director of the Legal Services Policy Institute at The College of Law
‘McBryde Associates’	Management consultancy to legal profession
‘Meston Associates’	Sole practitioner, former lawyer and partner in private law firm in Scotland
‘Rankine Associates’	Management consultants to the legal function within ‘Agency’
‘Walker Associates’	Sole practitioner currently employed as in – house training development officer in private law firm ‘William Forbes’

Appendix J

Journal Articles referenced in Chapter Seven

Journal of the Law Society of Scotland

“Be both commercial and professional”, (1999), November, p.26.

“Opportunity knocks”, (2004), September, p.32.

“Switching Channels”, (2006), p.22.

“The future in your hands”, (2002), June, p.22.

Managing Partner Journal (www.mpmagazine.com)

“Doing it in bulk; Lessons in service delivery from the bulk providers” (2004), Vol.7 (3), posted 2/07/04.

“Knowledge-management tools in legal practice”, (2004), Vol.6 (9), posted 09/03/04.

“Leading and leaning”, (2007) Vol.10 (3), posted 14.03.07.

“Maximising the benefits - making law firm client relationship management work” (2002), Vol. 4 (8), posted 25/04/02.

“People are our key assets – really?” (2003), Vol. 5(10), posted 01/04/03.

“Survival of the fittest? Assessing the evolution of the modern law firm”, (2002), Vol. 5 (4), posted 20/08/02

The Lawyer

“Keeping up with Jones” 23/01/06, p.17.

Chapter 8

Managing the Delivery of Professional Services

8.1 Introduction

The third and final research question identified in this research is the focus of the analysis of the empirical evidence presented in this chapter. The complex relationship between professionalism and management underpins the research question (**RQ3**) viz: “How does the role of the legal manager offer new ways to identify and shape opportunities for developing and delivering legal services?”

As lawyers diversify their services and introduce innovation to their role both by adapting their existing skills and acquiring new skills, increasing heterogeneity across the profession has consequences for the organisation and management of the lawyers and their services. The strong level of professionalism exhibited by lawyers is examined to determine the nature and extent of relationships between managers and lawyers and to explore the implications for the legal profession when faced with the introduction of managerial initiatives designed to enhance their services.

The research question also focuses on the significance for lawyers as they establish a role for themselves away from a functionalist profession that identifies with status and authority towards a rationalist approach that encourages a more open and less systematic role for the legal professional with less emphasis on conforming to standard practices and a more innovative approach to routines and processes in delivering services. As legal services become increasingly differentiated there are inevitable consequences for the management of those services, not least from imperatives for increased levels of output from efficiency driven strategic aims.

Decisions regarding the appropriate levels of management are interwoven with the demands of increasingly fragmented services and the measures introduced by organisations to implement them must be balanced against the continuing professionalism of lawyers that remains a feature of legal services.

Resource dependency theory recognises the influence of competitive pressures that drive organisations to be different (Scherer and Lee 2002) and provides a theoretical background to the discussion of the research question. This chapter will also draw on resource theory, which, in relation to services, highlights the expectations of benefit to be derived from services (Araujo and Spring 2006). Within the context of professional legal services those expectations are framed by the knowledge and experience that shape the services sought by the client. The institutionalisation of professional relationships is acknowledged as a challenge to initiatives and innovation that are counter intuitive to pre – existing routines and recognised norms of behaviour and practice (Cohen and Levinthal 1990, Newell et al 2003, and Nicolini, Powell, Conville and Martinez – Solano 2007). Nevertheless lawyers are demonstrating the ability to differentiate their work through the application of their expertise across the nature and scope of the client relationship and the significance of this innovative behaviour is a focus in the analysis discussed in this chapter.

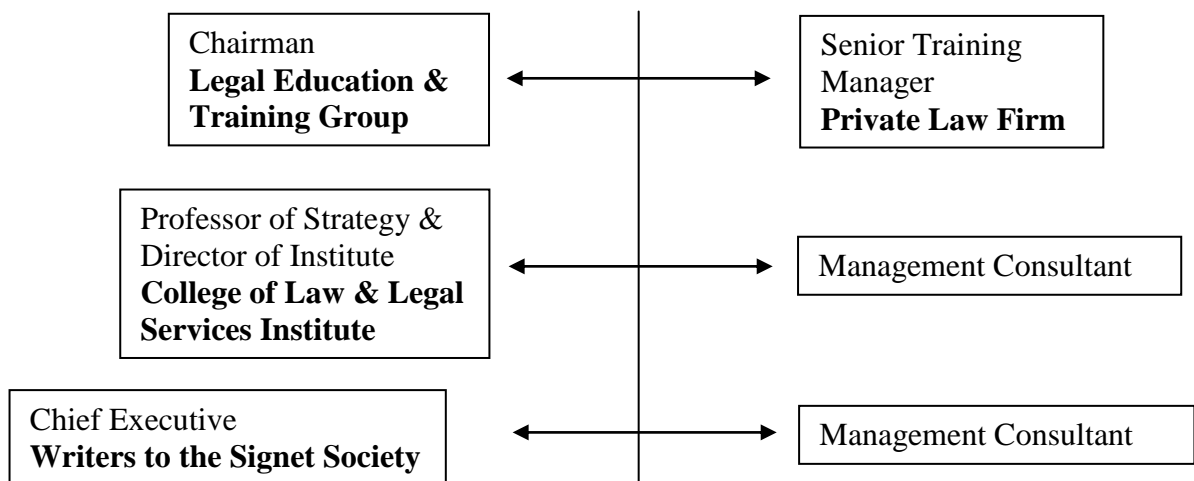
As lawyers reorganise and restructure they must address the demands on their services from an increasingly diverse and fragmented client base. The challenge for them is to balance and reconcile a professional role that is changing and becoming less conforming to its professional identity with appropriate managerial measures that will offer opportunities for growth and innovation.

The analysis of the empirical evidence gathered during this research is presented to address and discuss the issues pertinent to the research question.

8.2 Introducing the Empirical Evidence

In accordance with the grounded theory methodology approach of this research the systematic processes of coding and analysing the data began as soon as the empirical evidence started to be collected (Strauss and Corbin 1990, 1998). The process of open coding of the data is a descriptive and interpretive stage that is useful in identifying concepts and categories across the data (Goulding 2002). This level of categorisation is an organisational tool and a useful means of sorting and managing the data (Strauss and Corbin 1990, 1998). Six descriptive categories were identified at this stage representing significant areas of empirical evidence pertinent to the research questions. Two core categories were labeled ‘Private Law Firms and ‘In-House Lawyers’ and represent the dual contexts being researched for the delivery of legal services. Connections across and relationships that emerged between both these core categories and the remaining four categories named (Education and Training Groups, Journals, Management Consultants and Representative Groups) are a measure of the importance of the range of empirical evidence informing the research question. (**Appendix K** details the journal articles referred to in this chapter). Empirical evidence from sources across all six categories is analysed and presented. In some instances the interviewees embrace multiple roles and consequently were able to provide data that reflected this duality whilst also highlighting the interconnections across these categories and confirming the relationships within the sample.

Figure 8.1
Interviewees with dual roles



Coding is a means to classify and index the data and applying a code is: “*a way of linking the data to ideas and from ideas back to supporting data*” (Bazeley 2007 p 66). The initial open coding processes identified and articulated four themes or ideas across the data that were organised and recorded in four in vivo coded free nodes referred to in chapters six and seven viz:

- **Changing focus of the legal profession**
- **Combining legal with other skills**
- **Understanding both legal and business skills**
- **Diversity of skills**

Gibbs (2006) describes this stage of coding as: “*a way of connecting a theoretical concept or idea with passages of text that is some way exemplifies that idea*” (p 57). These free nodes are abstract representations that are both descriptive and labels for emerging themes and link the data back to the broader descriptive categories (Strauss and Corbin 1998).

The second and third stages of more detailed coding (axial and selective stages) represent the start of the theorising process as the data is recoded within clusters to create organisation and order across the data and to help identify patterns of association (Bazeley 2007). The methodology of grounded theory is receptive to the researcher constructing his/her own coding paradigm (Kelle 2007) and using the NVivo 8 coding programme the data was systematically recoded creating a 'family' of tree nodes. The tree structure in NVivo works not only as a means to catalogue the data but also as a tool to connect existing nodes with new nodes that are created during the ongoing analysis of the data. **Table 8.1** shows the family of tree nodes that emerged during the second and third stages of the coding process. The nodes highlight the length and breadth of the issues under review and reflect the range of dimensions that inform the research question. Finite distinctions evidenced in the naming of the nodes reflect the patterns and variations that emerged during the coding, analysis and recoding processes that are fundamental to a grounded theory methodological approach to the analysis of the data.

Table 8:1
Family of Tree Nodes

<p>Career Opportunities</p> <ul style="list-style-type: none"> • Attitudes and initiatives • Combining legal and managerial skills • Diversifying • Support and encouragement • Thinking strategically 	<p>Management as a Profession</p> <ul style="list-style-type: none"> • Challenges of managing lawyers • Conflict in managing lawyers • Culture of management • Manager of lawyers • Management responsibility • Relevance of management training to lawyers • Strategic direction • What makes a good legal manager
<p>Coaching and Mentoring</p> <ul style="list-style-type: none"> • Attitudes towards • Benefits of • Not for everyone • Recognition of value • Relevance to law and legal practice 	<p>Management Potential</p> <ul style="list-style-type: none"> • Developing managerial skills • Developing partners as managers • Enhancing management skills • Identifying potential • Identifying leadership
<p>Education and Training</p> <ul style="list-style-type: none"> • Acknowledging a firm's commitment to • Acknowledging value of • Attitudes to management training • Continuity in training across organisations • Cost effectiveness of training • Formal qualifications • Gaps and omissions in the training process • Initiatives by private law firms • Learning from experience • Level of interest in management training • Sharing knowledge and experience • Structured management training • Teaching business issues • Transferability of skills 	<p>Management Training for Lawyers</p> <ul style="list-style-type: none"> • Lawyers as managers • Level of interest amongst lawyers • Level of value given to management training for lawyers • Management relative to number of lawyers • Training for all levels
	<p>Motivation</p> <ul style="list-style-type: none"> • In a team • Management role • Value of
	<p>Relevance of managing lawyers</p> <ul style="list-style-type: none"> • Different management styles • Role of legal manager

8.3 Managing Lawyers

Interpretive analysis of the coded data at this stage enabled greater understanding of how and why the coded texts were important (Strauss 1987 and Strauss and Corbin 1998) and reflecting across the codes encouraged the identification of patterns of association (Bazeley 2007). Developing connections across the nodes to link these associations was a critical process in identifying broader themes and relationships in the data (Gibbs 2006). The emerging picture highlighted that to resolve the challenges of managing lawyers with a culture of managerialism there is a need to reconcile changes introduced by new and innovative management initiatives with the core strengths of the professionalism of the lawyers. The role of the legal manager is a significant player in managing this conflict but it must do so across the interconnections that were observed between the dual roles of lawyer and manager.

8.3.1 Reconciling Professionalism to Managerial Influence

Historically the role of the legal professional did not give high priority to management issues and devolved authority was often limited to decisions that were relatively unimportant and non strategic in nature. Private law firms (the traditional context for of the profession) were under managed and the positions of seniority within the profession were rewards for demonstrations of legal expertise and ability (Managing Partner Journal 2005, Vol. 8:3). These roles often embraced elements of a managerial role but there were minimal (if any) pre requisites on appointment for evidence of managerial skills and aptitude: *“The lawyers just got on with the job and management issues were an irritation that they would rather somebody else dealt with”* (‘Rankine Associates’ Interview).

The private law firm ‘James Dalrymple’ is used as a frame of reference to review how lawyers in private firms are managed, and draws on the example of both the former and current management structure of this firm (**Appendix L**). The firm had adopted a new, innovative management structure with the introduction of a combined

senior leadership of a Chief Executive (a lawyer and partner) and an Operations Manager, (a non-lawyer) who “*was employed to manage the firm*” (Interview). These two roles jointly led an internal hierarchy of senior lawyers within the firm. Significantly the non-legal role of Operations Manager ceased to exist within two years following the appointment of a new Chief Executive who “*felt the position wasn't necessary*”(Interview). The firm is currently ‘managed’ by a management team in which all members are lawyers and partners within the firm. During the interview no further explanation for the introduction of the new management structure was offered but when asked if there was resentment amongst the partners that someone who was not a lawyer was trying to tell them how to run their business the answer was insightful:

“Yes I think it was a struggle. Having a legal background means it is easier to relate to the partners. However I think it may happen again. After all it is a business and it needs to be managed. It would probably be side by side. The Chief Executive who is a lawyer and a non lawyer” (Interview)

The appointment of the non-legal Operations Manager was one of a number of initiatives introduced by the firm to project a more ‘business like’ approach to their services but the increased managerial authority of this role was inadequately reconciled with the professionalism of the firm forcing a further reorganisation that resulted in increased managerial authority for the lawyers. The pattern emerging across the data suggests that whilst there are attitudes of negativity amongst the profession to the introduction of managerial initiatives to their services there is also evidence that some lawyers are pursuing different roles that identify with this increased managerial role and authority for the legal persona.

Texts from the data initially coded within the tree node ‘Management as a profession’ were then recoded under the family of branch nodes. The coded data reflected the range and diversity of views from lawyers.

Lawyers are, by the nature of their profession, independent, and management initiatives do not fit easily with their professional role: “*Management is the antithesis*

of the law because there is no right answer” (‘Rankine Associates’ Interview). There was considerable evidence that managing lawyers (in any environment) was a challenge. As with lawyers in private law firms, in-house lawyers similarly identify with a functionalist role that enjoyed the protection of their professional group and were resistant to the external authority and management imperatives standard in the wider organisation or business environment in which they exist. The legal adviser to the in-house group ‘Jurisprudence’ was succinct in his view: *“Traditionally lawyers like to be in charge of what they are doing. Lawyers hate being managed. There is an in built thing that they like to run their own case - they like to have ownership of their work load”* (Interview). Nevertheless the coded data also highlighted a growing acceptance amongst lawyers of a culture that recognises that management can enhance their role and the service they deliver: *“The climate is moving towards a virtuous circle that reconciles the role of a good service lawyer that understands the business issues and that embraces management skills as integral to the professional role”* (Interview with Member of the Education and Training Committee, Law Society of England & Wales). The levels of suspicion and uncertainty displayed by lawyers towards management are balanced with an approach to their role that is reconciling itself with a culture of management and implies an enthusiasm for changes and a willingness to embrace some form of managerial bureaucracy: *“Management is the key to unlocking tension and getting delivery right”* (‘Kemp Associates’ Interview). As demand grows for a wider and more diverse legal service that is often competence driven, lawyers are reorganising themselves and, in doing so, the managerial role emerges as a key player in both service delivery and strategic decision making: Lawyers are showing themselves receptive towards trends integrating managerial skills in the legal role: *“It is difficult to separate out the management of the work from the work itself because they are so closely linked”* (‘William Forbes’ Interview).

As private law firms and in-house legal teams both strive to compete more effectively in the legal services market they are organising themselves to embrace innovative challenges and prepare their lawyers for new responsibilities. However lawyers continue to deliver their services from within a regulatory framework that is

committed to external duties of care ensuring a need to reconcile any managerial initiatives with those professional standards. The emerging picture reflects of a ‘balanced response’ from a profession that continues to demonstrate levels of suspicion and uncertainty towards management yet acknowledges that some form of managerial bureaucracy is both necessary and inevitable.

8.3.2 Role of the Legal Manager

This role was examined in the context of both private law firms and in-house legal groups to address its contribution in the management of legal services.

Reflecting the inductive nature of the research the analysis was an iterative process during which the data was constantly revisited to identify similar constructs and relationships (Eisenhardt 1989). In order to explore the rationale behind the role of the legal manager the empirical data was analysed for evidence of the contribution of and the dimensions to this position. Throughout the data collection and analysis processes individual case studies were created enabling comparisons to be drawn and allowing for the construction of a conceptual framework (Graebner and Eisenhardt 2004). A clear distinction emerged across the two groups of lawyers (private law firm lawyers and in-house lawyers) reflecting different roles and profiles for legal managers across the two organisational contexts. Further (although less obvious) differences in the role for the in-house legal manager also emerged during the analysis but they were recognised as distinguishable relative to the size of the legal teams being managed. Tentative propositions were developed by grouping together variables of interest (Graebner and Eisenhardt 2004). For the purposes of this analysis, in-house groups comprising twenty or fewer lawyers were classified as ‘small’ and in-house legal groups comprising more than twenty lawyers were classified as ‘large’. The data revealed patterns of key words and phrases that are perceived both within the profession and across external sources as necessary and/or desirable personal attributes which, when combined with specific management training, enhance the role. By “*fracturing or slicing the text*” (Gibbs 2006 p 71) in

this manner the data was opened up and further questions could be directed to explore further the issues under research. The key words and phrases identified across the three groups are listed below in **Table 8.2**.

Table 8.2
Qualities and skills for the in-house legal manager

<u>Private law firms</u>	<u>In house groups of less than 20 lawyers</u>	<u>In house groups of more than 20 lawyers</u>
<ul style="list-style-type: none"> ▶ Sharing values of professionalism and integrity ▶ Leadership ▶ Trust and respect of peers ▶ Willingness to allocate time to management 	<ul style="list-style-type: none"> ▶ Focus on teamwork ▶ Cooperation across the business ▶ Raising the profile of the group 	<ul style="list-style-type: none"> ▶ Leading and managing the group ▶ Encouraging a collaborative approach ▶ Involving the group in strategic decision making

Private law firms

Building on the key words and phrases identified as fundamental to the role of a successful legal manager within a private law firm, the empirical data from the private law firm case studies were again analysed. The data from each firm in the sample was scrutinized for their respective interpretations of the role and to examine the contribution by the managers within the firms. **Table 8.3** presents a sample of quotes taken from interviews from four of the firms. They reflect the firm’s respective expectations from the role of the legal managers in their firms and provide evidence of how the managers are expected to embrace and deliver the role. In the private law firms researched many lawyers exhibit profiles that demonstrate some or all of these qualities and also a level of commitment to management training which, combined with their intimate knowledge of the business and strong client

relationships they have developed, ideally position them to be successful managers. The evidence from the firms Andrew Bankton' and "John Erskine' in particular highlighted a commitment to the role of the legal manager. Each firm had each appointed a senior lawyer to the senior management role. The respective roles of 'Managing Partner' and "Chief Executive' identify with the profile of a legal manager who demonstrates a high level of commitment to the managerial role combined with a sound knowledge of the business and highlight an energy and commitment towards embracing management skills and combining the professional role with managerial authority found across private law firms.

Table 8.3
The role of the legal manager in a private law firm

Firm	Sharing values of professionalism and integrity	Demonstrating leadership	Trust and respect of peers	Willingness to allocate time to management
‘Andrew Bankton’ (Interview with the Managing Partner)	<i>“It’s all about getting that team in place and working in accordance with the strategy and vision for the unit”</i>	<i>“The role of the lead partner in a Unit is to manage a team where everyone has a contribution to make”</i>	<i>“The Unit Head must have a set of competences of the standard demanded by the firm and a focus on managerial issues and business development skill”</i>	<i>“The Unit Head should spend 50% of their time on management. As Managing Partner I spend between 50% - 70% of my time on management”</i>
‘David Hume’ (Interview with the Head of Human Resources)	<i>“This is encouraged through the delegation of the work load by the team manager”</i>	<i>“Key competencies must be demonstrated before appointment as head of a team”</i>	<i>“Resistance from some of the partners is balanced by the strength of commitment for the role of team leader across the departments from the Managing Partner”</i>	<i>“There is no specified time allocated but regardless of the role of team leader that partner’s focus remains on fee earning”</i>
‘John Erskine’ (Interview with Executive Chairman)	<i>“Teamwork and delegation are essential”</i>	<i>“Team leaders must demonstrate managerial capabilities and an ability to manage the business”</i>	<i>“Team leaders must actively consult with their partners”</i>	<i>“Department Heads are expected to spend 20% - 30% of their time on management. In my role as Chairman and Chief executive I spend about 60% - 70% of my time”</i>
‘William Forbes’ (Interview with the Career Development Officer)	<i>“Demonstrations of the management of effective teamwork is considered essential for our legal managers”</i>	<i>“We encourage individual styles but the emphasis is on good communication skills”</i>	<i>“There is a strong firm ethos on sharing experience and consulting with fellow partners”</i>	<i>“No specific time is allocated but time spent on management tasks are considered an integral part of the job”</i>

In-house legal groups

Whilst the values represented by the private law firm manager are also valued within the in-house setting the focus shifts towards a more integrated role for the manager leading the team not only within the legal framework but also the wider organisation and is consistent with an emphasis on managing both the internal relationships within the legal group and its external relationship with the wider organisation. The data collected on in-house legal groups comprises both in depth case studies of five groups and additional evidence from other data sources (in particular interviews reported in 'The Lawyer' with representatives from in-house legal groups). Evidence from these sources was sought to test the validity of the observations on the role of the in-house legal manager using the classification of small and large groups to highlight the distinctions observed. **Table 8.4** presents samples of quotes from four 'small' and four 'large' groups that reflect the shape and direction of the role of a legal manager leading a group of lawyers within an organisational context. Regardless of distinctions in the role the in-house legal manager must demonstrate a willingness and aptitude for leadership and managerial authority to effectively embrace the role.

Table 8:4
The role of the legal manager for an in-house group

Small in- house groups (20 lawyers or less)	Focus on team work	Cooperation across the business	Raising the profile of the group
Collins, Stewart Tullett, Legal capability: 6 (Interview with Legal Director reported in The Lawyer 20/03/06)	<i>“I encourage everybody in the team to do more than just the job”</i>	<i>“The lawyers must get to know the various business areas of the firm”</i>	<i>“The lawyers encouraged to embrace a wide – ranging approach to their work”</i>
London & European Financial Services Legal capability: 4 (Interview with the Head of Legal reported in The Lawyer 11/12/06)	<i>“I’m looking to grow and enhance the team”</i>	<i>“The emphasis on supporting the business from the legal and compliance side”</i>	<i>“The CEO wanted to make sure that every area of the company was represented around the management table. This included the legal department”</i> (Legal Manager sits on the Management Board)
Capital One Bank Legal capability: 12 (Interview with International Chief Legal counsel reported in The Lawyer 06/09/04)	<i>“We work as a team – divisions of labour are not jurisdictional”</i>	<i>“It’s important that our lawyers are close within the business rather than being simply an independent function”</i>	<i>“I wanted to expand our horizons and be more closely involved in the business, rather than simply seeing things from a relatively excluded perspective”</i>
Royal & Sun Alliance Legal capability: 12 (Interview with UK General Counsel reported in The Lawyer 10/03/08)	<i>“The lawyers work across three teams. The aim is to build up a team which supports our customer strategy”</i>	<i>“There is encouragement for lawyers to develop different roles across the business”</i>	<i>“Lawyers are sent on secondment to other parts of the organisation”</i>

Table 8.4 Continued

Large in-house groups (20 or more lawyers)	Leading and managing the group	Encouraging a collaborative approach	Involving the group in strategic decision making
<p>‘Agency’ Legal capability: 650 approx (Interview with Global Legal Service Coordinator)</p>	<p><i>“The organisation has a global approach to legal management. We try to make sure the quality is fit for purpose”</i></p>	<p><i>“Our business has globalised and the different client serviced by ‘Agency’ lawyers have changed and this has effected how the legal function must change”</i></p>	<p><i>“Some legal functions within the organisation are little more than a service function whilst others are more involved in commercial decisions”</i></p>
<p>GE Commercial Finance Legal capability: 65 (Interview with General Counsel reported in The Lawyer 09/04/07)</p>	<p><i>“I am very conscious of the need to maintain and develop the team”</i></p>	<p><i>“There’s a lot of scope to learn and develop with the business”</i></p>	<p><i>“Lawyers ...are seen as partners and leaders in a growing business”</i></p>
<p>‘Jurisprudence’ Legal capability: 40 (Interview with Senior Legal Adviser)</p>	<p><i>“If anyone wants to see me on any issues I have to make the time to do that”</i></p>	<p><i>“We are not in the normal think tank of taking strategy forward but that doesn’t mean we are not involved in the process”</i></p>	<p><i>“We are required to contribute sometimes on a level of ‘what do you think?’”</i></p>
<p>Reuters Legal capability: 31 (Interview with Legal Director reported in The Lawyer 17/07/06)</p>	<p><i>“Making the lawyers work as an efficient team is a priority”</i></p>	<p><i>“I see our function as primarily supporting Reuter’s growth strategy”</i></p>	<p><i>“Regular communication with the organisation raises the profile of the legal group”</i></p>

8.4 The Dual Roles of Lawyer and Manager

Whilst the empirical evidence highlights a significant relationship enjoyed across the dual roles of lawyer and manager the drivers behind this relationship are not immediately apparent. Further examination of the data was required to determine the extent to which this relationship is borne out of a profession reorganising itself to accommodate managerial techniques and imperatives or alternatively is the consequence of management instigating changes to the professional role.

The professional role is characterised, in part, through its influence over the shape and direction of the role it embraces and the tasks it performs (Malhotra and Morris 2009). The managerial role can harness innovation and bridge the gap between the knowledge and experience in the professional role and the successful and productive exploitation of those resources (Lowendahl 2005). Embarking on a new direction for the professional role requires a change from a principal focus on knowledge towards a combined approach that embraces the development of managerial skills as integral to professional career development (Hitt, Bierman, Shimizu and Kochbar 2001). Historically the legal profession rewarded success in the professional field through promotion to positions of seniority and leadership that traditionally included a management role. In private law firms issues of succession remain fundamental to their strategic aims but increasingly firms are rejecting promotion on grounds of seniority and instead are identifying potential leaders in early career stages a high priority (*"Laws of leadership"*, Managing Partner Journal, 2005). As firms recognise the value of developing management skills in their lawyers the processes are aimed not exclusively at senior positions but across all lawyers who demonstrate leadership potential (*"Learning to lead"*, Managing Partner Journal, 2008).

A recurring pattern observed in the coded data was the role of teamwork and leadership as significant contributors to the successful delivery of legal services. In the legal profession a team embodies a critical mass of appropriate knowledge, skill and experience that requires direction and management from good leadership in order to work cohesively and effectively. To acquire and sustain the trust and respect

of the team the leadership role must be credible and effective at developing relationships both within the team and externally with those seeking its services. The empirical evidence confirms that although many lawyers have embraced a leadership role and through the development of their interpersonal skills have proved themselves effective team leaders there remains a strong resistance to such initiatives from those lawyers who wish to remain *“the expert who doesn’t want to be a manager”* (‘Delict’ Interview). Whilst conceding that amongst lawyers, *“at different levels there are material differences for going to work”* (‘George Joseph Bell’ Interview) and that some lawyers *“don’t want to get bogged down in the administration of management”* (‘William Forbes’ Interview) there is nonetheless considerable evidence arising from this study to suggest that lawyers are developing their leadership skills and managerial competencies and in doing so increasing their marketability and aiding their career progression. The evidence is presented from lawyers working both in private law firms and in-house legal groups.

Private law firms

Across the sample there is significant evidence of firms encouraging their lawyers to develop their remit beyond their professional role. Firms recognise that the talent pool in their lawyers is considerable and offer training programmes to complement and the professional development of their lawyers. Stephen Mayson (Professor of Strategy at College of Law and Director of the Legal Services Policy Institute) described these programmes as being: *“part of the process of encouraging lawyers to think about strategy and giving them the language to do that”* (Interview). They offer potential benefits to firms. At ‘David Hume’ the firm has a policy of identifying key competences for potential Associate and Partnership roles amongst their early career stage lawyers and then developing those skills with training programmes. The Head of Human Resources explained: *“We see the development of management skills and legal skills as good practice that will help develop the business”* (Interview).

Many lawyers have integrated themselves into the role of team work in delivering their services and are keen to develop and embrace a leadership role within those teams. Lawyers who are responsible for managing teams: *“take their role seriously and are able to balance leadership with management”* (‘James Dalrymple’ Interview). These roles are however only filled by senior lawyers, usually partners within the firm and as the Director of Training and the Director of Quality at the firm ‘George Joseph Bell’ cautioned: *“there is a dangerous assumption that by the time a lawyers reach partnership they will have all the necessary skills”* (Interview).

Inevitably initiatives introduced to identify and nurture leadership potential in lawyers impact on the transferability of their skills and enhance their career paths. However their contributions in private law firms through leadership and team work continue to be underpinned by the strength of professional identity and associated professionalism (discussed in detail in chapter seven) that remains fundamental to their professional role. The consensus remains that the delivery of legal services is by framed their knowledge and expertise and inevitably any measures introduced by firms are always mindful of these influences.

Rich and detailed evidence from two private law firms, ‘William Forbes’ and ‘John Erskine’ is used to illustrate the contribution of developing leadership and team working to enhance the interconnections between professional legal service and managing the delivery of that service.

‘William Forbes’

(Interview with the In – house Career Development Officer)

The position held by the interviewee as the in–house career development officer combines both a strategic and commercial focus with a range of initiatives in place to identify and encourage potential amongst the lawyers in the firm : *“I believe that it is very important that at an early stage the lawyers start to*

think strategically about their careers and what they want from them because there are so many more opportunities now aside from the straight forward career path.”

Internally this firm is structured as five Departments and each is led by a team of two senior lawyers and one non lawyer, viz: Practice Group Head + Work Group Head + Business Manager. There are several teams within each department and each is led by a senior lawyer. There is considerable management authority developed at both Department and team level. Each Department has autonomy of its own budget. Training is managed at both Department and firm level. There is a firm wide compulsory training and development programme for all lawyers. The partners in the firm must enroll in the firm’s ‘Leading Lawyers’ programme designed to enhance their man management skills which the firm believes that it is integral to their job: The interviewee commented that for the partners’ role in the firm “*it is difficult to separate out the management of the work from the work itself because they are so closely interlinked.*”

The firm has introduced measures to enhance the role and career development of their lawyer. The role of ‘Associate Director’ was developed in 2006 to recognise and reward lawyers who are acknowledged experts in one of four key areas of legal specialism and to lead a team in that specific field of expertise. The firm also has a ‘Best Lawyer Profile’ that is designed to give guidance on achieving the level of skills and legal and technical knowledge deemed necessary by the firm.

There is a clear focus on an ethos of teamwork in the firm: “*Team work is essential in all transactions*” and the firm encourages strong leadership of those teams recognising that: “*effective team work requires man management*”. Nevertheless the interviewee reported concerns that remain amongst the lawyers with issues of credibility for the legal role: “*The lawyers don’t want to get bogged down in the administration of management. They (lawyers) fear that their legal skills might lose its credibility and its pre eminence.*”

'John Erskine'

(Interview with the Executive Chairman)

The interviewee, the Executive Chairman and Head of the Management Board, explained the change in approach that had been introduced in the firm: *"In the past we have seen the partners as managers rather than seeing every lawyer within the team as a manager. Our processes for associates and partners have been formalised in the last two years. The aim is to demonstrate for the purposes of promotion that you are an effective manager."*

Internally this firm has three Departments each led by a senior lawyer and each department contains a number of Units led by a lawyer. The Department Heads are responsible for the management of their respective groups but strategic decision making is made in consultation with other partners in the Department. The Unit heads are responsible for the management of their Unit but report to their respective Department Head.

There is no formal management training or leadership development programme in place in the firm. The annual appraisal scheme is used to identify potential leaders. The Department Heads are chosen by the partners within the department. The Chairman elaborated on the consequences of this selection process: *"In the past we have seen the partners as managers rather than seeing every lawyer within the team as a manager. The Heads of Department recognise they have been charged with the responsibility for running a business and yet although they know a lot about lawyers they haven't been trained how to manage them. It is fair to say that not everybody who has been a Head of Department has been a good manager."*

This firm is very successful despite its conservative approach to running the business: *"None of the partners get any formal management training. It is just what they pick up along the way"*. Nevertheless the Chief Executive acknowledges the shortfalls in the management of the firm and is keen to embrace a more 'business

like' and structured approach to training and leadership development but is forthright in his recognition of the resistance embedded in the professional identity: *“Curiously lawyers who are used to being confrontational in their professional careers somehow find it difficult to confront someone in their team who is underperforming. The concept of a partnership is that all the parties are owners of the business and there are often long standing relationships in place that make it difficult to be critical of one of your colleagues and fellow partners.”*

The evidence from these two firms mirrors the recurring pattern across the data that private law firms are introducing changes into their internal structures designed to promote an enhanced role for their lawyers. A shift in the balance of professional development designed to embrace more management focused approaches have led to greater ownership amongst lawyers for the responsibilities of team working and leadership. Whilst the firms are each promoting their own individual approaches to developing leadership skills in their lawyers they often do so within a culture of professionalism that still remains suspicious of such measures. There is vulnerability amongst some lawyers that developing new skills and ways of working will undermine their professional role.

In-House Legal Groups

As with lawyers in private law firms lawyers working in-house are encouraged to develop themselves and to diversify their role beyond the legal team. Teamwork is an integral part of an in-house legal group and leadership of the team ensures the delivery of a legal service that meets the demands of the business. A clear focus on identifying and developing leadership and management potential amongst the lawyers reflects the increasing profile of the lawyers across the wider organisational setting and an emphasis on developing the role of the in-house lawyer. Across the

sample each in-house group demonstrated not only a hierarchy of teams in place but also programmes and initiatives in operation to encourage and develop leadership potential amongst the lawyers. Rich and detailed evidence from two in-house groups, ‘Delict’ and ‘Contracts’ is presented below to illustrate enhanced role for the legal manager within an in-house organisational setting.

‘Delict’

(Interview with the Senior Legal Adviser and Head of this Group)

This in-house legal group is a division of the Government Legal Services for Scotland. Its remit is to provide legal services to a Government Department.

The legal function comprises ten Divisions spread across three Groups. Each Division and each Group is made up of a team of lawyers led by a team leader. All the Division leaders report in the first instance to the Group leader who in turn report to the senior legal advisor, the head of ‘Delict’. The leaders of both the Divisions and the Groups have autonomy over the management and training of their respective teams but they have no financial authority. This authority lies with the head of ‘Delict’.

There is a Leadership Development Programme for the Division Heads aimed at developing their role beyond that of legal expert and developing further leadership potential: *“We encourage the lawyers to see their careers not simply confined to legal disciplines. Increasingly we have been trying to involve them with strategic decisions and people emerge through that process. We are talking about what we should do to prepare people for new responsibilities. We are now finding people are enthusiastic to learn new skills.”*

The Senior Legal Adviser encourages his lawyers to put themselves forward for the organisation level management training programmes that are in place although he conceded: *“very often these programmes have no immediate relevance for lawyers.”*

‘Contracts’

(Interview with the Chief Legal Advisor to the Group)

This in-house legal group is a Division of the Government Legal Service for England & Wales (GLS). Its remit is to provide legal advice to a Government Department. The group is divided into seven Divisions each led by a senior lawyer as a team leader who report to the Chief Legal Advisor. The team leaders have autonomy over the management of their teams: *“In terms of the organisation of their work the Division leaders have fairly extensive autonomy because that is the way I approach it and like to run my department”*. The Senior Legal Advisor reported that devolving authority in this way worked well: *“We are relatively comfortable about managing and leading ourselves as lawyers”*. He acknowledged the consequence of encouraging his Division leaders to take responsibility for managing their teams was the lawyers recognised that: *in order to be promoted you end up managing and leading people and you have to show that competence and the people who are good lawyers and good managers are more likely to get promoted.*” The Divisions have limited financial authority but are subject to the budget constraints imposed by the Department. Training decisions are taken and coordinated by the GLS.

The Leadership and Management Programme is part of the compulsory ‘Professional Skills for Government Programme’ and all lawyers working in ‘Contracts’ are eligible for and must attend this course: *“Leadership and management are key core skills required for all senior positions in the GLS. We take training seriously and the GLS encourages coaching and training in management skills. Some courses (aimed at specialists like lawyers) would focus on the skills required to manage a group of lawyers as opposed to managing other people.”*

Within the five in-house groups that were researched as in-depth case studies the team leaders all enjoyed senior positions within the organisational hierarchy and as a consequence there were underlying assumptions about their managerial expertise in addition to the presumptions about their legal skills both enhanced through experience overtime. In ‘Jurisprudence’ the team leaders enjoy considerable managerial autonomy but the Head of this group advised that: *“Before appointment as a team manager the lawyer has to demonstrate some management skills. Their appointment is based on experience and capabilities and general organisational approach”* (Interview).

Some of the groups were organised into teams that were more fully integrated into the organisation’s internal structure (most notably ‘Agency’ and ‘Succession’). Nevertheless the lawyers still functioned professionally within those teams and their responsibilities remained defined by their role to deliver legal services. In ‘Agency’ the lawyers are managed in teams across a range of business divisions and their role within those teams is at a *“reasonably senior level”* that automatically qualifies them to follow the organisational leadership development programme. Despite this position *“a lot of development is not geared towards people becoming legal managers but instead towards becoming effective lawyers”* (Interview with the Global Legal Services Coordinator).

Across the contexts of both private law firms and in-house legal groups it seems lawyers are increasingly aware that in order to meet the changing and diversified demands on their services their role delivering in legal services needs to be managed and nurtured. They do so within a climate of increased managerial initiatives designed to increase the efficiency of service delivery but also, as lawyers adapt their role, they are demonstrating they are receptive to measures to enhance their role and develop their skills.

8.5 Developing Opportunities for Lawyers

As lawyers are drawn towards innovating and diversifying their services, decisions and choices on issues of career progression and the transferability of their skills are shaped by options that include the range and availability of training courses and coaching and mentoring programmes which offer potential to develop their role. Whilst lawyers are creating opportunities themselves to develop their role they are also being provided with opportunities by firms and a profession that both recognise the potential for greater leverage from an enhanced legal role.

Lawyers working out with the private law firm context experience cultures where management training is generally embedded in the organisation and where, regardless of their professional role, aspirations for career progression within the business require they adhere to the organisation-wide structured training programmes in place. Across the sample of in-house legal groups the lawyers enjoy a high grading level within the organisational framework that automatically places them within the management training and leadership development programmes in place. The evidence from these groups suggested levels of expectation from the organisations that lawyers should demonstrate effective management potential and aspire to career paths that will not be confined to their legal profiles. The management training initiatives reflected not only organisational imperatives but also the philosophical approaches in place that balanced the demands on the legal services with the demands for organisational consistency in training. However there is also evidence to suggest that some generic training courses are considered ill suited to the demands of the legal manager and are often combined with or replaced by programmes that are tailored and dynamically in touch with the demands of the profession.

Private law firms are increasingly distancing themselves from traditionally held attitudes that regard training solely in regulatory and compliance terms. They are instead committing to management training, coaching and mentoring programmes (*“Trends in training”*, Managing Partner Journal, 2004 and *‘Coaching: a culture*

shock”, Managing Partner Journal, 2006). These combine with moves to foster a culture and ethos acknowledging and supporting the value of management roles in their lawyers, not least for pragmatic reasons to deliver better quality legal services (“*Cultivating careers*”, Managing Partner Journal, 2006 and ‘*Passing the baton*’, Managing Partner Journal, 2006). However, introducing or promoting training programmes has significant financial implications and for the smaller firm these considerations are often balanced not against long term strategic value but against short term or immediate consequences, particularly the loss of fee earning capacity. The Management Consultant at ‘Rankine Associates’ commented the very real concerns that the smaller firms have in this respect: “*What it always gets back to is the value put on attending course together with the time pressures there are for meeting the needs of the business and doing legal work*’ (Interview).

Training and career development have become increasingly valued across the profession (“*Training for success*”, Managing Partner Journal, 2006) and training programmes, mentoring opportunities and a commitment to professional development have become critical factors in recruitment and retention policies (“*Court groom*”, The Lawyer, 2007). Firms and organisations must balance financial constraints against the demands of strategic initiatives and take cognisance of the implications for the nature and self-image of the legal profession that derive from the training and development of lawyers. Access to both guidance and programmes that offer affordable and pertinent training combined with opportunities to share and learn from experience create an appropriate environment for developing and enhancing the skills of the legal professional.

The constant coding and analysis of the data identified further core categories that reflected observed patterns of behavior (Goulding 2005). Five key measures designed to enhance the developing role of the legal professional were identified, namely: coaching, mentoring, motivational tools, strategic tools and training programmes. They each offer opportunities for firms and in-house groups to generate opportunities for lawyers to learn and develop their role. They inform and

facilitate each other and the evidence presented from the data analysis highlights these interconnections.

Coaching

Lawyers are often reluctant to attend conventional management training and may reject programmes that require prolonged periods of absence from their day to day work (*“Coaching conundrum”*, Managing Partner Journal, 2005). Addressing the demands of the dual roles of fee earner and manager can be challenging: *“The culture of the firm must be supportive and at times forgiving”* (*“Don’t give up the day job”*, Managing Partner Journal, 2004). In their 2008 consultation paper on education and training, **“Discussing the detail”** The Law Society of Scotland acknowledges the contribution of such initiatives and recommends that *“teaching in skills should more often take the form of coaching rather than direct instruction”* (p 32). The tacit knowledge and expertise are central to the experience-based work of delivering legal services lend themselves to coaching and mentoring schemes to develop individuals and encourage team working:

“More and more law firms are now embracing the concept of coaching as a tool to increase potential and improve performance. Coaching is no longer seen (as it used to be) as a fix for problems but as a proactive way to assisting development, individually, within teams and across organisations”

*(‘Performance coaching in law firms- maximising your potential’
Legal and Education Training Group Newsletter, 2007, Winter)*

The evidence from both private law firms and in-house legal groups highlights coaching promoted as an experience-based learning alternative to conventional training programmes and a means to identify potential candidates for management and leadership potential. At individual level coaching is viewed as a personal development tool that is designed to nurture existing talent and assist lawyers embracing new skills and often takes the form of ‘executive coaching’ as an

objective approach towards enhancing leadership skills amongst partners, legal managers and those lawyers identified as potential leaders. Coaching is also acknowledged as a useful tool within teams as a connecting mechanism or practice that can transgress departmental or divisional boundaries and be both strategic in its direction and motivational in its influence. The emerging picture is one of general consensus that coaching is deemed a ‘nice to have organisational tool’ rather than as a necessity and there is limited evidence across the data sample of coaching measures being adopted as integral to the professional development strategy of lawyers regardless of context. The firm ‘William Forbes’ is unique in the sample, promoting an active coaching programme that is administered by an in house career development officer: *“I wanted to be more than a lawyer who listened. I see my role as partly guidance, partly nurturing”* (Interview). However, there was little enthusiasm amongst lawyers to commit to either the time or the focus required to develop the necessary skills to be an effective coach and the alternative option of introducing external facilitators is challenged by the profession on issues of credibility and effectiveness within the professional culture. These challenges were succinctly described during an interview with the management consultant ‘Rankine Associates’ appointed to take charge of the in-house training and development in the law firm ‘George Mackenzie’:

“Although I had done training for a number of years and was experienced I moved to a law firm where the whole culture was completely different. They also thought I was a bit strange because I wasn’t a lawyer and was a professional trainer. My approach is that I work with professionals to help them develop their management skills but obviously you need to know about the business. You need to know how lawyers work and what the business does and over the years I have worked more and more with both professional support lawyers and directly with lawyers and partners so I have a pretty good understanding although I am not technical. I was used to the hard sell but it was still a bit of a shock to come up against lawyers who border on professional disrespect for what I was trying to teach them.”

(‘Rankine Associates’ Interview)

Mentoring

More individualised knowledge sharing can be effected through mentoring and coaching programmes where individual knowledge and experience is shared on a regular basis between two individuals (“*A strategic approach to coaching*”, Managing Partner Journal, 2006). Usually, a more experienced lawyer will take a less experienced lawyer under their wing and share experiences with them on: “*The ideal mentor is likely to be a more experienced person within the organisation who is able to pass on their knowledge and experience*” (“*A friend in need*”, The Lawyer, 2008, p.26).

Mentoring provides an opportunity for the more experienced lawyer to share his knowledge and experience and in doing so guide the development of the aspiring lawyer (“*Cultivating careers*”, Managing Partner Journal, 2006). The arrangements tend to be fairly informal but are reinforced by the strength of the relationship between mentor and trainee. “*Mentoring means being able to take what you have learnt and what you are in the process of learning and combining them to teach others by example*” (Interview with D Ball, Law Society of England & Wales). It is often a longer-term relationship than coaching but its philosophical approach to sharing experience based learning combines effectively with a more formalised coaching programme.

In the private law firm sample there was no evidence of any formal mentoring programmes in place but there was a positive attitude amongst the lawyers towards informal mentoring arrangements. The Managing Director at the firm ‘Andrew Bankton’ commented: “*we have talked about it*” and at the firm ‘John Erskine’ the Executive Chairman acknowledged he “*would like to see one in place*” (Interview). In some private law firms individual senior lawyers were encouraged to demonstrate leadership and assume responsibilities within a mentoring role. The firm ‘William Forbes’ has no formalised scheme in place but nevertheless mentoring is actively encouraged. The informal scheme was explained in detail during the interview with the in-house career development officer:

“There is no formal scheme in place. Mentoring is done departmentally so it is up to each department to choose if they want to have a mentoring programme and if so how it operates. A senior partner takes a personal interest in each trainee and regular meetings ensure they are getting the support they need. As senior associates are identified as potential partners, mentors are put in place to help guide them through the development they need, and to provide support as they take the step up in responsibility. The mentor ensures any issues are addressed early, making a successful transition much more likely, and helps associates recognise the additional range of skills they will need to be successful in the new role.” (Interview)

The firm ‘Viscount Stair’ has a similar informal mentoring scheme in place in which new trainees are offered support from a senior lawyer. Similarly support is offered for new senior lawyers joining through a ‘buddy system’ but although actively encouraged the Senior training Officer acknowledged at the interview that: *“but it is was very much left up to the individual as to how far this was taken and some are far more diligent in their role than others”* (Interview).

The nature of the mentoring relationship seems suited to the departmentalised teamwork environment of the private law firm in which a hierarchy naturally falls into place, unlike the flatter structures observed across in-house legal groups. The lawyers working in the government department ‘Contracts’ fall within the umbrella of the Government Legal Service for England & Wales (GLS) which operates a centrally organised mentoring scheme. Formalised mentoring arrangements have been discussed but rejected by this group and the focus is essentially on ‘self help’ or by nomination from a line manager. Nevertheless mentoring is encouraged across the broad spectrum of the GLS and consequently the role assumes a less specialised knowledge- based focus and embraces a more strategic development role.

Motivation and Strategic Initiatives

The data reveal a pattern of underplayed yet recurring references to acknowledgement of the value and potential that may be derived from measures

designed to enhance motivation. Such initiatives stem from a growing culture amongst lawyers that is supportive not only of personal development measures designed to enhance individual career progression, but to the wider strategic organisational aims that seek to promote innovation and diversity across their services. Both private law firms and in-house legal groups are seeking to capitalise on the interconnection between motivational goals that may direct their professional services and the strategic aims and aspirations of the business. The firm or the in-house group must be clear about the role and services that they seek for their lawyers and producing anticipated levels of performance and delivery requires the lawyers to demonstrate a combination of legal, technical and managerial skills that are in turn managed by strong leadership. The data reflected a consensus that: *management development is not just a training programme but is about on the job training and learning from experience that cannot be replicated on a course*” (‘George Joseph Bell’ Interview) but the issue for many remains how to recognise and reward achievements that are additional to demonstrations of their legal skills and abilities.

Teamwork underpins the relationship between motivational goals that focus on the strategic direction of a business, yet initiatives must address issues of business strategy and balance those with individual aspirations. Annual appraisals are widely used across the private law firm sample as a mechanism for guiding and measuring performance and the means through which individual potential is identified and nurtured and they are focusing increasingly less on a professional assessment and more on a balance between professional ability and personal development.

Nevertheless some initiatives remain ad hoc and subjective measure. For example the firm ‘Andrew Bankton’ looks for a commitment to: *“work on and not just in the business”* (Interview) and the firm ‘John Erskine’ looks for the lawyer with the *“X factor – the star quality”* (Interview). However there is also evidence of more objective, tangible measures and practices being introduced to configure learning: The ‘Associate Director’ role and ‘Best Lawyer Profile’ are two such measures introduced by the firm ‘William Forbes’ that highlight the potential of increased transferability of skills amongst their lawyers as a consequence of personal development. Similarly, the firm ‘James Dalrymple’ uses a Competency Matrix to

identify key competences and potential amongst its lawyers. This firm reported a significant change in attitude towards training and development following the receipt of and “Investors in People” award.

Training Programmes

It is no coincidence that lawyers are exhibiting increased levels of commitment to structured training programmes that are consistent with the increasing demands on legal services requiring more diverse and complex roles for lawyers. Management training for lawyers is arguably discretionary and whilst some within the profession continue to view training purely in regulatory and compliance terms most are energised to develop programmes that that will enhance and address the role of lawyers beyond the remit of their legal expertise. The need for multi-dimensional training is taken seriously and must satisfy demands for innovation and creativity in the programme. Although many private law firms have well-developed management training programmes in place, there remains an undercurrent of opinion that consistently seeks to balance the value of such courses against the pressures of meeting clients’ needs and delivering legal services. The focus is on the lawyer to demonstrate the knowledge and skills acquired and thus justify the time spent on the programme. The firm ‘James Dalrymple’ has developed a rigorous multi-structured training programme (**Appendix L**) that reflects the expectations from the firm for each level of lawyer within the firm. Lawyers working within in-house groups often receive training at both group and organisational levels. The specialist legal courses combine with broader managerial courses conducted at department or organization level. The training for the lawyers in the in-house group ‘Contracts’ comes from a range of providers reflecting the unique hierarchy within which the group operates (**Appendix M**).

8.6 Analysis

Lawyers belong to a profession that has been reluctant to embrace rational – bureaucratic measures to organise them and direct their services. The research question discussed in this chapter nevertheless recognises that lawyers are reconciling their professional role to managerial initiatives as they seek to identify opportunities for growth and innovation in their market. Growing levels of heterogeneity across the legal profession are driving changes in the delivery of their services. As lawyers reconcile themselves to the demands of managerial initiatives to identify and nurture opportunities for growth and innovation their services increasingly reflect not only the resources of their profession but also the dynamic capabilities of leadership and management. It is significant that as lawyers adapt their activities they do so in ways that they retain authority over their day to day work whilst demonstrating they are resourceful in adapting their skills and acquiring new ones.

The evidence from the sample researched, (and specifically highlighted by the example of the firm ‘Andrew Bankton’) reflects that lawyers are increasingly resigned to being managed and having their services strategically directed. At ‘Andrew Bankton’ the focus of the work done by the lawyers is now shaped by the strategic aims of the firm and the firm acknowledges that in addressing those aims, some lawyers will be involved in work that is not be targeted as primarily fee earning but will nevertheless be no less valuable to the firm. The firm and its lawyers are adapting to a changing focus to their services that embraces not only legal but other non- legal services and the lawyers are fulfilling roles that support these changes. They nevertheless continue to demand a consensus that acknowledges the embedded values of professionalism and integrity resonant with their professional status. As lawyers concede the need to adopt a more ‘business–like’ approach to their services they have been forced to address the consequences for their professional role as measures are introduced to manage those services more efficiently. They remain committed to delivering their services within a regulatory framework that defines their levels of professionalism and they continue to assert

ownership of their services. This strength of professionalism is balanced against their demonstrated willingness to adapt their role and to accept levels of managerial authority to accommodate the demands of the increasingly fragmented contexts from which legal services are delivered.

The performance and delivery of professional legal services is the result of combining the unique and idiosyncratic resources of the legal profession (Hitt, Bierman, Uhlenbruck and Shimizu 2006). Whilst this research concurs that the role and identity for lawyers remains distinguished by the expert nature of their knowledge and the specialist focus of their services (Quinn, Anderson and Finkelstein 1996), changes to the shape and nature of professional legal services have seen the processes that deliver legal services successfully exploit these resources as lawyers seek to diversify and innovate their services. Lawyers have responded to demands to develop their services to embrace increasingly diverse and non-legal specific considerations. They do so in ways that enhances their role as they provide new directions for their services by addressing non-specific legal directions that encompass a more holistic application for their skills and expertise and include strategizing roles that reflect a business and commercial orientation to their services.

Nicolini et al (2007) observed that the strength of professional identity in the healthcare sector was a source of conflict between managers and professionals. The legal profession remains largely defined by the shape and content of its work (Suddaby and Greenwood 2005, Malhotra, Morris and Hinings 2006, Malhotra and Morris 2009). Differences in the relationship between lawyers and managers are influenced by organisational context and reflect not only the nature of the environment from which services are delivered but also the nature and complexity of the relationship between the lawyers and their client. These factors influence and shape the role of the lawyer and consequently the demands on the legal manager but they do not materially alter the relationship between lawyers and managers.

8.7 Concluding Remarks

The research question discussed in this chapter addresses the role of managerial input as lawyers reorganise themselves in response to demand for new and more innovative legal services. Notwithstanding increased strategic influences on their services, the lawyer/client relationship and the expectations sought continue to shape and direct the manner and mode of legal services. Lawyers remain defined by the nature of their work and the manner and mode of their services reflects a loyalty to the routine practices and norms of the legal profession as they continue to deliver their services within a compliance framework of professional standards. Nevertheless although the influence of professional boundaries co-existing within an organisational framework remains significant lawyers have proved inspirational in creating new roles for themselves that are shaped by the nature and scope of their services and not constrained by social and institutional boundaries.

If the legal profession is to adapt and diversify to meet challenges to their services these boundaries need to be managed. The successful coordination of the interconnections across the dual roles of lawyer and manager demonstrates the resourcefulness of lawyers both in adapting their existing skills and also in acquiring new ones.

Appendix K

Journal Articles referenced in Chapter Eight

Managing Partner Journal (www.mpmagazine.com)

"A strategic approach to coaching", (2006), Vol. 9(1) posted 25/05/06

"Coaching: a culture shock", (2006), Vol. 9(6), posted 31/10/06.

"Coaching conundrum", (2005), Vol. 8(3), posted 02/08/05.

"Cultivating careers", (2006), Vol. 9(1), posted 25/05/06.

"Don't give up the day job", (2004) Vol. 6(8), posted 03/02/04.

"Laws of leadership", (2005), Vol. 8(3), posted 02/05/05.

"Learning to lead", (2008), Vol. 11(3), posted 22/07/08.

"Passing the baton", (2006), Vol. 9(3), posted 03/08/06.

"Training for success", (2006), Vol. 9(6), posted 31/10/06.

"Trends in training", (2004) Vol. 7(6), posted 05/11/04.

The Lawyer

"A friend in need", (2008, March 3), p.26.

"Court groom", (2007, February 19), p.29.

Appendix L

'James Dalrymple'

The private law firm 'James Dalrymple' has a highly structured training programme that is conducted in – house. Each year the firm wide appraisals are analysed to determine the training requirements for the forthcoming year and a training analysis is submitted to the Management Board for approval. The Board also identifies key strands to be adopted in the training strategy for the forthcoming year.

Level 1

Basic training programme for the firm's trainee lawyers. Its focus is on soft skills. Trainees will also receive Divisional training which focuses on legal skills.

Level 2

Soft skills training programme for all legal fee earners (except trainees). This includes project management and time management courses.

Level 3

Development programme providing management training for lawyers at 'Associate' level

Level 4

Competency Matrix (for all levels up to Partner) drawn up in conjunction with the annual appraisal to identify the expectation of each lawyer in terms of both legal expertise and management ability.

Level 5

Partnership Competency Matrix

Appendix M

'Contracts' Training Programmes

'Contracts'

This in – house group of lawyers is responsible for providing legal services to a Government Department. The lawyers working within the department are employed by TSol¹ and as such are part of the wider legal organisation GLS² which in turn is part of the Civil Service organization in England & Wales. As member of the Civil Service lawyers working within 'Contracts' are supported through a range of training programmes at organization wide level and also across programmes specifically for lawyers at GLS level, TSol level and (at a relatively minor level aimed at specialised legal skills) at department level.

Organisation level

National School for Government runs the Professional Skills for Government programme (compulsory for all Senior Civil Service employees) and a series of management courses to feed into this programme

GLS level

An in house training team comprising members of the GLS Secretariat + the GLS Training Committee + the National School of Government coordinates training programmes for all lawyers in GLS and organizes a centrally coordinated informal Mentoring Scheme for all lawyers in GLS

TSol level

An in – house training team comprising lawyers from TSol plus the Legal development staff at the HR division of TSol coordinates its own in – house training programme for lawyers within TSol including a Leadership and Management programme

Group level

Specialised courses administered by a senior lawyer + support lawyers

¹ Treasury Solicitors provides legal services to central Government Departments and other publicly funded bodies in England and Wales

² Government Legal Service in England & Wales

Chapter 9

The Role of Legal and Managerial Competences in the Delivery of Professional Legal Services

A Discussion of the Empirical Research Findings

9.1 Introduction

This thesis has researched the development and delivery of professional services and the management of the processes that shape and deliver professional services. The aim of this chapter is to theorize and generalize the conclusions drawn from the discussions presented in the preceding chapters. This final chapter will provide concluding remarks on the contribution of this research across three different areas of resources, processes and professions that have been the focus of the themes and ideas that have emerged in the course of this research project. The chapter will discuss the conclusions drawn from the analysis of the empirical evidence presented in chapters six, seven and eight and the implications of the research in respect to the theoretical positions of resource theory, process theory and professionalism. The discussion will reflect on the relationship between the empirical research and the theoretical discussions in chapters two and three that informed and guided this research project.

This study adopted a resource approach to its research into the management of professions and the interconnections between resources and processes as firms and organisations seek ways and opportunities to enhance and develop their professional services. In this research the discussions on resources and processes centre on their inimitable value to firms and organisations and the contribution from this research to resources and processes as comment domains are developed in this chapter. The

findings and conclusions from this research contribute to developing understanding of resource theory and process theory and the extant literature on professions and professional services. This thesis addresses the arguments and discussions in the context of professional legal services but the conclusions drawn on the resource approach to the management of professional resources and the development and delivery of professional services by firms and organisations have broader implications for the management of professions generally. In this chapter the discussions are addressed in the context of the three research questions in the thesis. Three major categories (the fundamentals of law today, professional socialisation and service delivery) were used in the research to develop theoretical concepts that served as an interpretive framework and a basis from which to explore the abstract understandings of the relationships and connections between theoretical categories and emerging ideas.

Chapter six addressed the research question (**RQ1**): “How do legal firms and law professionals process and mobilize resources as they both seek to develop legal services?” Processes not only serve as connections across resources they also manage change and in this research they are an amalgam of, on one hand, routine and conformity (in the established codes of conduct and conventions adhered to by lawyers) and on the other hand resourcefulness and dynamism (e.g. lawyers involving themselves in decision making and operational roles and devising imaginative and skilful ways of developing their services, for instance by becoming part of operational teams). The conclusions drawn suggest that as law firms and lawyers seek to differentiate their role and services they are re-evaluating their role and contribution to the delivery of legal services and, in doing so, engaging with the contradictions and imbalances of addressing strategic aims and standard processes that shape and process their services. Addressing these conflicting influences law firms and lawyers demonstrate a level of resourcefulness that challenges the traditions and conservatism of their professional identity. As lawyers display innovation and creativity across their services their responses suggest their role extends beyond the framework of their traditional remit and their services reflect the

contributions lawyer and manager that redefine understanding of professional legal services.

Chapter seven developed the discussion through the research question (**RQ2**): “How do legal professionals encounter and resolve managerial challenges to their professional identity?” The introduction of managerial initiatives across legal services not only challenges the integrity of the profession but also confronts the lawyer/ client relationship and the specialist knowledge and expertise that define the service. Whilst lawyers remain loyal to the professionalism of a service that, for them is defined by the strength of a professional identity, they also concede that managerial processes may enhance their services and offer opportunities to encourage innovation and diversity. Whilst a service may be delivered individually it is nevertheless done so in the context of a firm service (whether intentionally or by default). Services derive their legitimacy and value from their association with a profession and there are enhanced by this distinction. They may however also be delivered in combination with other associated techniques (i.e. managerism) and although they may be less visible and do not assume the same recognition they are nonetheless valuable.

The individualisms and idiosyncrasies that define a legal service are drawn from the resources of the profession’s knowledge and experience but managerialism has a role to play in differentiating the processes that deliver services. The final research question (**RQ3**): “How does the role of the legal manager offer new ways to identify and shape opportunities for developing and delivering legal services?” was the focus of the analysis and discussion presented in chapter eight. As lawyers are reconciled to rational-bureaucratic measures to better manage their services a relationship has developed across the dual roles of lawyer and manager. As legal services become differentiated they do so in ways that develop as processes connecting with resources which are also then additionally managed by techniques adopted by lawyers working in similar ways but which are nevertheless, distinguishable across firms.

A research strategy was adopted that was designed to gather information about how resources are ‘managed’ and how firms identify and shape opportunities for developing and delivering professional services. The aim of the data collection was to examine and understand the relationship between a firm’s resource base and the delivery of services in the context of the legal profession and the delivery of professional legal services.

The research was influenced by a processual perspective that identifies with the pragmatists’ approach to theory development as a process of understanding the evolution and emergence of a reality observed from the data (Strubing 2007). Introducing a processual approach to grounded theory in this research follows the method adopted initially by Strauss and Corbin (1990, 1994). Although the data collected was descriptive in nature, through the iterative processes of coding, comparison and categorisation, the findings became conceptualized and theorizing across the data began the transition from recorded experiences and activities into concepts and interrelated themes.

Four key themes were articulated in the early coding and analysis process. These in vivo codes represented abstract themes that were the focus for the subsequent theorizing across the ideas and concepts that emerged during the later coding processes. These four themes are:

1. Changing focus of the legal profession
2. Combining legal with other skills
3. Understanding both legal and business skills
4. Diversity of skills

These themes reflect the processual focus of this research study in which the changing nature of organisational and managerial realities were observed and recorded. They were recorded in the early stage of the coding and analysis process and they are descriptive in nature (which is reflected in their wording) but nevertheless they were useful in providing a basis for reflecting the interactions

between resources and processes and their link with professions at this stage. Initially they were used as abstract themes for recording experiences that were observed and noted in the data but as the process of theorizing from the data began, these themes became conceptualized with the ideas of resources, processes and professions. Connections were identified that linked the central phenomena under research, not only with context, but also changing social conditions and observed interactions amongst the actors. This conceptualization across the data was concurrent with the ongoing, integrated processes of the literature review and the empirical processes of data collection and analysis from which the three research questions were identified.

Answers to the research questions were sought using a grounded approach to the data to understand the consequences of the interplay and interconnections observed during the data collection and analysis processes. Observing patterns of association and connections across the data began the process of moving from a description of the data to the interpretation of the empirical findings.

9.2 Summary of the literature

Conducting a literature review in grounded theory research is a contentious issue. The approach taken in this research was influenced by Goulding (2005) who concedes that in grounded theory research reviewing the literature *“involves a delicate balancing act between drawing on prior knowledge while keeping a fresh and open mind to new concepts as they emerge in the data”* (p 296) and by Charmaz’s (2006) view that, in grounded theory research, the literature review should combine with the theoretical framework as the sources of analysis and comparison. Reference to related theory and existing empirical work enhances the theoretical sensitivity of the findings in this research study and also demonstrates the researcher understands the phenomena under study (Suddaby 2006). Revisiting and summarizing the literature at this stage provides the opportunity to set out the theoretical framework within which answers were sought to the research questions.

The literature on resource theory and the resource-based view of the firm informs the resource-based approach to the strategic management of professions that sets the theoretical framework of this research. Resource theory and a resource-based view of the firm in the tradition of Penrose (1959) are used to explain the differences that shape the strategic management of firms (Foss and Ishikawa 2007) and understand the contribution of a firm's idiosyncratic resources in explaining differences in performance (Ahuja and Katila 2004). Chapter two discussed in detail the significance of resource heterogeneity (Scarbrough 1998) and drew on the resource-based perspective of a firm to explore the relationship between resources and services. Loasby's views on knowledge as a dynamic asset that, together with experience, can be shared and transferred were used to frame developing ideas on the strategic management of resources in professional services.

The research focused on the processes involved in delivering services by addressing the relationship between social context, namely professions, and an interdependency with resources that is process driven. The processes that enable organisations to achieve their strategic aims are a consequence of resource allocation. Chapter two reviewed the literature on processes developed through a combination of resources and interaction across social functions and shaped by the subjective influences of experience and context (Rugman and Verbeke 2002, 2004 and Ford and Hakansson 2006). These processes present themselves as established and familiar routines and systems from which a strategically valuable relationship can be created with the resources (Araujo and Spring, 2006).

The discussion on the resource-based approach to the strategic management of resources was extended in chapter three to the management and delivery of professional services. The extant literature highlights research into the role of the manager and the broader activity of managing critical processes in the performance of the professions (Robertson, Scarbrough and Swan 2003, Malhotra, Morris and Hinings 2006, Malhotra and Morris 2009) but there is a gap in the literature on research into the challenges of managing organisations that exist in an institutionalised professional context which this research is drawn to and discusses.

Lowendahl's (2005) work on professional service firms identified a significant role for managers but, whilst different professions exist across a range of contexts and are organised in different ways, it remains the professional dimension that shapes the conduct of the work and the service provided (Suddaby and Greenwood 2005, Malhotra, Morris and Hinings 2006, Malhotra and Morris 2009). The research was guided by the conclusions in the literature on professions and the aspects of professionalism associated with the professional role. The lack of a clear definition of a 'profession' is not significant and indeed highlights the changing and evolving role for the legal professional that was simultaneously observed during the research process.

9.3 The Conclusions and Implications of the Empirical Research Findings

The empirical analysis in this research addressed two different contexts delivering professional legal services, namely private law firms and in-house legal groups. In chapter four the discussion focused on the increased use of qualitative research in areas of organisation, business and management research. This research, conducted in the context of the legal profession and its members, was an exploratory study that observed the interactions within a social group (the legal profession and lawyers) and sought to understand and contextualize behaviour and situations from the evidence of empirical data.

A range of data sources and collection methods were used and reflected the desire to understand a great deal about the social reality of the delivery of professional legal services and the social interactions of the actors involved. The analysis of the empirical findings to understand 'what is happening' was underpinned by a pragmatic approach to the data analysis that recognised the observed interplay between the actors was occurring within a changing social and cultural environment and it was important to analyse the consequences of those changes and to address them in the context of the research questions.

9.3.1 Understanding and Developing Professional Resources

The services delivered by lawyers and law firms are developed from their resources but against the influential background of the profession to which both are inextricably tied. The ongoing interdependent relationship between lawyers and law firms that exists within the institution of the profession (which represents a structure and context within which, in the traditions of resource theory, resources may be organised to shape and deliver professional services) is fundamental to connecting professional resources.

Lawyers are the individual members of their profession who, through their work providing legal services, exhibit a professionalism that is reinforced by their seemingly personal resources of knowledge and experience. Knowledge for lawyers develops initially from their prerequisite specialist education and training and is then further enhanced by ongoing professional development programmes and also through coaching and mentoring measures that complement their practical experience. This experience is central to shaping legal services and is developed discretely overtime by lawyers and through shared wisdom and know how. The resources of knowledge and experience remain highly individualised and personal to lawyers and are rarely codified although they may be shared and become familiar as routine practices.

Law firms are professional service firms that are largely defined by the professionals employed there and whose work and services are shaped by the resources of their knowledge and experience. Although law firms owe their distinctiveness to the lawyers who work there and are a recognisable entity within the context of the legal profession as a provider of legal services, yet they may also challenge the individuality of lawyers. Their role is not merely a holding device from which lawyers may deliver their services. As with lawyers, their professional role is similarly drawn to the resources of knowledge and experience but these resources are less distinctive to individual firms and instead are routinely systemized and codified in standard practices and delivered as expected norms of behaviour and conduct. Moreover law firms have a relationship with the ‘customer’ that develops through an

ongoing relationship with clients and which, for firms, is a resource that they may draw on as they seek new opportunities.

The resources of knowledge and experience are invaluable to legal services but they need to be organised in such a manner that they connect with processes that do not rely on the embedded routines and practices. Lawyers continue to deliver services in response to the demands of their client base and draw on their resources of knowledge and experience to do so but, as they seek ways to perform their role in innovative and creative ways that would enhance their services, less emphasis is being placed on the norms of behaviour and routines embedded in the professional role. As clients become increasingly informed and demanding lawyers seek out the resourcefulness of their resources to develop new and innovative ways to deliver their services.

Lawyers alone seem unable or unwilling to seek out the resourcefulness embedded in the resources connected by these processes and instead have sought some form of management imperative which they concede as necessary to realise the full potential of their resource capabilities. Although lawyers still identify with a functionalist role for their professional services, the imperatives driving change across legal services see lawyers reorganising themselves in ways that embrace managerial initiatives. Professionally they have developed themselves through new education and training programmes and practices. In doing so they have not only enhanced the transferability of their skills but they have also addressed potential for future career development.

9.3.2 Developing Professional Services

As demand grows for increased diversity in the shape and scope of legal services inevitably some aspects of the professionalism of lawyers and their services are diminished as a consequence but not significantly so. Lawyers are embracing new roles to successfully create a brand for their services that not only address the

strategic demands of an organisation but also fulfill their professionalism of their role. Lawyers retain their professional identity and skills and their services continue to be framed by the resourceful allocation of their knowledge and experience albeit in different and exciting ways.

As legal services are delivered across boundaries a level of contextual interaction is inevitable. A wholly 'protectionist' approach to legal services is therefore no longer appropriate. Resource heterogeneity is a source of innovative capability for lawyers but relying on resource capability alone is insufficient if lawyers are to drive innovation across their services. In this research the influences of the social and institutional group to which professions belong were equally evident in this research amongst lawyers working in law firms and those who were part of in-house groups and created an alliance amongst lawyers that was reinforced by the strength of a professional identity that was very strong and pervasive. The role of 'expert' was one that all lawyers embraced and which continued to shape the demands on their services. As a professional group lawyers were self regulating and enjoy considerable levels of autonomy. This research found that lawyers were organised into sub-groups within their working environment and within those groups there were further degrees of autonomy delegated to senior lawyers.

Introducing change to legal services involves managing a professional role in which the strength of the lawyer/client relationship continues to shape the manner and mode of services. Lawyers are balancing the joint influences of the standards processes and norms of routine synonymous with their profession against the commercial imperatives to deliver a less individual and more uniform service that fitted with the strategic aims of their business. Whilst lawyers refuse to compromise their position in respect of specialist training, peer review and self regulation they are nevertheless adapting to change, and they are doing so in ways that not only challenge their professional identity but also embrace new roles and direction for their specialist skills and knowledge.

The successful delivery of new and innovative professional services is shaped by the dual influences of firms and professions and influenced by the consequences of organising resources across these two co existing frameworks. The relationship between resources and services is enhanced by the interdependencies created with the institution of a profession which, whilst constrained by its own social barriers, nevertheless reinforces the inherent strengths of professional resources. Understanding and managing that relationship is critical in driving change across the delivery of legal services.

9.3.3 The Evolving Professional Identity and Role

In chapter three the identity of the legal profession was examined and measures being taken by lawyers to adapt and differentiate their role to address challenges being made on their services were reviewed. Professions and the role of a professional are largely defined by the functional aspects of the professional identity (i.e. professional identity, professional autonomy, specialist education and training, professional associations, peer review, demand for skills / service, levels of bureaucratisation).

However this research found that although lawyers are embracing new opportunities to use their skills and expertise their role remains closely aligned to the functional aspects of their profession and the professional identity continues to exert considerable influence and direction. Notwithstanding the current moves towards deregulation of the legal services market (these were discussed in chapter one), the legal profession in the UK continues to be regulated by autonomous professional associations and subject to their codes of practice and conduct. Membership of such professional associations represented the inherent conservatism of the legal profession and promoted elitism amongst lawyers but curiously this adherence to these aspects of professionalism represented continuity and stability to clients.

Lawyers continue to display levels of homogeneity and loyalty to the professionalism of their profession which offered values that legitimized their role. As professionals, the lawyers see their role as being “*good at law*” and they remain committed to delivering a service that is shaped by professionalism that reinforces the “*strength of their professional identity*”. However these levels of homogeneity are being questioned by those in the profession who argue that they do not fit with strategic decisions and that, as a profession, lawyers must adapt to meet new challenges on their services. Issues of professional elitism, lawyers’ resistance to change and their desire to maintain a primary focus on legal skills in their work continue to wield a significant influence across legal services but, as the professional boundaries become blurred some aspects of professional socialisation are consequently diminished.

The professional role is personal and idiosyncratic to lawyers but nevertheless this research found that lawyers were displaying innovative approaches to their role and were using their resources of knowledge and experience in ways that were less conforming to the standard processes and norms of behaviour of their professional role. Lawyers are becoming more reflective and adaptable and this approach is influencing their professional role and shaping their services. As lawyers develop heterogeneity across their services their focus is on sharing their knowledge and experience with their fellow lawyers. They embrace teamwork in their services and demonstrate levels of cooperation, working with their peers towards shared goals. Similarly they are active in building relationships with clients that encourage a collective approach to their services that is driven by that the desire for firm, not individual recognition.

9.3.4 The Role for Managerialism in Professional Services

A shifting paradigm for lawyers and their professional identity implicitly points to a role for managerialism in the delivery of legal services in which management has a role to play in generating and organising the sharing of knowledge and experience. This research found that, in pursuit of introducing innovation and creativity in their

services, lawyers conceded that some form of management influence was helpful in realising the full potential of their resources across their services. Although the professionalism of the legal role remains deeply entrenched, both in the conduct of lawyers and their services, as law firms and lawyers seek ways to achieve their strategic aims the focus is drawn to creating a strong brand for their legal services.

Lawyers' services were traditionally rewarded for demonstrations of their knowledge and experience but as lawyers and firms strive to address their clients' expectations managerial influences are credited for shaping how lawyers delivered their services. It was clear from the research that lawyers were unsure how to accommodate the introduction of managerial initiatives across their services and there was evidence of considerable resistance from the profession who were anxious to "*do what they have always done*" acknowledging that "*for a profession rooted in the past and tradition, lawyers don't have a great deal of experience in coping with change*". Specifically in respect of in-house lawyers, managers developed strong relationships with the clients and as a consequence were empowered to introduce greater transparency and communication between the lawyers and clients.

As legal services evolve towards a more business orientated direction there is an appetite amongst the profession of a need for change and the mood amongst lawyers who concede the need to align their role with the strategic aims of the business. Underpinning these measures however legal services continue to be defined by certain aspects of professionalism, namely, their specialist knowledge, the strength of their professional identity, and aspects of elitism in their role and the codes of conduct that shaped their work ethic. These norms of professional behaviour and standards of professionalism serve as benchmarks against which clients may measure the services they seek from lawyers and thereby reassure themselves. The challenge to lawyers is to redefine their role without compromising their professional identity and to do so in ways that they can manage the resourcefulness of their resources.

9.3.5 Redefining the Professional Role

This research observed a growing trend amongst lawyers away from a formal, processual approach to legal services towards a more responsive, innovative approach that is counter intuitive to their standard practices. The role and identity for lawyers remains distinguished by the expert nature of their knowledge and the specialist focus of their services but changes to the shape and nature of professional legal services have seen the processes that deliver legal services successfully exploit these resources as lawyers seek to diversify and innovate their services. As lawyers develop their role across new and diverse skills they demonstrate a duality to their role that embraces both professionalism and managerialism. Individually lawyers have developed themselves through new education and training programmes and practices and they have embraced new managerial roles. In doing so they have not only enhanced the transferability of their skills and but also addressed potential for career development.

9.3.6 The Implications for Professional Services

The research concludes that the professional skills of lawyers translate effectively into managerial strengths. There is some resistance from the lawyers and indeed some lawyers chose to reject any demands for them to embrace managerial skills, preferring to focus on their legal skills. But many lawyers accept that by combining the strengths of their professional role with the broader, more inclusive considerations of management they are not only enhancing the transferability of their skills and career paths but also enriching their legal role. As lawyers embrace the management of their services the profession is reassured that the professionalism and integrity of their services will not be threatened by external management initiatives which further enhanced the authority and credibility of the role of the legal manager.

The levels of professionalism exhibited by lawyers in their role and services are unsurprising given the traditional background and history of their profession.

However in the face of threats from the potential deregulation of their services and against a backdrop for demands from their clients for a more accountable and ‘business –like’ service lawyers are resilient and tenacious in addressing opportunities for growth and exploring different approaches to deliver new and innovative services. Generally lawyers have responded positively to challenges presented to them and their services and they are strategically repositioning their role and successfully managing themselves.

9.4 Theoretical Contributions of this Research

This section presents the general theoretical contributions from this research across the three research traditions outlined in the literature review, namely, the resource view, processes and managerialism among professions and will develop general conclusions, capturing this research project’s contributions to these three key theories.

The three research questions that have been the focus of the three preceding chapters each draw on these three theoretical areas but in particular, question one is more closely aligned with resource theory, question two with process (and specifically ideas of developing services from resources), and question three with the conjunction of professions and managers. In this section each area of theory will be addressed and this research’s position on each respective theory perspective will be summarised using prominent examples from the research to record occasions that reflect the principle tenets of theory across the different dimensions.

Finally this section will outline the contributions of this research with respect to each of the three theories discussed.

9.4.1 Professions and Organisations Mobilizing Resources

(a) Reprise of theory

In this subsection the theoretical contributions to understanding professional resources and their application in the delivery of professional services are discussed. The conclusions drawn from the examination of the first research question in this thesis, namely; **(RQ 1)**: “How do legal firms and law professionals process and mobilize resources as they both seek to develop legal services?” are used to generalize theoretical ideas about the application of resource theory to professional services.

Resource theory in the tradition of Penrose’s resource-based view of the firm explains the relationship between a firm’s resource base and the delivery of services. Whilst resource theory acknowledges the entity of the firm as the *prima facie* framework within which resources may be organised and developed, the institution of a profession is similarly a robust framework within which resources may be organised. A profession may be interpreted as a source of external resources (Sherer and Lee 2002, Pinnington and Gray 2007) upon which the firm may draw upon.

The conjunction of firms and professions to provide an additional means of organising resources is reinforced by the ability of professions to connect services with their personal resource base (Scarbrough 1998). Resources are described by Baker and Nelson (2005) as a range of independent and unique tangible and intangible assets which firms may draw on to compete for and explore opportunities but additionally this research found that resources were not straightforward and could be complicated and problematic to remobilize and recombine. The professional resources examined and researched in this project are the idiosyncratic resources of the legal profession that were found to exist as an amalgam of different frames of reference, i.e. individual lawyers and law firms. The resources of knowledge and experience are distinctive assets for both lawyers and law firms.

(b) Examples of resources from the research

Firm, professional and personal resources were found across a range of settings and were not context specific per se. Professional resources, although they may have appeared highly individualised, were seldom private and personal, and indeed were rarely codified. As they become routinely systemized overtime they evolved into standard and routine practices that were anticipated as expected norms of behaviour and conduct. Indeed knowledge and awareness of these resources (whilst not specific), raised their profile and enhanced their value.

At the law firm ‘Andrew Bankton’ a market research project was undertaken by the firm and the report “Moving Forward with Confidence” was used as a basis for both the firm to develop its business and to seek new opportunities with a focus on high profile, complex work that they felt should be partner led. The aim was for the firm to concentrate less on volume and instead to seek out more opportunities by attracting new, ‘high’ quality clients. The report captured and mobilized the firm’s resources not only of the established and familiar routines and practices of a professional organisation and a law firm but also by drawing on the seemingly personal resources of knowledge and experience of its individual lawyers. By combining together the inherent strengths of professional codes of practice and norms of behaviour with the shared wisdom and know-how of individual lawyers the report became a valuable resource for the firm which it could then draw upon. It did so by putting in place a strategy (named ‘Operation Bearhug’) that was directed at developing a close working relationship with clients with partners taking the initiative to get to know their clients better and to understand their clients’ business. This initiative was introduced by the firm with a focus on building both existing and new relationships with clients as the firm sought new opportunities to develop their business. This firm had drawn on its professional role as a provider of legal services to explore new ways to enhance its business.

‘Operation Bearhug’ demonstrated how firm, professional and personal resources had been identified and isolated but thereafter effectively mobilized and combined. It was initially opposed by many of the lawyers in the firm who identified with the

standard practices and norms of behaviour and conduct more usually associated with their profession. However as the practice became an accepted part of the partners' role within the firm it developed overtime as a valuable resource, which although not embedded in the traditions of the profession, nevertheless was influenced by its relationship with the institution of a profession.

(c) Specific conclusions on this thesis' contributions to resource theory

This thesis contributes to the understanding of resources that exist and are organised and combined across different institutional settings. Sherer and Lee (2002) and Pinnington and Grey (2007) saw in the institution of a profession a resource that could be used by firms. This research found that the institution of a profession additionally co exists as a framework with firms and the juxtaposition of professions and firms raises expectations about the organisation of resources. The relationship between two co existing structures (such as firms and professions) that shape the processes of combining resources is complex and is constrained by the influences of the social and institutional boundaries of a profession. Resources are dynamic and interesting entities that are complex to acquire and combine, especially in professional settings, and tensions may exist across interconnections within an institutionalised setting. Variations in the negotiations are required to access resources that need combining and reflect the differences in firm, personal and professional resources. However, resources can successfully be combined across a range of settings and the relationship can be both productive and innovative.

The individualism of professions identified by Scarbrough (1998) as a valuable asset in applying resources is further enhanced by the idiosyncrasies of resources (Baker and Nelson 2005) that provide firms with opportunities to mobilize resources across complex and overlapping settings. This thesis concludes that professional resources are noteworthy as assets that are fundamental in not only configuring the role and identity of professions but also exploring and developing opportunities for them. The conjunction of firms and professions introduces competing dimensions for firms as they seek to develop their resources competitively. The institution of a profession,

although constrained by social barriers and embedded in traditions and professions norms, is nevertheless a valuable resource that can provide new ways to capture, apply and mobilize resources and one that challenges the identity of the firm as a structure within which resources are organised.

9.4.2 Managing the Processes that Deliver Professional Services

(a) Reprise of theory

This subsection discusses the role and contribution of processes in shaping and delivering services addressed in the discussion on innovative yet incremental service development in this thesis, and, specifically reflecting on the role of processes both as routines and as discrete entities. The conclusions of the second research question addressed in this thesis, namely; **(RQ 2):** “How do legal professionals encounter and resolve managerial challenges to their professional identity”, are used to theorize and conceptualize ideas about processes and their role in the delivery of professional services.

The research was theoretically informed by process research with its focus on the actions and activities overtime of both individuals and organisations (Pettigrew 1997, Langley 1999, Van de Ven and Poole 2005) and further by the objectivity of the influences of pragmatism when combined with process theory (Locke 2001).

Processes are dynamic and empowering routines that work the interconnections and interdependencies between resources and services. There is inherent value in a firm’s processes and, as they develop, they accumulate greater value Langley (1999) and later Van de Ven and Poole (2005), who identified four approaches (Approaches I, II, III and IV) across both variance and process methods for studying and measuring organisational change.

Additionally processes are important as discrete entities that are valuable assets which on firms can rely. Processes exist as learning mechanisms whereby knowledge and experience can be shared (Loasby 1999) and as means of communication across

the social interactions between two social communities or organisational structures. Processes are also practices and routines, developed overtime by multiple interactions and recurring behaviour (Feldman and Rafaeli 2002) that firms can rely on to instill and transfer best practices (Newell et al 2003). Cohen (2007) described the routines and practices that are defined by the professional norms of practice and codes of conduct as mundane and rigid but this thesis argues the contrary.

(b) Examples from the research that capture processes

In this research processes were observed in number of ways (e.g. seminars, training programmes, coaching, mentoring and forums for communicating and sharing information) as lawyers and law firms sought ways to both develop and enhance the means to share and transfer their valuable assets of knowledge and experience and to cultivate greater communication in the social interactions between firms and professions. Some measures were formal, particularly in larger law firms and also in-house legal groups, for example the Legal Information Online Network available to all lawyers working within the Government Legal Service. Others, whilst ad hoc and informal, were no less effective. At the firm 'David Hume' there were no formal regulated measures in place but nevertheless there was an enthusiastic and positive culture that encouraged the sharing and transferring of knowledge and experience. Lunchtime seminars provided a relaxed and informal forum for discussion that was encouraged by the management team.

At the firm 'John Erskine' there was a strong emphasis on developing teamwork and departmental work groups which, was used as a method to develop a culture of sharing and transferring knowledge and experience. Internally this firm was structured across three Departments each led by a senior lawyer and each department contained a number of Units, each led by a lawyer. The Department Heads were responsible for the management of their respective groups and the Unit heads responsible for the management of their Unit. Teamwork and collaboration were integral to the working practices at both department and unit level. As these working patterns became routine overtime they developed as supplementary practices.

The firm 'William Forbes' placed a high value on developing managerial and leadership skills. This firm had introduced a number of initiatives designed to enhance the transferability of skills of their lawyers and to develop their career potential within the firm. In addition to tailored training programmes there was also compulsory career development programmes for different levels of post qualified lawyers. Their 'Leading Lawyers' programme was a mandatory course for all partners to develop their man management skills.

Although these practices were embedded in the culture and social norms of a profession, and despite the influence of the social and institutional as socially constructed markers, they presented opportunities to firms through the performance of change. They were dynamic and introduced new and innovative practices which overtime captured new and additional dimensions to standard routines and which developed as forms of incremental innovation.

(c) Specific conclusions on this thesis' contributions to the concept of process

This thesis contributes to the Approach II perspective adopted by Van de Ven and Poole (2005) that views processes as a series or sequence of events that unfold over time and which introduce change. Approaches I and III put forward by Van de Ven and Poole both take a variance approach to research organisational that does not fit with this research in which change is introduced overtime and often incrementally. Both Approaches II and IV adopt a process perspective that each focus on understanding change overtime through actions, events and activities. However unlike the quantitative analytical perspective of Approach IV, in which time is a variable in the change processes, Approach II adopts a more transactional view of the sequence of events and activities overtime that recognises the influence of varying factors in introducing change. This research found that processes can contribute to the development of new and innovative professional practices by working with professionals and professional organisations to create opportunities for their services through enhanced communication and shared knowledge and learning, in new

working forms and practices such as legal teams and management and leadership roles.

The standard procedures and routines of professional services become embedded in organisations and professions through their frequent use over time (Feldman and Rafaeli 2002) but this thesis concludes that such processes are important not only as connections between resources and services but as an important concept that can establish new and innovative practices that challenge standard procedures and routines in professional services. Although these processes maybe contextualized in the cultural norms and traditions of a profession they are also dynamic and capable of challenging embedded professional routines and behaviours and are inherently valuable in driving innovation across professional services.

This thesis concludes that processes that work both as routines and as entities and they can be introduced and applied by organisations to encourage new ways of thinking and acting. They need not be formalized plans; indeed they can be introduced in a relatively abstract manner and can become more substantive and permanent as they develop overtime. Thus the emphasis within organisations changes from anticipated outcomes alone to a combined focus that additionally embraces new directions and measures that demand alternative practices.

9.4.3 Professionalism embracing Managerialism

(a) Reprise of theory

This final subsection discusses the theoretical contributions of this thesis to the complex relationship between professionalism and managerialism. The conclusions from the third research question in this thesis namely; **(RQ 3)**: “How does the role of the legal manager offer new ways to identify and shape opportunities for developing and delivering legal services?” are used to generalize theoretical ideas about the conjunct relationship between professionals and managers.

The literature does not provide a clear definition of a ‘profession’ or a ‘professional’. The work of Suddaby and Greenwood (2005), Malhotra, Morris and Hinings (2006) and Malhotra and Morris (2009) established that, in general terms, professions and professionals are defined by the shape and content of their work that is characterised by their expertise, jurisdictional control and the lawyer / client relationship. They describe professional work as framed by socially constructed expert knowledge and expertise and delivered a manner and mode that is loyal to the norms and routines of a profession. Professionals belong to a social identity that not only shapes their work and the manner of their services but that enjoys a status and authority that is enhanced by levels of specialist training and the ownership of knowledge and experience. Professions conform to a social categorisation that is defined by a combination of professional membership (Montgomery and Oliver 2007), ownership of a specialist knowledge domain (Quinn, Anderson and Finkelstein 1996) and the consequences of professional socialisation processes (Anderson-Gough, Gray and Robson 2000).

Hodgson’s (2005) description of the professionalisation process as a cumulative one that combines many aspects of the professional role orientated the research towards micro level processes that explain the dynamics of an interdependent relationship between co-existing social contexts, namely firms and professions. As professionals and managers are reconciled across the processes that shape and deliver professional services the drive for innovation and creativity challenges the durability of the role of the professional in the delivery of a service that is shaped by increasing levels of management within firms and organisations (Watson 2001, Rashman, Withers and Hartley 2009)

(b) Examples from the research of the theory – related phenomena of professionalism and managerialism

This research found that the institution of a profession (in the form described by Malhotra and Morris 2009) provides a forum from which professions can seek ways to develop their services and mobilize resources around the concept of the firm and

within the social and institutional context of a profession. In this research it was observed that as lawyers sought ways to differentiate their skills and services, the role of lawyers evolved into one that was broader and less defined by the socialisation of its profession. For example, for the lawyers in-house at 'Agency' product knowledge and detailed knowledge of the business was becoming more and more important. Similarly the lawyers working with the Government Legal Service were required to contribute corporately to the department or organisation in which they are located. At the law firm 'William Forbes' it was common practice to second lawyers to large client organisations. Secondment was considered a valuable opportunity for lawyers to develop themselves personally and to enhance the transferability of their skills.

The research found that the social identity of the professional role was evolving and becoming less 'professionalised' and as it did so, it was being enhanced by the added dimension of managerialism as a co existing identity that provided a role in developing and improving services. This research observed that additional skills were being nurtured at the early career stages of lawyers and were being done in ways that were designed to enhance their career progression. Measures such as management and leadership training courses and programmes were introduced. At 'David Hume' the firm had a policy of identifying key competences such as team working and leadership for potential Associate and Partnership roles amongst their early career stage lawyers and then developing those skills with specialised training programmes.

This research further found that the role for managers was to develop networks, careers and opportunities for professional services that were firm specific. The role of the legal manager was observed across a range of levels and positions with the organisational hierarchies (team leaders, department/ division heads. management team members and leaders). At the firm 'Andrew Bankton' although the senior lawyers already enjoyed quasi-management positions these roles were being further developed as the role of Unit Head. This was a managerial position whose primary role was to provide strong leadership and direction for the legal teams in the Unit.

(c) Specific conclusions pertaining to the ideas about professions and managers

An outcome of this thesis extends the views of Suddaby and Greenwood (2005), Malhotra, Morris and Hinings (2006) and Malhotra and Morris (2009) that professions and professionals remain largely defined by the shape and content of their work and understood by the nature of their knowledge, the significance of jurisdictional control over their work and the influence of the lawyer / client relationship. This thesis concludes that as professions embrace differentiated roles their influence will extend beyond the framework of their traditional role and identity.

Managerialism offers professionals opportunities that are important if they are to successfully adapt and diversify their role and their services (Watson 2001, Rashman, Withers and Hartley 2009) but this research concludes that to do so managers must operate in a context in which they acknowledge that whilst the influence of professionalism which may be diminished by the role of managerialism, it will be not significantly so as the professional role and identity remains pervasive and persuasive. Montgomery and Oliver (2007) observed that boundaries of the social and institutional contexts of professions and organisations within which the interdependent relationship between professions and organisations exist are diminished as boundary spanning activities became more frequent. This research found that similar boundaries exist between professions and managers but these must be managed within a framework of the prevailing traditions and routines of a profession and the professionalism of a service must not be compromised by managerialism. The potential for managerialism to develop and enhance professional services through increased communication and cooperation is considerable but it must be developed mindful of the strength of the social and cultural influences shaping those services. The effectiveness of the role of managerialism will reflect its success in combining and managing diverse social identities to ensure enhanced outcomes.

This thesis found that managerialism is being challenged to capture and cultivate and thereafter communicate and possibly standardise professional services development.

In doing so managers inevitably must confront a professional role that may be highly individual although now moderated and modified by standard codes located in professional bodies. Managerialism is tasked with transforming professional services towards a firm – centric perspective without compromising the professionalism of services.

9.5 Conclusions on the Methodological Approach of Grounded Theory

The literature reviewed in chapter four highlights the increased use of qualitative research in areas of organisation, business and management research, recognising that different aspects of social orders have distinct patterns of thought and action that are often combined with idiosyncratic codes of language and behaviour. This research was conducted in the context of the legal profession and its members and was an exploratory study that observed social and cultural phenomena and sought to understand and contextualise behaviour and situations from the evidence of empirical data.

A grounded theory approach to the research was appropriate and allowed the researcher the opportunity to develop a theoretical account of the empirical data (Martin and Turner 1986). As a methodology it embraces a flexibility and adaptability in its procedures that enabled the researcher to capture and understand the complexities in substantive areas such as organisational and individual interactions and behaviour and decision making (Locke 2001) and to contextualize the findings (Martin and Turner 1986). Grounded theory is inductive in nature and acknowledges that social reality is not a given but a picture of changing and evolving scenarios and influences as a result of interactions and experiences (Locke 2001). Grounded theory research is also formative and it has the ability to be able to adapt and change as the research process progresses. Star (2007) describes grounded theory as “*an excellent tool for understanding invisible things*” (p 79). This research embraced the influence of pragmatism in the methodology with the aim of ensuring

issues of responsibility, location, consequences and authorship of the data were addressed during the analysis, coding and categorisation processes that define a grounded theory approach. The researcher adopted an interpretivist approach to reflect a research process where the data was collected and then systematically analysed and synthesized by the researcher to look for explanations and develop understanding about actions and behaviour within a social setting.

Chapter five presents a detailed examination of a grounded theory approach as a method of data collection and analysis. A range of sources was used to provide data which collectively, when coded and analysed, promotes and supports an emergent theory that can be validated or 'grounded' in the empirical evidence. The selective approach adopted in the choice of cases reviewed within the sample population reflected the "*controlled opportunism*" (Eisenhardt 1989 p 539) of the purposeful nature of theoretical sampling approach in grounded theory. Constructs were developed through other sources of evidence (journal articles, archival data, and Government reports). The research adopted Strauss' (1987) approach and followed a systematic procedure to the coding process and in doing so started the processes of conceptualizing and theorizing.

As a methodological approach to research grounded theory describes and explains the phenomena under study and in this research provided an appropriate framework for carrying observations and ideas about the management and delivery of professional services to a conceptual level.

9.6 Limitations of the Research

This research contributes to research in the delivery of professional services across complex interconnections and, specifically, explores the relationship between the dual contexts of professions and organisations in order to understand how the processes of combining resources are influential in driving innovation in the delivery

of a service. However it is recognised and acknowledged that there are inherent limitations in this study that must be addressed.

This research was conducted in the context of the legal profession and reviewed the delivery of legal services from private law firms and in-house legal groups. Eight firms were researched in depth in the private law firm sample and five legal functions from the in-house legal group. The number of respondents from the private law firm and in-house group samples limits the generalisability of the findings. Additional empirical evidence was gathered from a range of other sources providing extensive data that provided sources of constructs to reassure the validity of the findings from the case studies but nevertheless the researcher acknowledges that the sample has its limitations and cannot claim to be wholly representative. The purposeful sampling approach of this research does however provide confidence in the appropriateness of the firms and groups chosen.

Whilst issues of access were not generally difficult the researcher acknowledges that given the sensitive nature of this research some aspects of the research topic may not be fully informed. The research is mindful that bias must always be addressed and the interpretation of the data was approached in an open-minded manner to ensure meaningful analysis.

The grounded theory approach of this research concedes that by the nature of this type of research the study is context specific and consequently the findings are difficult to generalise across wider settings (Goulding 2005). Nevertheless it is hoped that the conclusions drawn from this research may derive some applicability in the wider context of the delivery of services from other professions and may also provide insight into the role of professions as a structure in organising and shaping resources.

9.7 Suggestions for Further Research

In this research lawyers exhibited levels of professionalism in their role and services that were unsurprising given the traditional background and history of their profession. However in the face of threats from the potential deregulation of their services and against a backdrop for demands from their clients for a more accountable and ‘business –like’ service lawyers were resilient and tenacious in addressing opportunities for growth and exploring different approaches to deliver new and innovative services across increasingly fragmented organisations. The influence of managerialism across legal services was especially interesting given the strength of professional socialisation in the legal role. These findings offer interesting avenues for further research. Firstly in the context of the legal profession, further research using a much larger sample to test the findings and to observe lawyers as they embrace wider more diverse roles for their services. More specifically it would be interesting to research into how lawyers are coping with the dual roles of legal professional and manager. Lawyers are increasingly found across a range of organisational contexts, and whilst this research has confirmed that the organisational framework does not influence the shape of services further research could examine if demands were being made on lawyers to adapt their role and if so how lawyers were responding.

There is also scope to apply the findings of this study to other, similar professional settings and to research the influence of the professionalism of other professions, and in particular how the findings from this research translate within the context of other their professional standards, codes of conduct and norms of behaviour, in the delivery of services and to examine the role of management in directing and shaping those services.

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