Brief update July 2015

SOLICITORS, BARRISTERS and JUDGES in England and Wales— a brief overview from the perspective of someone who spent over 20 years as a solicitor in a major international law firm.

To start, “lawyer” is a general word. It can be used to refer to solicitors, barristers and judges.

1. SOLICITORS

There are many more solicitors than barristers. (Dec 2010 - 117,500 solicitors and 16,000 barristers.)

1.1 Regulation, representation and complaints handling

For many years The Law Society had the three functions of

- regulating solicitors,
- acting as the “trade body” for solicitors and promoting their interests, and
- dealing with complaints against solicitors by members of the public.

Pursuant to legislation introduced as a result of the Clementi report published in December 2004, this has changed. There are now three separate bodies.

a) The Law Society represents solicitors. For example, it will negotiate with and lobby the profession’s regulators (see b) below), offer training and advice and protect and promote solicitors.

b) The Solicitors Regulation Authority deals with all regulatory and disciplinary matters and sets, monitors and enforces standards.

c) The Legal Complaints Service is for members of the public wishing to make a complaint about solicitors.

(HOT TOPIC. The Legal Services Act 2007 has started a process whereby, since January 2012, outsiders have been able to invest in law firms. This is a big change with significant potential ramifications.)
1.2 Qualifying as a solicitor

a) 2 years at Law School. However law graduates only do one year as their degree exempts them from the first year of Law School which is called both the CPE (Common Professional Exam) and the Graduate Diploma in Law (GDL). The CPE / GDL covers basic subjects* which law graduates will already have covered at University. Thus the first year of Law School is only for non-law graduates.

* also called the core / foundation subjects.

“The foundation subjects are:
• obligations including contract, restitution and tort
• public law (including constitutional law, administrative law and human rights law)
• criminal law
• property law
• equity and the law of trusts
• law of the European Union

You also will be expected to have appropriate expertise in legal research skills and the English legal system.”

The name of the course in the second year – for law graduates, the only year -is the Legal Practice Course (“LPC”).

Students have to pass the exams at the end of each year.

(The CPE / GDL and LPC used to be called Part I and Part II, respectively.)

b) 2 years as a trainee with a solicitor pursuant to a training contract. If a person passes the exams set by The Law Society after each year at Law School and completes his training contract, he will be admitted as a solicitor (unless he does something awful).

In big law firms, it is usual for a trainee to spend about 6 months in 3 or 4 different “practice areas” which is the name law firms now give to what used to be called ( and what most people would understand as being)“departments”. People talk of doing / having different “seats” as a trainee.

The term “trainee” is relatively modern. When I trained, I started working as “an articled clerk” / I did articles of clerkship. However, in all significant respects, it was the same as being a trainee solicitor except that articled clerks usually got paid less
than other university graduates whereas trainees now usually get paid more than other university graduates.

However, I’m not complaining. It was only comparatively recently that articled clerks got paid at all and indeed in the past some had to pay a solicitor a “premium” for taking them on as an articled clerk.

Things have changed since when I did Part II, the equivalent of the LPC, in 1979.

**Then** – just learn law, no training in practical skills. Probate (dealing with the estates of dead people); Family; Conveyancing (real property); Partnership and Company; Commercial (included sale of goods, employment and consumer credit) and…one other, I can’t remember… plus Accounts for Solicitors although you tended to do this later.

I had to pay for everything – the course at Law School and living expenses.

**Now** – more practical, skills based. Topics covered are different and big law firms can tell a Law School what to teach those who are going to become trainees with them so that the course can include things like introductions to banking and capital markets law and the law of takeovers and mergers.

Most people apply for training contracts while at university. If you have a training contract, the law firm will pay your tuition fees and living expenses while you do the LPC (and, for non law graduates, the CPE / GDL).

Many people who don’t have a training contract will do CPE / GDL and then LPC in the hope of getting a training contract later. They pay for themselves. This is expensive and risky.

Two other significant and related differences between THEN and NOW.
2) The number of training contracts was roughly equal to the number of people who went to Law School. (The Law Society controlled the number of places at Law School. Now, it’s left to “market forces” i.e. if you can pay to go to Law School, go ahead even if you don’t have a training contract.)

1.3 Different ways in which solicitors practise.

At one extreme, you get the sole practitioner who practises on his own. At the other extreme are the large international law firms which may have thousands of staff (both
qualified lawyers and “support” staff) working in 20 or more offices throughout the world.

The sole practitioners and small “High Street” firms (so called because their offices are to be found in the High Streets of most towns) will usually practise the types of law on which their clients (never “customers”) need advice. E.g. criminal, family, wills and probate, conveyancing etc.

(NB – the word “conveyancing” refers to conveying real property / real estate i.e. interests in land. “interests” refers to the different types of legal interest which can arise in land. In this context, “to convey” means “to transfer title”. The most common interests are as freehold (absolute) owner and as tenant / lessee under a lease or sublease. Increasingly, conveyancing solicitors are called property or real estate lawyers.) If you are interested in the language of Property (real and personal) see i) those parts of my Word Lists and Word Families which deal with this and ii) my Hand out entitled “Leasing, Letting, Tenancies etc.” which was produced in response to the question “what’s the difference between a lease and a tenancy?” Short answer – in legal terms, none although by tradition you refer to some types of agreement as tenancies and others as leases).

The major international firms (and note that it is always law “firms” because they are partnerships and not companies) will also be referred to as the City law firms because traditionally they had their offices in the City of London (postcodes EC 1 to EC 4). However recently some of these firms have moved to new offices outside the City in the area known as Canary Wharf / Docklands.

These firms will do most of their work for large international financial institutions and companies and will cover the wide range of law which their clients encounter in their businesses. Five of these firms are known as the “Magic Circle” firms and to get an idea of the range of work done by these firms look at the website of one of them – Clifford Chance, Linklaters, Allen&Overy, Freshfields and Slaughter and May.

One should also remember lawyers who work for the public sector (both central government and local authorities), lawyers who work for the Crown Prosecution Service (“CPS”) and lawyers who work for the Legal Departments of large companies. The last of these are often referred to as “in house” lawyers. In house lawyers will not always be solicitors – some will have qualified as barristers.

NB A solicitor practises law in a legal practice and one talks of “the practice of law”. Different spelling of verb and noun. (It’s the same with advise (v) and advice (n) and license(v) and licence (n) although I think American practice with this last one may be different.)
2. BARRISTERS

Approximately 16,000. Regulated by The Bar Council. (I imagine that the promoting and regulatory functions of The Bar Council have been separated in the same way as for solicitors although, to be honest, I haven’t looked into this).

Training is broadly similar except that the “professional examinations / exams” are set by The Bar Council and that the practical training period – called “pupillage” – is only 12 months. The first 6 months are unpaid (in contrast, trainee solicitors are paid from the beginning) while during the 2nd 6 months barristers are allowed to work (although it is not easy for them to get cases).

All barristers have to be members of one of the 4 Inns of Courts (Inner Temple, Middle Temple, Gray’s Inn and Lincoln’s Inn) and eat a certain number of dinners at their Inn.

Barristers are self-employed and work as individuals in sets of chambers. They do not work in firms. While this may be an over-simplification, I see chambers as being places where, for administrative convenience and to pool costs, barristers gather together to work. However, even though a barrister is a member of a set of chambers, he or she still works as an individual in his or her own right.

The traditional work of barristers is advocacy in the higher courts although some solicitors now have “rights of audience” in the higher courts. Advocacy in the lower courts is done by both solicitors and barristers. Experienced barristers are also consulted by solicitors and asked to give “opinions” on difficult legal issues.

The most experienced barristers are called Q.C.s (“Queen’s Counsel”). If a barrister is appointed a Q.C., it is said that “he’s taken silk” and QCs are known colloquially as “silks”. This is because only QCs are allowed to wear gowns made out of silk.

Solicitors will always refer to barristers as “counsel”. Thus a solicitor will send “Instructions to Counsel” and meet to discuss matters with Counsel. This is always called a conference (sometimes abbreviated to “con”) with counsel, never a meeting.

In court, it’s “counsel for the prosecution / defence” or “prosecution / defence counsel” (criminal) and “counsel for the claimant / defendant” (civil).

If you watch British crime films or TV programmes, you may hear the expression “brief” as in “It’s OK, I’ll get off, I’ve got a great brief”. This is slang used mainly by criminals and the police and means “lawyer”
3. JUDGES

Traditionally, the process by which judges were appointed was rather opaque. They were appointed by the Lord Chancellor after “soundings” had been taken and various “nods and winks” had been exchanged.

(Literally, the expression “to take soundings” refers to the process on a ship of finding out how deep the water is. Metaphorically, it refers to the process of asking people what they think about something or somebody e.g to take soundings among the staff about the proposed changes, to take soundings about whether X would be suitable as a judge / partner in a law firm.)

In the last 5 years or so, there’s been much / a lot of change. The office of Lord Chancellor, which dated back centuries, has been abolished and there is now a Ministry of Justice. There is also a Judicial Appointments Commission (“JAC”) whose aim is to make the process of appointing judges more transparent.

(“transparent” and “opaque” are opposites. The respective nouns are “transparency” and “opacity”. Most glass is transparent except that toilet windows are opaque.)

In contrast with many civil law countries where judges under 30-35 can hear cases, in England and Wales judges are appointed from the body of practising lawyers and only after they have significant experience of practice. One never finds a judge in his 30s and most newly appointed, “young” judges will be at least 45.

Most judges are former barristers but one of the aims of the JAC is to broaden the “pool” from which judges are appointed. It is likely that the number of former solicitors who become judges will increase although this will take time.

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