**Financialisation by Proxy: The Case of Large City Law Firms**

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Lawyers have a primary duty to the courts and a secondary duty to their clients. These duties – including the attendant responsibilities such as client confidentiality and the rules relating to legal professional privilege – are paramount

This quote, taken from the publicity material of a corporate law firm, seems innocuous enough on the surface. Indeed, it reflects the principles of the professions that are enshrined in their codes of conduct. However, as becomes clear when we return to this quote later in the paper, such longstanding principles are increasingly exposed to new pressures associated with the financialisation of legal practice. Indeed, as illustrated by our analysis of large law firms, the penetration of financial logics into the management of professional firms is an important and so far relatively undocumented trend which may have some unexpected yet significant implications for professionals as well as consumers.

Of course, outside of the professions, the inflection of economic practice by the rubrics of financialisation is now a well-documented trend.[[1]](#footnote-1) Uniting all of these studies is a concern with the way the involvement of firms in capital markets and the rise of shareholder value logics have influenced strategy, firstly in the USA and latterly in the UK and increasingly in other parts of Europe and Australia.[[2]](#footnote-2) It has since become increasingly obvious that the logics of financialisation pervade economic life and that we are witnessing the ‘capitalisation of everything’.[[3]](#footnote-3)

In this chapter we interpret the structural transformation of the legal profession in England and Wales over the last 20 years through the concept of financialisation and propose this as an alternative to complement existing analyses which draw on the related concepts of de-professionalization[[4]](#footnote-4), commercialization[[5]](#footnote-5) and managerialization[[6]](#footnote-6). We show how privately held organisations, not listed on stock markets, have become enchanted by the logics of financialisation, mirroring the behaviours of market-listed, shareholder value driven firms. In particular we consider how the idea of ‘financialisation by proxy’ can be used to explain how increasingly performance-led, and metric driven models of corporate governance are redefining the management of law firms leading to the wide-raging reconfiguration of traditional structures, values and practices.

As well as the introduction of the idea of financialisation by proxy, the contribution of this chapter is to show how the example of law firms is not only interesting insofar as it extends the analysis of financialisation to privately owned organisations but also because it explores these processes within a professional context, a context traditionally assumed to be separate from the world of business, commerce and entrepreneurship.[[7]](#footnote-7) In doing so, we highlight the peculiar proxy metrics and mechanisms through which these logics are being stretched, in another example of the ‘capitalisation of everything’,[[8]](#footnote-8) into new and unexpected domains. This colonisation is inevitably a process fraught with tensions as the intended and unintended consequences of financialisation collide with the fundamental principles and long standing practices of professional occupations. Thus, we consider the wider societal implications arising from the financialisation of supposedly public safeguard services.[[9]](#footnote-9) In particular we suggest that this drive towards fitter, leaner and meaner organisations and towards financial excellence might actually only benefit ‘elite’ professionals who are able to extract significant surplus from expanding subordinate groups in an increasingly elongated and reformulated division of labour. This is something that is not only likely to threaten public interest as well as long standing professional institutions such as traditional understandings of professional autonomy and partnership but, as documented by events following the recent economic crisis, it may also be financially unsustainable.[[10]](#footnote-10)

This chapter unfolds over X sections. First we present a brief overview of the literature on financialization. We then present our methods before proceeding to analyze the restructuring of large law firms through the concept of financialization. In particular we connect significant changes in the structure and practices of large law firms over the last 20 years or so to attempts to improve their financial performance, measured through the key metric of Profit Per Equity Partner (PEP). We argue how, as law firms increasingly manage with an eye to their position in the relevant league tables, PEP acquires a performative value as it redefines long standing professional institutions such as promotion and career patterns as well as the very concept of the professional partnership itself (through developments such as lateral hires, de-equitizations and salaried partnerships). We then identify a number of vectors which have facilitated the spread of financialized logics and practices within the legal profession, and discuss some of the implications of these changes for professionals, their clients and the wider public. Finally returning to these issues with the benefit of hindsight, we add a coda whereby we review some of the trends, arguments and predictions described in the original research (conducted in 2007-08) in light of recent developments occurred in the post financial crisis period (2008-2013).

1. Theories of Financialisation

Theories of financialisation are now well rehearsed and it serves little purpose to subject these to another comprehensive review.[[11]](#footnote-11) Instead, we focus upon the four main components of existing arguments: trends, agents, outcomes and critiques of financialisation and use these to understand recent changes in large corporate law firms in England.

The ‘trend’ of financialisation is not a particularly new one. As Hengyi Feng et al.[[12]](#footnote-12) describe, the ‘model’ has existed since the 1990s but has received most attention since the dot.com bust of the early 2000s and the subsequent revaluation of high-tech firms using ‘actual’ rather that ‘potential’ performance metrics. A central component of such evaluations is, of course, the logic of shareholder value and measures such as Economic Value Added (EVA), Market Value Added (MVA), Total Shareholder Return (TSR) and Cash Flow Return on Investment (CFROI). As Julie Froud et al.[[13]](#footnote-13) point out, whilst such shareholder value logic is as much a discourse as a stable, agreed-upon model of economic practice, it has come to dominate contemporary assessments of the success of firms. Crudely put, successful firms should deliver value by paying high dividends to shareholders and increasing their market value so as to offer substantial yields on investment.

The ‘agents’ promoting this phenomenon are diverse. Julie Froud et al.[[14]](#footnote-14) describe how consultancies, such as Boston Consulting Group and Stern Stewart, propagated logics initially formulated by management gurus such as Rappaport and Stewart. This reminds us then of what Nigel Thrift[[15]](#footnote-15) describes as the circuit of soft capitalism in which management gurus, the media and business schools advance economic practices claimed to optimise performance in the ‘new’ knowledge economy.[[16]](#footnote-16) In addition, pension fund managers who are now some of the most active investors also vigorously promote the logics of shareholder value, through direct interventions at shareholder meetings.[[17]](#footnote-17)

The ‘outcomes’ of this are, according to William Lazonick and Mary O’Sullivan[[18]](#footnote-18), a series of important structural changes, including a shift away from a ‘retain and reinvest’ allocative regime where growing the firm through the recycling of profits is the main priority, to a ‘downsize and distribute’ regime where cuts in the labour force and divestures shrink the size of the firm but allow more profit to be distributed to shareholders. This has, according to William Lazonick and Mary O’Sullivan, a number of effects. First, contrary to expectations, there are lay-offs during periods of boom. Second, differentials between chief executive and worker remuneration are increasingly stretched. Third, and as a result of the previous two tendencies, returns to shareholders in the form of dividends and share buy-backs are significantly inflated.

Most would accept that there has been a discernible trend in this direction, but a number of ‘critiques’ of financialised logics and analyses of their effects have emerged that force us to look carefully at the wider implications. Perhaps most significantly it has been suggested that academics need to be more critical of the rhetorics of financialisation. As Julie Froud et al.[[19]](#footnote-19) have argued, financialised logics and the discourses underlying them are varied, mutable and fluid, being enacted differently by both the consultants and firms that promote and employ them. Consequently, according to Froud and colleagues, assumptions that a linear logic exists between corporate restructuring, increased ‘shareholder value’ and efficiency and effectiveness improvements are questionable, with existing evidence being unequivocal at best. Instead these authors promote a cultural economy perspective that recognises the power and legitimising effect of financialised discourses over the delivery of tangible results. Indeed, as they show using the car industry, it is far from clear that financialised practices lead to more successful companies as weaker players can often deliver better shareholder value on paper, despite their shaky market position.

Our point of departure is to draw on these literatures and argue that they can be useful in analysing current trends in the organisation of large law firms in England. As already noted, existing studies of financialisation focus upon capital market listed corporations in which the chief executive’s primary role is to satisfy institutional investors and realise their demands for shareholder value. Law firms, with one Australian exception that we refer to below, are not market listed as of yet but seem to be increasingly displaying archetypal financialised logics. We attempt to explain this trend using insights from the literatures described above so as to reveal some of the unexpected, troubling and potentially unsustainable consequences of recent financially focused practices.

1. Methodology

Our analysis is constructed using a triangulation of data from various sources. Quantitative material charting the composition and performance of large English law firms was taken from The Legal Business 100 survey between 1993, when records began, and 2008, when this research was conducted. This longitudinal analysis allows us to extrapolate historical trends in the financial performance and organisational structure of English law firms whilst also providing insights into the changing management practices that are associated with financialisation. We focus our analysis on the 10 largest firms, primarily because of the emphasis that these firms have placed on financialised management techniques in recent years. The trends identified are, nonetheless, relevant to the wider sample of firms analysed in the aforementioned survey. These trends are also relevant more broadly to large law firms worldwide, and in particular to US based practices. However, here we focus on the largest firms in England to help tease out the geographically specific way in which English firms ‘became financialised’ in the late 1990s and early 2000s.

We also completed an extensive survey of articles in legal publications aimed at practitioners in the UK (The Lawyer, Legal Business and Legal Week). This provided further detail of the changing financial performance and strategies of firms as well as insight into media reactions to these changes. Finally we undertook twenty interviews during late 2006 and early 2007 in large corporate law firms in England. Interviewees were drawn from firms representing different segments of The Legal Business 100 survey, ranging from the largest, multi-office international firms through to nation-wide firms and single office practices. Interviews lasted between 40 and 70 minutes, were recorded, transcribed and then coded. All interviewees were questioned about the strategy of the firm they worked for, recent changes to the organisation of the firm, working conditions and practices within the firm, managerial structures and styles, and the impact of financial metrics (such as Profit per Equity Partner) on their long term strategies and day-to-day operations. Analysis of the interviews is used to help corroborate and explain the trends identified in the quantitative data collected.

1. Financialised Law Firms?

Perhaps what makes the suggestion that law firms’ behaviour is increasingly inflected by financialised logics so significant is the radical break such a change would imply from traditional notions of a professional firm. Law, as one of the few state sponsored professions, has like accountancy a fiduciary duty and, historically at least, is supposed to represent a public safeguard service.[[20]](#footnote-20) As part of this duty lawyers, as trustees of valued forms of skill and expertise,[[21]](#footnote-21) are supposed to put the interests of their clients and of the public before their own. In this sense law firms have not been traditionally seen as organisations in which commercial logics prevailed. Of course, as Gerard Hanlon describes, such idealistic visions of what lawyers and law firms are and do, if they were ever accurate, have certainly been diluted by the rise of mega-law firms with their business orientated, commercial outlook.[[22]](#footnote-22) Indeed, today large corporate law firms are professional ‘business’ services firms, increasingly designed to lubricate the activities of global capitalism rather than to provide commercially disinterested public safeguard services.[[23]](#footnote-23)

What these studies of the rise of the legal business service firms do not directly predict, however, is an outright obsession with financialised performance metrics and the unprecedented impact that these are having on the reorganisation of the legal profession. This is not to suggest that lawyers have not always been keen to make money.[[24]](#footnote-24) However, in recent years there seems to have been refocusing around financial performance underscored by new discourses and metrics of profitability that inevitably promote different types of values, practices and structures.[[25]](#footnote-25) This, we argue, is symptomatic of the 1990s and 2000s and curiously coincides with not only the growing size of corporate law firms but also with the rise of the shareholder society and the ‘capitalization of everything’.

* 1. The Performance Era and New Metrics of Success

The 1990s and especially the 2000s heralded a new period for law firms characterised by a new discourse: ‘profits per equity partner’ (PEP). Whilst not as familiar as its big brother shareholder value and the associated metrics of EVA, MVA, SVA and CFROI, PEP has come to replace turnover as *the* measure of the success of a law firm. The Lawyer, one of the most influential legal publications in England, trumpeted the announcement that it would produce a ‘Top of the PEPs’ table in 2007 to provide ‘the definitive inside track on the performance of the UK's biggest law firms’.[[26]](#footnote-26) For firms the race was very much on to reach the top of this table as partners recognised the embarrassment associated with low levels of PEP in a hyper-competitive marketplace. As the managing partner of Freshfields Bruckhaus Deringer commented about their past performance after restructuring delivered a massive rise in PEP, ‘we did not have the financial performance that is necessary or appropriate for a firm of the calibre of ours’.[[27]](#footnote-27) Similarly the managing partner of Eversheds commented after the announcement that they had broken the £500,000 PEP barrier, ‘profitability has been one of our key targets over the past year, and with PEP breaking the £500,000 barrier, we have proven our ability to deliver on our promises’.[[28]](#footnote-28)

Of course, the result of the new obsession is a devastating critique of firms failing to increase PEP. These firms are seen as poorly managed organisations in need of refurbishment. So when the firm Shoosmiths reported a 27 percent increase in turnover but only a three percent rise in PEP, these results were described as ‘mixed’ and blame was placed on ‘a period of sustained expansion and a major recruitment drive across seven UK offices [that] have taken their toll on the firm’s profitability’.[[29]](#footnote-29) It would seem, then, that in the new epoch of financialisation, long term investments associated with growth, which are typical of a ‘retain and reinvest’ regime[[30]](#footnote-30) are not necessarily seen as wholly positive. Indeed, such has been the focus of managing partners on the new PEP metric that, over the period under consideration, PEP in our sample of the top 10 law firms in England has risen by 157 per cent. As indicated by Table 1, this outstrips other financial indicators.[[31]](#footnote-31) In the eyes of The Lawyer, this growth is a reflection of a series of unprecedented and controversial interventions on the organisational structure and division of labour in law firms, including the increasing recourse to ‘brutal cost-cutting’[[32]](#footnote-32) and the redefinition of the very notion of partnership. This is something which strikes a remarkable resemblance with the ‘downsize and distribute’ regime, which according to William Lazonick and Mary O’Sullivan[[33]](#footnote-33), is characteristic of processes of financialisation.

[Insert Table 1 here]

* 1. Restructuring the Law Firm

We can begin our explanation of the restructuring associated with PEP fetishes in the 1990s when the first significant period of change was noted.[[34]](#footnote-34) This was in many ways a period of unprecedented change as the structure of firms, which had been relatively static throughout the 20th century, began to evolve. Indeed, as Stephen Ackroyd and Daniel Muzio report, throughout the 1990s a rapidly growing number of solicitors entered salaried employment as part of the first attempts by partners in law firms to drive up profitability and deflect the impact of a more hostile business environment by leveraging the performance and contribution of a rapidly expanding cohort of subordinates (non-partners) who did not share profits.[[35]](#footnote-35) This stage is, however, the thin end of the wedge. As indicated by figure 1, even more significant changes have occurred since 2000 with, by the year 2006, the associate to partner ratio in the legal profession climbing to around 1.8:1, an almost complete reversal of the ratio in the mid 1980 (1:2), as firms attempted to adopt what might be described as a leaner, more profitable model.

[Insert figure 1 here]

This monumental transformation of the law from a predominantly self-employed to a predominantly employed occupation is underscored by a series of additional and drastic interventions on profession’s labour process and career structure. In particular, these interventions include the toughening and lengthening of promotion times and criteria. These have been extensively discussed elsewhere;[[36]](#footnote-36) yet we want to focus on one particularly recent and important development: the case of the salaried partnership.

The salaried partnership is a significant innovation which stretches the meaning of partnership. The ‘traditional’ legal partnership was made up of equity partners only - individuals who owned a share of their firm and therefore, took a share of the profit it generated. Hence profit per partner measures in the past were effectively the same as PEP measures. Increasingly, though, we are seeing salaried partners, whose remuneration is not linked to profits (besides the effect of bonus schemes), operating as a new tier in organisational hierarchies. Indeed, not only are salaried partners found in most firms now but their numbers are growing significantly. As suggested by Table 1, salaried partners are, in our sample, the fastest, indeed the only, growing section of the professional labour force. Thus, salaried partnership, from an anomaly found only in a minority of firms, has been recast as a formal step in an increasingly elongated professional career structure. This introduction of new steps in the career ladder together with the broadening of existing ones has implied the elongation of hierarchies and the stretching of career spans. Writing in the 1980s, Richard Abel[[37]](#footnote-37) estimated an average wait of 5.5 years; today, once an increasingly common stint as a salaried partner is factored into the equation, this has almost doubled to 10 years.

The above changes to partnership and labour force structures, more generally, responds to a financialised logic. A salaried solicitor can generate substantially more fees than her labour costs (this surplus can oscillate between 2.5 and 4.8 times wage costs according to Abel[[38]](#footnote-38)). Thus increasing the number of salaried staff relative to profit sharing partners leads to an increasing volume of surplus which can be used to maintain and expand partner income levels. Indeed, according to Gerard Hanlon,[[39]](#footnote-39) large firms have operationalised this logic by considering for partnership only those solicitors which generate three times more income than their remuneration costs. The rule of the game is simple: increase the number of people who bake the cake whilst stabilising or reducing the number of people who can share the cake.[[40]](#footnote-40) Larger helpings will inevitably follow. Salaried partnership contributes to this strategy by increasing leverage whilst providing at the same time an expectation management tool.

The financial logic associated with these developments emerges clearly in Table 3. As it shows, the majority of PEP is now actually produced through the appropriation of surplus generated by subordinate workers, including this new category of ‘lesser’ partners. In this context, the manipulation of staffing ratios (cooking the books) becomes an effective route for increasing profitability and a standard aspect of law firm management.

[Insert table 2 here]

Most radically, recent interventions have also sought the reduction of equity partner headcount in a period of boom for legal services. Indeed, as indicated by Table 1, between 2003 and 2008 the number of equity partners employed in the top 10 firms in the UK contracted by almost one per cent despite revenues growth of 27 per cent. Although a proportion of this reduction will be accounted by natural wastage, these trends corroborate growing anecdotal evidence of de-equitisation (redundancy of equity partners). This is a momentous development which according to some[[41]](#footnote-41) strikes at the heart of the very nature of the legal profession, as, in a dramatic break with the past, it signifies how partners, the owners of the firms, are also increasingly viewed as cost to be efficiently and ruthlessly managed. ‘Chopping dead wood’ or ‘weeding the garden’, to use common expression, is a useful instrument in today’s increasingly bloated, heterogeneous and geographically dispersed partnerships, where informal control may be somewhat less effective.[[42]](#footnote-42) Yet, the gradual reduction in equity partners may be more than a simple short term managerial intervention targeted at seriously under-performing employees.[[43]](#footnote-43) Instead the reduction seems to also be bound up with the quest of sustaining and expanding profitability. Thus, the updated strategy may be to actually reduce rather than simply stabilise those who share the cake, whilst of course continuing to expand those who participate to revenue generation.

The recent changes discussed here suggest then, that developments in the profession’s labour process which originally emerged in the 1990s as defensive moves[[44]](#footnote-44) have been carried through and indeed intensified in what for law firms has been a period (between 2002 and 2007) of unprecedented growth and profitability. This parallels trends identified by William Lazonick and Mary O’Sullivan[[45]](#footnote-45) in the corporate sector and in particular the shift towards a ‘downsize and distribute allocative regime’, whereby even financially successful firms continuously reorganise their activities and turn to their labour process as an avenue for sustained profitability and shareholder return. Thus, the growing attention for financialised metrics and practices and the unprecedented impact that these are having on the structure of the legal profession is certainly tied to the self-interested agency of those who stand to benefit from these changes: equity partners. Yet, there are other significant vectors of change beyond self-interest. It is to these other vectors of financialisation that we now turn our attention.

1. Vectors of Financialisation
2. Political-Economic Realignments

The legal ‘Big Bang’ that took place in 1990 opened the English legal market to overseas law firms for the first time.[[46]](#footnote-46) Previously many US firms had entered London to provide advice on US law to transnational corporations. After 1990, however, these firms increasingly began to provide English law advice and compete with the Magic Circle firms Clifford Chance, Linklaters, Freshfields, Allen and Overy and Slaughter and May. This created new competition and, most significantly for our argument here, positioned English incumbents against competitors with significantly higher levels of profits. This had two effects:

First, it created reputation problems for English firms. Law firms live and die on their reputation and, in a financialised world where profitability is the only accepted measure of success and the quality of the firm, being less profitable than your US counterpart causes reputational problems. Second, and more pragmatically, the more profitable US firms were able to pay solicitors significantly more money and, therefore, poach star players from English firms. As one senior partner commented about this dilemma:

I think it’s fair to say that they [reports of PEP] must have some impact. For example potential recruits may regard them as significant. Perhaps some clients make a judgment on the quality of a law firm by how well it seems to be doing in those terms. So you cannot completely ignore the league tables…What we do have is a sense of a need for comparability purposes to know that we are not lagging behind on competitors, that we’re not making our partners or our staff work harder for less benefit…And so if you were not financially success[ful] you would have to find some other means of retaining or attaining staff and that could be more difficult[[47]](#footnote-47)

It could then be argued that US law firms themselves were vectors of financialisation. And undoubtedly this is true to some extent as English firms copied their rivals who had begun to leverage higher numbers of solicitors to partners, used up-or-out promotion mechanisms,[[48]](#footnote-48) deployed dual tier partnership arrangements and crucially enjoyed better profitability levels at an earlier stage. But convergence around best (in this case intended as most profitable) practice is not the only relevant trend at play.

In the post 2000 era we must also turn our attention to the enabling role of the regulatory ‘Big Bang’ connected with the UK Legal Services Act. This Act, through the introduction of Alternative Business Structures, paves the way for the potential overhaul of the traditional governance, regulation and structure of legal practice. A key provision, here, is the acceptance of outside (meaning non lawyer) ownership of law firms. In this context, most radically, law firms may be able to attract external investors as shareholders and to ‘go all the way’ with a full stock-exchange flotation. Indeed, at the time this research was conducted, it was anticipated that up to 50 per cent of the firms in The Lawyers’ UK 100 survey might seek outside investors and even stock exchange listing.[[49]](#footnote-49)

Whilst the full implications of the Act are still emergent and perhaps slower that what originally expected[[50]](#footnote-50), its provisions seem likely to support the financialised logics and practices here described. Indeed, part of the logic of the new financial metrics such as PEP is to provide an acceptable basis for the valuation of law firms so as to facilitate investment decisions.[[51]](#footnote-51) Partners may therefore be keen to maximise the value of their partnership equity by enhancing PEP and ultimately the supposed value of the firm to outside investors. In this respect it is interesting that we are beginning to see in the specialist legal press proxy (multi-billion pound) stock-market valuation for the UK’s leading law firms.[[52]](#footnote-52)

Legislation, therefore, seems to have acted as a powerful vector in facilitating the shift from financialisation by proxy to ‘real’ financialisation. In addition, of course, the very centrality of law firms as intermediaries in the newly emergent ‘economy of permanent restructuring’[[53]](#footnote-53) has also exaggerated the willingness of law firms to change their structure. Large corporate law firms now service clients that are constantly merging, de-merging, reorganising and refinancing their operations. They produce the legal structures that facilitate ‘downsizing and re-distribution’[[54]](#footnote-54) processes in their clients and inevitably these logics have caught the attention of managing partners themselves.[[55]](#footnote-55) This is, then, an important component of this process of financialisation by proxy. Law firms have become so embroiled in the logics and practices of financialised management on behalf of their clients that they have begun to absorb and recreate these in a process of institutional isomorphism.[[56]](#footnote-56) In addition, other actors have also been important in driving change.

1. Cultural economy and law firm management

As described in the opening sections of the chapter, various agents of financialisation have an important role in reproducing the discourses that influence corporate actors. In particular, management gurus and consultancies have in recent years increasingly turned their attention to advising law firms. Perhaps the most important guru for law firms is David Maister. His books which include ‘Managing the Professional Service Firm’[[57]](#footnote-57) and ‘First Among Equals: How to Manage a Group of Professionals’[[58]](#footnote-58) are bestsellers, having sold over 2.5 million copies on Amazon alone. In these books Maister offers various prescriptions for managing everything from partner motivation to overseas office networks. Significantly, profitability is a key issue in all of these texts. In ‘Managing the Professional Service Firm’ a whole chapter is dedicated to this issue early on in the book. Here readers are reminded that:

In a partnership, the ultimate measure of profitability is (or should be) profit per partner, which is driven by three main factors, *margin*, *productivity*, and *leverage*…’profit per partner’ should be viewed as the professional firm equivalent of ‘return on equity.[[59]](#footnote-59)

Leaders of law firms have listened to such advice and used it as a cue for the adoption of the types of structural changes occurring in market-listed firms as a response to financial pressures.

The media also deserves careful consideration because of the central role some publications have played in championing financial logics. This has taken place both in the financial press (e.g. Financial Times) and professional publications such as The Lawyer. The Financial Times now awards annual ‘innovative lawyers’ awards, one category being management where the focus ‘could include, for example, issues such as international expansion and rising profitability’.[[60]](#footnote-60) The winner in 2007 was Eversheds for its partner profit sharing scheme. The influence of such publications because of the way they analyse, rank and publicise the PEP performance of firms should also not be underestimated. Mirroring the findings of Gordon Clark, Nigel Thrift and Adam Tickell[[61]](#footnote-61) and Greenfield and Williams[[62]](#footnote-62), it seems that the way the media portrays certain types of action has helped sway the behaviours of managing partners in law firms. Winning an award from the FT or being top of the PEPs in tables produced by The Lawyer and others is increasingly seen as important proxy for quality and performance and as such a concern for management. As one interviewee commented:

Whether we’re first, second or third has a cosmetic benefit sometimes but frankly we want to be towards, well we want to be at the top end of these tables. If we’re at the top end of the tables we’re happy[[63]](#footnote-63)

1. Problematising Financialisation in the Law Firm

It seems then, that various actors have resulted in significant changes in the structuring of law firms over recent years. Of course, as William Lazonick and Mary O’Sullivan and Julie Froud et al.[[64]](#footnote-64) amongst others show, the adoption of financialised practices is not without consequences for the core workforce of firms, for clients, for society at large and, somewhat paradoxically, for the long term performance of the firms in question. These issues form the focus of the discussion below. As we show, the changes law firms have initiated have both intended and unintended consequences worth further examination.

1. Professional Lives: Towards the Law Factory?

As reported, recent changes have involved the elongation and formalisation of professional hierarchies and the emergence of two-tier partnerships with associate lawyers being asked to wait longer before they are offered partnership.[[65]](#footnote-65) The ‘tournament of lawyers’[[66]](#footnote-66) is also becoming increasingly contested as promotion is decoupled from seniority and technical competence[[67]](#footnote-67) and subjected to the requirements of the business case (will the lawyer generate profits) and ultimately to the necessities of retaining and improving satisfactory financial ratios.

Perhaps one of the most justifiable logics connected with the proliferation of salaried partners is, then, that the role of this new position in helping to manage career expectations and combating attrition by offering associates who otherwise would not be promoted the title and status of being a partner. However, paradoxically, despite the intention to provide an expectation management tool, frustration is often caused by the fact that on many occasions the profit generating threshold for admittance to any form of partnership places substantial, some might say unreasonable, demands on lawyers. At the same time the temptation to use more salaried partners to expand the firm’s revenue base without decreasing individual partner takings becomes irresistible, further reproducing the problem as there is actually an incentive not to promote people beyond salaried partnership level. As one interviewee described his experience of this process:

I’ve got a lot of friends at [firm x] and they have really squeezed partnership and it’s difficult to get partnership at [firm x] now because they want to, you’ve probably read it in the Lawyer if you read that, they want to get to four hundred thousand pounds per equity partner. The only way they are going to do that is reduce the partners. [Lawyer x] is a guy who has come across here from [firm y], he only joined us a month ago as partner, fantastic bloke, very able, corporate lawyer and he was told by his immediate boss [at firm x] that “we want you to be a partner because you are capable but if we squeeze the numbers to make the PEP target you won’t make it for a few years”.[[68]](#footnote-68)

For those stuck in the middle, the new profit focus has potentially significant consequences. Whilst the ‘elites’ of law firms, the equity partners, reap handsome rewards from rising PEP, non-equity partners and especially the rafts of leveraged associates face new challenges as they fulfil the role of cogs (profit generators) in increasingly large law machines. Consequently, as the income gap separating junior solicitors and partners from their profit sharing equity partner seniors widens,[[69]](#footnote-69) and as promotion tracks become more competitive and tortuous, workloads increase, work-life balance deteriorates and promotion tournaments become more fractious. Sixteen hour days and six or seven day working weeks are now not uncommon as lawyers strive for promotion and are leveraged to deliver rises in PEP. These tensions of course reap a personal as well as a professional toll. In particular, the combination of extended partnership tracks and growing stress levels are said to be the cause of the now significant attrition rates experienced by large English firms which run at up to 50 per cent, despite unprecedented financial success. Indeed, many firms are now asking whether it is possible to extract profits from an already stretched group of workers:

You get to a certain level – say the £500,000 partner profits point – and the squeezing more out of the machine becomes increasingly difficult; particularly if you are not going for the big de-equitisation push. You cannot ask associates to do much more than they are doing.[[70]](#footnote-70)

1. Public Interest

All of this may seem of little concern beyond the confines of the law firms’ walls. But, in theory at least, professionals such as lawyers ‘heal our bodies, measure our profits and save our souls’.[[71]](#footnote-71) Professional projects[[72]](#footnote-72) have historically justified their claims, privileges and rewards on the basis of rhetorics of altruism and public service. This is what Steven Brint[[73]](#footnote-73) refers to as the social trusteeship ideal of professionalism whereby the professions have consistently highlighted their role as depositories of socially relevant forms of knowledge, thus giving them the ability to solve problems of great public and personal importance.

In today’s post-Enron context, many would be rightly sceptical of suggestions that professionals and corporate lawyers in particular provide publicly spirited services. Nevertheless, despite the new realities of commercialisation, corporate lawyers do still maintain important statutory roles and deontological responsibilities, which inevitably clash with the unfettered pursuit of economic return. As officers of the court lawyers have a duty to serve justice and uphold the law, whilst the nature of their fiduciary relationship with clients implies that they have to prioritise the clients’ best interest (in the sense that they do not step outside of the law), sometimes at the expense of their own profit maximisation. For example, if a client has to be advised not to pursue a particular deal or form of restructuring for legal reasons the law firm will potentially lose income. New financialised models which emphasise profitability and success in the PEP league tables raise questions about the ability of lawyers to maintain this ‘disinterested’ position and their fiduciary duties.

Indeed, In May 2007 when the Australian firm Slater and Gordon floated on the Australian stock exchange the profession entered a new era where profit making has to have a formal place in management decisions. This is where the chapter’s opening quote, taken from Slater and Gordon’s initial public offering brochure, becomes significant:

Lawyers have a primary duty to the courts and a secondary duty to their clients. These duties – including the attendant responsibilities such as client confidentiality and the rules relating to legal professional privilege – are paramount given the nature of the company’s business as an incorporated legal practice. There could be circumstances in which the lawyers of Slater & Gordon are required to act in accordance with these duties and contrary to other corporate responsibilities and against the interests of Shareholders and the short-term profitability of the company.[[74]](#footnote-74)

The quote captures the inherent tensions between the profession’s duties and the new preoccupations connected with financialisation, flotation and the expectations of outside investors. Can lawyers maintain this balance effectively? Are overworked associates and partners capable of fulfilling their duties and of managing conflicting demands to the best of their ability? Furthermore, does the consumer and indeed society benefit from such changes in emphasis and practice even when these are justified in the terms of client focus and value-added?

In many ways such questions take us back to the work of Adolf Berle and Gardiner Means who studied the dangers of separating ownership and control in firms because of the moral hazard it creates. Similarly the work of Michel Aglietta and Antoine Rebérioux[[75]](#footnote-75) on the problems of CEO share options as a mechanism for ensuring the performance of firms also seems relevant here. In short, this work suggests that financialised performance metrics might create a conflict of interest with partners and those managing law firms potentially prioritising their own and the firms gain – i.e. profitability – in lieu of fiduciary duty and at the client’s best interest. Staffing transactions with cheaper forms of less qualified professional labour such as legal executives and trainees, leveraging the work of junior professionals, using computerised case management systems to reduce the number of solicitors needed, and having solicitors simply sign-off paperwork associated with a case rather than actively work on the case are all examples of the outcomes of profit-driven strategising. As the factory system replaces craft production, costs are reduced but clients may be potentially deprived of the benefits associated with bespoke, professionally-led advice.

Whilst we are hesitant to make too many claims at present because of the ongoing nature of developments, clearly such issues should be considered in future debates. Indeed, an intensification of financially-driven restructuring is possible in the English context over the forthcoming years as firms further seek to improve PEP in preparation for floatation on stock exchanges or the attraction of external investors. As Mayson[[76]](#footnote-76) argues, those firms with high PEP are likely to be more attractive to investors and so PEP rates and league tables are likely to become even more important in post-legal services act epoch.[[77]](#footnote-77) However, our interviewees did argue that few large firms were likely to rush to find external investors because of concerns about the reputational dangers associated with the demise of partnership governance.[[78]](#footnote-78) Indeed, reassuringly some practitioners are even beginning to ask questions about the dangers of that the PEP ‘game’. As Guy Beringer the managing partner of Allen and Overy commented in an editorial placed on his website:

I argue that PEP is not an appropriate measure of the success of a law firm and should be replaced with measures which take account of sustainable profitability, client satisfaction and staff motivation.[[79]](#footnote-79)

Similar comments were made by the Editor of Legal Week[[80]](#footnote-80) suggesting that the financialized model of the law firm is already contested.

1. Conclusion and Coda

In this chapter we have sought to do two things. First, explore the way the logics of financialisation have penetrated large English law firms in recent years. We have described this as a process of ‘financialisation by proxy’ because of the way ideals and discourses have moved into the world of legal services from the world of the stock market through newly created metrics and mechanisms (PEP league tables). In doing this we have examined both the nature of the changes associated with this process and the agents involved in spreading financialized logics and practices within law firms. Second, we have begun to unpack some of the most striking consequences of this process of change and how this connects with other key trends identified in the literature such as internal stratification, commercialization and managerialization. It is well known that financialised management has implications for the workers[[81]](#footnote-81) and consumers[[82]](#footnote-82) and here we have begun to examine these debates from the perspective of law firms.

We originally conducted this research in 2008 as the legal profession had enjoyed a prolonged and intense period of economic expansion but with the financial crisis up on us. Returning to this work with the benefit of hindsight for this current publication, has given us the opportunity to review our original arguments and observations in light of recent developments occurred in the post financial crisis period. Interestingly, the 2009-2013 quintile saw the reversal of many of the trends registered in the previous 15 years and discussed in our original publication. What is most interesting here is not so much the decline in financial indicators such as PEP (-32%) or Revenues per Lawyer (-10%), something which is to be expected in the context of an economic slowdown, but the more structural trends such as the decrease in leverage ratios which by 2013 had dropped to 5 salaried professionals for equity partner from a ratio of 6.9:1 in 2008. The fact that this figure is closer to the 1993 value of 3.9:1 than to what it had been only 5 years earlier, clearly speaks to the intense process of restructuring and deleveraging that the profession has embarked upon in the post crisis period. Of course, deleveraging points out to some significant changes in underlying headcount trends, with most growth, occurring, for the first time in 20 years, at partner rather than associate level.

What does this means for our original thesis on the financialization of the legal profession? Most simply it may suggest that financialization is a conjectural rather than an epochal trend, as it relies on and contributes to the broader economic cycle. This is best illustrated by the example of leveraging, which acts as a source of profitability until salaried workers can generate a sufficiently large surplus relative to their cost of labour. This is fine in periods of economic growth but in recession leverage can rapidly turn from a source of profitability to a liability, as firms have to maintain large fixed costs without generating the necessary volumes of fees. Thus, most basically, the inexorable trend towards leveraging described in our original paper, depended on an expanding legal services market and was reversed as soon as this condition disappeared. This of course echoes the general criticisms on the suitability of PEP as a performance metric, which began to surface, as described in the previous section, even during the noughties expansion. Secondly, it is also worth considering, whether leveraging requires certain type of labour intensive transactional work which may be more amenable to be delegated to cheaper and less experienced forms of labour, such as the due diligence work associated with M&A activity or the intense document checking associate with capital markets operations. As soon as this work disappeared following the crisis, not only did profitability decline but leveraged business models became less viable.

Of course, these developments are not per se incompatible with financialisation, as the structural adjustments described above may be motivated by attempts to protect financial performance in a changing economic context. Thus, whilst during periods of growth financial performance could be best served through leveraging, during a slowdown this was best achieved through its opposite. As such, it may be possible that firms could use the justification of the crisis to radically change the size and shape of their partnership to protect profitability, better position themselves for future growth[[83]](#footnote-83) or even make the firm more attractive for a sale[[84]](#footnote-84). This of course would still imply that, whilst the structure and behaviour of firms is indeed changing, financialized strategies and practices continue to drive their management and to exercise a significant influence on the structure of the profession. One thing that appears clear, though, from the prominence of criticisms in the media, the development of alternative metrics such as EPP (Earnings per Partner) and the declining frequency of media citations, is that the hegemony of PEP as a performance indicator is increasingly contested and in decline.

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10. Stephen Ackroyd and Daniel Muzio, ‘The Reconstructed Professional Firm: Explaining Change in English Legal Practices’ (2007) 28 *Organisation Studies* 729; Daniel Muzio and Stephen Ackroyd, ‘On the Consequences of Defensive Professionalism: The Transformation of the Legal Labour Process’ (2005) 32 *Journal of Law and Society* 615. [↑](#footnote-ref-10)
11. See Michael Pryke, and Paul Du Gay, ‘Take an Issue: Cultural Economy and Finance’ (2007) 36 *Economy and Society,* 339; Julie Froud et al, *Financialization and Strategy. Narrative and Numbers*. (London and New York, Routledge, 2006) for reviews. [↑](#footnote-ref-11)
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13. Froud et al, Financialisation and Strategy, (n 1). [↑](#footnote-ref-13)
14. Froud et al, Financialisation and Strategy, (n 1). [↑](#footnote-ref-14)
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16. See Gordon L Clark, Nigel Thrift, and Adam Tickell, ‘Performing Finance: The Industry, the Media, and its Image’, (2004) 11 *Review of International Political Economy* 289; and Cathy Greenfield and Peter Williams, ‘Financialisation, Finance Rationality and the Role of Media in Australia’ (2007) 29 *Media, Culture and Society* 415 on the role of the media in producing and disseminating the discourses of financialised practice. [↑](#footnote-ref-16)
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35. Ackroyd and Muzio, ibid. [↑](#footnote-ref-35)
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48. Marc Galanter and Thomas Palay, *Tournament of Lawyers: The Transformation of the Large Law Firm* (Chicago, University of Chicago Press, 1991). [↑](#footnote-ref-48)
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55. As even the most senior partners in London’s law firms are paid significantly less than many of the bank clients they work for, this trend is likely to have further driven the desire of partners to optimise their own profits so to affirm their elite status. [↑](#footnote-ref-55)
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60. See [www.media.ft.com/cms/d1fbb852-ce3a-11db-b5c8-000b5df10621.pdf **- Last accessed 10/12/2008**](http://www.media.ft.com/cms/d1fbb852-ce3a-11db-b5c8-000b5df10621.pdf%20-%20Last%20accessed%2010/12/2008) **(this may have been removed since by ft?)** [↑](#footnote-ref-60)
61. Clark, Thrift and Tickell, Performing Finance, (n 13). [↑](#footnote-ref-61)
62. Greenfield and Williams, Financialisation, (n 13). [↑](#footnote-ref-62)
63. Senior Partner, Top 10 firm. [↑](#footnote-ref-63)
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65. See also William D Henderson, ‘An Empirical Study of Single-Tier versus Two-Tier Partnerships in the Am Law 200’ (2006) 84 *North Carolina Law Review* 1691. [↑](#footnote-ref-65)
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69. For example, in the large English ‘magic circle’ firms (Clifford Chance, Freshfields Bruckhaus Derringer, Linklaters and Allen & Overy, the ratio of starting salaries to ‘top of equity’ pay is approximately, on average, 1:17 or £65,000 to £1,105,000. Even starker is the ratio between those at the bottom of the partnership ladder in 2006 and those at the top which was, on average, 1:4.8. In 2001 the ratio of top of equity to bottom of equity was 1:2.4 (based on data in The Lawyer (2003; 2006). Many also expect the changes associated with the Legal Services Bill to be replicated elsewhere meaning discussions of financialisation may have relevance outside of the English context of this paper. [↑](#footnote-ref-69)
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80. See Legal Week, End of the Road for PEP, *Legal Week* (London, 19 July 2007) b. [↑](#footnote-ref-80)
81. Lazonick and O’ Sullivan, Maximising Shareholder Value, (n 2). [↑](#footnote-ref-81)
82. Froud et al, Financialisation and Strategy, (n 1). [↑](#footnote-ref-82)
83. The Layer (4/2/09) Clifford Chance to Cut partners in firm wide reshaping; Ganz, K (2009) Clifford Chance to make 80 London Lawyers Redundant. The Lawyer (8/1/09); Moshinsky, B (2009) Linklaters to axe up to 70 partners in massive shake up. The Lawyer (23/1/2009); Taylor, M. Linklaters: 270 London Jobs to Go, The Lawyer (29/1/2009); Byrne, M (2010) Costs in Translation. The Lawyer (5/7/2010) [↑](#footnote-ref-83)
84. Griffiths, C (2010) Focus: Equity partnership and EPP: Slash and Earn. The Lawyer (13/9/2010) [↑](#footnote-ref-84)