Collective CPE: Professional Learning in a Law Firm

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Continuing Professional Education (CPE) is usually conceived as a planned and formulated process for individual members of professional associations. This paper, by contrast, examines professional learning as a collective and distributed process, taking a whole firm, as the unit of analysis. Action Research informed by activity theory is used to work with a law firm. The results show inherent tensions and contradiction in a process of knowledge sharing and practice improvement.

Keywords: Continuing Professional Education, Action Research, Case Study

Continuing Professional Education (CPE[i]) is usually conceived as a planned and formulated process for individual members of professional associations. Previous researchers in the field have focused on the methods used and issues of implementation (Sadler-Smith *et al* 2000). One consequence of this perspective is that scant attention is paid to more informal processes, including intuitive and implicit learning and the way this learning is shared with others in local contexts and in turn, the way these local cultural and historical conditions enable or constrain such learning. Recent research by Gold, Thorpe, Woodall & Sadler-Smith (2007) highlighted a significant number of important ways in which professionals in a law firm frequently learned from key moments of their practice, 'on-the-run' so to speak, and the contextual nature of that learning. In particular, through the twin process of articulation and accumulation, learning was shared and became collective knowledge and understanding within the unit, a group of four employment lawyers within a department. This paper, develops our understanding by examining professional learning as a collective and distributed process, one which affects subjects differently working within diverse but overlapping contexts. In this paper we take a whole firm, LawFirm, as our unit of analysis and view the firm as an activity system (Engeström, 2001). The findings are reported from a year-long action research study with a law firm in the north of England (LawFirm). Access was gained initially with the primary aim to improve the firm's competitive position. However, once close, we were able explore how learning emanates from practice through key moments with clients and how this learning becomes shared with others within the firm through meetings and other mediation means that cross functional boundaries. It also shows how tensions and difficulties that surfaced could also become a source of new knowledge that lead to changed actions and approach to business. We begin by considering the relationship between CPE and the law firm, and highlight the recent changes that affect the way in which law firms are organised. These changes have provided tensions and contradictions that require resolution and offer the potential for new learning. We then consider the findings from our involvement with LawFirm.

CPE and the Law Firm

England and Wales has 116000 solicitors[ii], all of whom are regulated. They are represented by their professional association, the Law Society. As one of the original three professions, practising solicitors find themselves highly regulated by their professional body in all aspects of their work. Under the Solicitors Act 1974 any solicitor who is employed in the provision of legal services is required to hold a practising certificate and the Society has statutory powers to monitor compliance. There are a range of rules that relate to practice and professional conduct. CPE, since 1985, has been compulsory with solicitors being encouraged to take responsibility for their own professional development. The requirement is for a minimum of 16 hours of CPE per year; of which at least 25 per cent must consist of participation in accredited training courses. CPE operates on an annual cycle with each solicitor returning a completed training record. The Law Society therefore, as with most professional bodies of a similar standing, attempt to 'manage' their members' CPE through a compulsory requirement in a planned and systematic process (Grant, Chambers & Jackson, 1999). The logic and assumptions on which the training takes place and will eventually operate are based on mechanistic assumptions that serve bureaucratic control (Taylor, 1996). Not unsurprisingly, the focus of much CPE is focused on particular inputs of codified knowledge and skills. This inputs

focus is also concomitant with the well-known difficulty of application in practice (Cantillon & Jones, 1999). Partly in response to such difficulties, some professional associations, including the Law Society, have widened the scope of their schemes to incorporate evidence based learning through the gathering of portfolios of evidence. Although a problem with this is that individualised attribution still remains which distorts the social nature of professional practice. It is in order to counter these distortions that we have sought to explore collective learning, even though this is rarely recognised as CPE. To undertake this, we have by necessity moved to a level of collectivity that accounts for the practice of many solicitors, the Firm. Our research question is posed as follows: Could and should CPE be better conceived as a collective and distributed process affecting different subjects working within diverse but overlapping contexts?

Our focus on LawFirm as the unit of activity requires attention to be given to the influence of culture and history, on the work that is completed, and the knowledge and learning necessary. Engestrőm (2004) and Warmington, Daniels, Edwards, Leadbetter, Martin, Brown, & Middleton, (2004) both have used the framework provided by Victor and Boynton (1998) that charts the historical trajectory of the organisation of industrial production. The value of this framework serves to emphasise the different types of knowledge and learning that need to be generated by different types of work, and the movement to more valuable types of work through the leveraging of knowledge (Warmington et al*.,* 2004). However, notwithstanding the implication that these movements are usually towards higher levels of value, there always remains the link to the past and indeed, the need at each progression to provide a renewal process for each of the types that have gone before. Figure 1 shows the path of these movements and renewals.

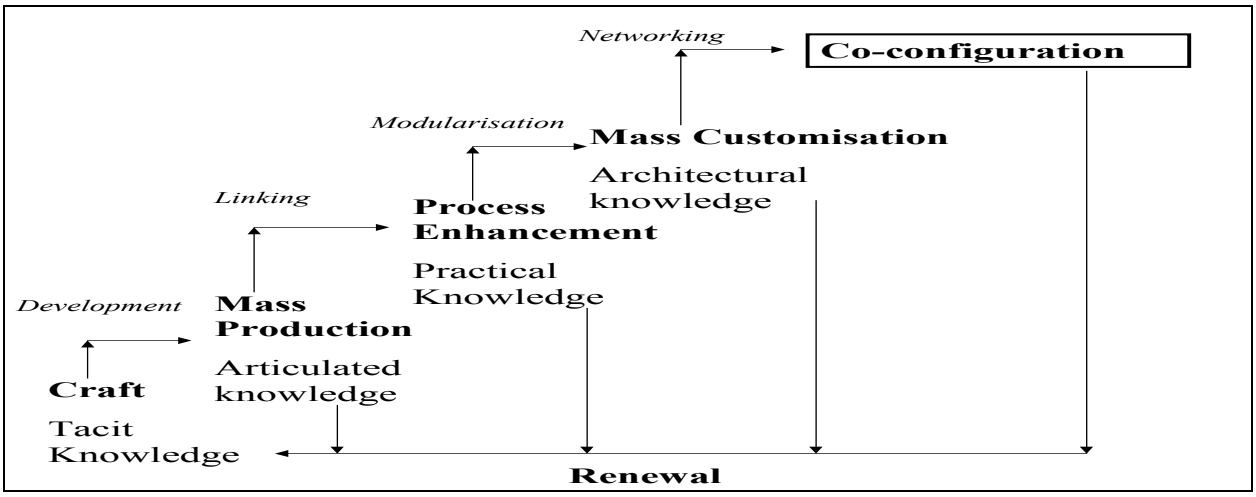

Figure 1. Historical Forms of Work
Source: Warmington et al., (2004, p.8) and adapted from Victor and Boynton (1998).

Craft work, for example, requires knowledge of products and processes based on personal intuition and experience built up through practice. Such knowledge is often articulated verbally between co-workers but remains tacit to a greater or lesser extent. The legal profession, however, as a 'status profession' together with medicine and the church (Elliott, 1972), take their origins as university disciplines, to be studied by the sons of the aristocracy. It was in its practice that the craft of the lawyer could be demonstrated. This is a reminder of the particular importance given to tacit knowledge within professional practice, which according to Eraut (2000, p.128) 'cannot be accomplished by procedural knowledge alone or by following a manual'. This kind of knowledge is developed in situations within a field of practice, almost entirely informally (Cheetham & Chivers, 2000). The move towards mass production becomes possible through the leverage of tacit knowledge through articulation. Here, there is a dynamic process of exploration through practice which is exploited through the formulation of better ways of working, expressed as codified knowledge. As the economy grew during the eighteenth and nineteenth centuries and the market for expert and professional services developed, different professionals established their position in society by claiming a unique authority over particular 'disciplinary knowledge' (Fournier, 2000, p.71). Abstraction and codification of knowledge became the hallmark of professional status and the first ingredient of an ideal-type of professionalism. However, far from making professions open to anyone, the process of mass production of codified knowledge provoked a defensive response from those in practice to make such practice exclusive to those they deemed fit and worthy enough to dispense it so as to avoid the disturbance of open market competition.

From the early nineteenth century, those who practised law became more concerned with protecting their status and interests than in making knowledge accessible. There were we understand many ‘'pettifoggers and vipers' who brought disgrace to the profession. So ironically, while the dynamic between practice and articulation produced a growing stock of codified knowledge, the self-interest and concern to protect the work of solicitors from outside competition made professional law practice exclusive, resulting in growing regulation. In 1823 'The London Law Institution' was formed, becoming a national body in 1825. In 1831 a royal charter was awarded. From this time on, until the present, the legal profession has followed a path of development towards the ‘ideal-type’ of professionalism, as formulated by Friedson (2001). The Law Society’s regulations provide professionals with a privileged position bordering on monopoly coupled with an apparent ‘dislike of competition, advertising and profit’ (Elliott 1972, p. 52).

At the level of the law firm, the mass production of codified knowledge resulted in functional specialisation but without the negative effects of tight rules to interfere with the practice of the professional. This was the start of the development of what Mintzberg (1983) called ‘professional bureaucracy’ and what Greenwood, Hinings, & Brown, (1990) called ‘professional partnership’ or $P^{2.}$ The key features of this form of organisation is that professional standards are expected but there is little central control and professionals are left to develop their own roles within decentralised units according to their preferences and specialisations. The traditional law firm that existed until the late 1970s and 1980’s allowed the direction of the firm to be left to the partners however, so long as sufficient fees are attracted and all the professionals can see a path of progression that will enhance their own status, there is little attempt to strategically control work or set stretching targets. During this period the protected and privileged position of professionals began to change, in response to a number of outside pressures which forced a move towards greater commercialisation, new definitions of professionalism came into being and challenges emerged to existing business (Hanlon, 1998). For example, deregulation meant that solicitors lost the exclusive right to provide conveyancing which had been a staple earner for many ‘high street’ solicitors.

Perhaps the greatest challenge to the profession, and one that progressively blurred the boundary between professional firms and emerging knowledge intensive firms, has been the convergence of micro-technologies, computing, telecommunications and broadcasting and opto-electronics which form a part of the ‘Information Technology Revolution’ (Castells, 1996). These developments dramatically add impetus to the articulation of codified knowledge and professional services in that they can now be mass-produced on a global scale via the access to such knowledge. For example, the public can access legal advice via such services as http://www.clsdirect.org.uk/, http://www.lawrights.co.uk/ and http://www.venables.co.uk/ in the way the public can access medical diagnoses online. There has always been a flow of new knowledge to practicing solicitors through the print media, but as Gold et al., (2007) found, online and electronic mailing services now provide an even more rapid service to solicitors directly after decisions are made. The significance of this and other changes in the context of professional practice has meant that there has been a need for law firms to become much more commercial, more competitive and more market oriented. According to Cooper, Greenwood, Hinings, & Brown, (1996), the consequence has been the emergence of new organizational forms, sometimes, referred to as the Managed Professional Business (MPB). These give far more emphasis to aspects of professional practice such as managing, planning and strategy. Targets, usually fee-related, are set for all staff and allow performance measurement. There is also more specialization in response to market changes. Staff, while still working within the framework of their professional standards, may also be accountable to a line manager or ‘partner-in-charge’. Many professional firms have invested heavily in marketing and commercial awareness programmes and now seek to compete with other firms in the same profession but also stretching the boundaries of their own practice. Indeed, one source of efficiency is practice improvement and this is seen as the means of achieving an edge over others and requires a focus on process enhancement, involving professionals and support staff working together. In England and Wales, the Law Society provides a range of guidelines and events all aimed specifically at improving practice management. In addition, (and following the general trends in the 1990’s for quality standards and process improvement) the Law Society has developed Lexcel, a quality standard for the legal profession. This requires an independent assessment of a law firm’s practice.

The need for law firms generally to embrace ‘commercialised professionalism’ (Hanlon, 1998, p.51) has been augmented by government policy that seeks to balance the need for the regulation of legal services on the one hand, with the promotion of competition that serves consumers on the other. In 2004, the Clementi Review of the regulatory framework of legal services recommended a more centralised and independent process for consumer redress whilst at the same time allowing non-lawyers to become partners in law firms. Indeed, it was envisaged that law firms could consist of a range of legal professionals which might include solicitors, barristers, licensed conveyancers as well as others. These were referred to as legal disciplinary practices or LDPs. In the future, it was thought it might be possible to allow different professions to establish a firm – these were referred to as multi-

disciplinary practices or MDPs. The review was followed in 2006 with the publication of the Legal Services Bill, which set out the proposals recommended by Clementi. However a parliamentary Joint Committee which examined the bill advocated a more incremental approach to change, beginning with a model of a law firm that would be composed of different types of lawyers but without outside ownership or management, suggesting that the 'more complex forms' proposed by Clementi might result in problems of conflicts of interest. Nevertheless, it is clear that the framework for the provision of legal services is slowly moving in the direction of increased competition and in the removal of restrictive barriers so that clients can benefit. These changes which many law firms have already embraced (for example, the introduction of marketing expertise and greater attention to the outcomes achieved with clients) have meant there has had to be a change in the established relationships with clients (Hart & Hogg, 1998) as well as client perceptions (Ellis & Waterson, 2001). In these ways, law firms have been building architectural knowledge to allow mass customisation.

In suggesting an organisational form that embraces different disciplines working together, Clementi may have been speculating on the future of legal services. However, it is an image of working that might be modelled as law firms attempt to leverage knowledge to ensure delivery of higher value-added services based on the integration of different forms of expertise. Such a model requires an ongoing learning process between professionals and their clients. This is a type of work that Victor & Boynton (1998) refer to as co-configuration. In a law firm, the traditional divisions of specialised provision, which respond to the requirements of clients for customisation, need also to consider how their interactions with clients provide opportunities for knowledge generation. However, for this knowledge to become known more widely within the organisation so that services to the client might be reshaped, it requires a process that takes professionals outside of their traditional disciplinary boundaries, and enables them to cross into the space between disciplines (Engeström, 1995). It is within these spaces, where knowledge can be shared, assumptions can surface and new ideas can be challenged. The tensions and ambiguities that emerge can then be explored and new possibilities agreed. Using the image of tying different strands of expertise together to produce a new configuration, solicitors in a law firm become partners in a process of 'knotworking' (Engeström, 2004). The following section considers how one law firm in the North of England made inroads into reconfiguring its service so as to obtain greater flexibility and higher value-added for clients through 'knotworking'.

Methodology

Our work with LawFirm has been consistent with a methodology routed in Cultural Historical Activity Theory (CHAT) (Engeström, 1995). Here researchers study the activity system of the firm, in a relevant and practical way so that interventions made contribute to the construction of new meanings which in turn lead towards greater understanding of the system. The approach is inherently multi-layered and multi-voiced, and considers the efforts of the different actors in the system as they pursue their work with clients and each other. The focus is always on how such work relates to the overall purpose for the firm or its object. This is a crucial feature of a CHAT approach and regarded as the key to understanding the change and learning (Leontyev, 1978) which we see as central to collective CPE. Specifically, the social organisation we define as LawFirm, achieves its unity and coherence in the production of professional services that provide definable outcomes when considered as object-oriented. Individuals within LawFirm, as they complete their work or pursue certain goals (even goals which fulfil the Law Society's compulsory CPE requirements) must connect to the object of the collective activity and its outcomes. In this way, the object becomes particular and very real for every work process that occurs in the firm (Engeström, 2004). Our study began with a study of the cultural and historical trajectory of LawFirm through an analysis of key documents and discussions with directors and staff. We also utilised previous data accumulation to consider how the firm moved from a reliance on a dwindling conveyancing market towards a fully-fledged commercial law firm to the market of regional owner-managed businesses and smaller PLCs to whom a quality service could be provided. Our study is also one of intervention. It is about working with participants as they seek to improve the firm. We achieve this through the introduction of new tools (to help managers to think and act), each with the potential to disturb patterns of working. Such disturbances also serve to produce confusions and contradictions, and these again allowing the emergence of gaps in understanding to be resolved through new ways of proceeding, a process Engeström (1995) calls expansive learning.

Findings

In LawFirm, our cultural and historical consideration suggested the object to be 'to provide value for money and a professional service'. This was constantly articulated and reproduced in a variety of actions, ranging from the

greetings of reception staff to clients entering the building to the provision of refreshing glasses of water on a hot day, to the many service actions undertaken with and for clients. We also considered how the firm's trajectory could be explicated by Victor & Boynton's (1998) types of work. At first glance, there was clearly still a great deal of reliance placed on tacit knowledge as the touchstone to practice, but as a firm, there had been considerable movement to embrace a number of new, non-standard legal solutions. Through its attention to process enhancement and its accumulation of architectural knowledge about clients, we could see that LawFirm was now operating on the 'cusp', between mass customisation and co-configuration (Warmington et al., 2004, p.8). Our intervention, therefore sought to work with LawFirm to bring about a further improvement and a move to co-configuration.

Co-configuration as explained is a form of work that matches LawFirm's aspirations to add value, particularly with relationships with clients and the leveraging the many cross-selling opportunities. As Victor & Boynten (1998) suggest, *'Mass customisation……requires the company to sense and respond to the individual customer's needs. But co-configuration work takes this relationship up one level-it brings the value of an intelligent and 'adapting' product' (*p.195).

While staff in LawFirm were still mainly working under the old departmental headings and systems of control, a key feature of co-configuration is the bringing together of difference and apparently separate streams of knowledge so as to better respond to the needs of clients. This became apparent in an early exploration of the relationship with one client which LawFirm was particularly keen to improve relations with. The client (referred to as A) was an overseas bank with a UK presence including a local branch. It soon became clear that the relationship worked at different levels with different degrees of connection. Figure 2 charts the relationships between nine professional staff at LawFirm and Firm A.

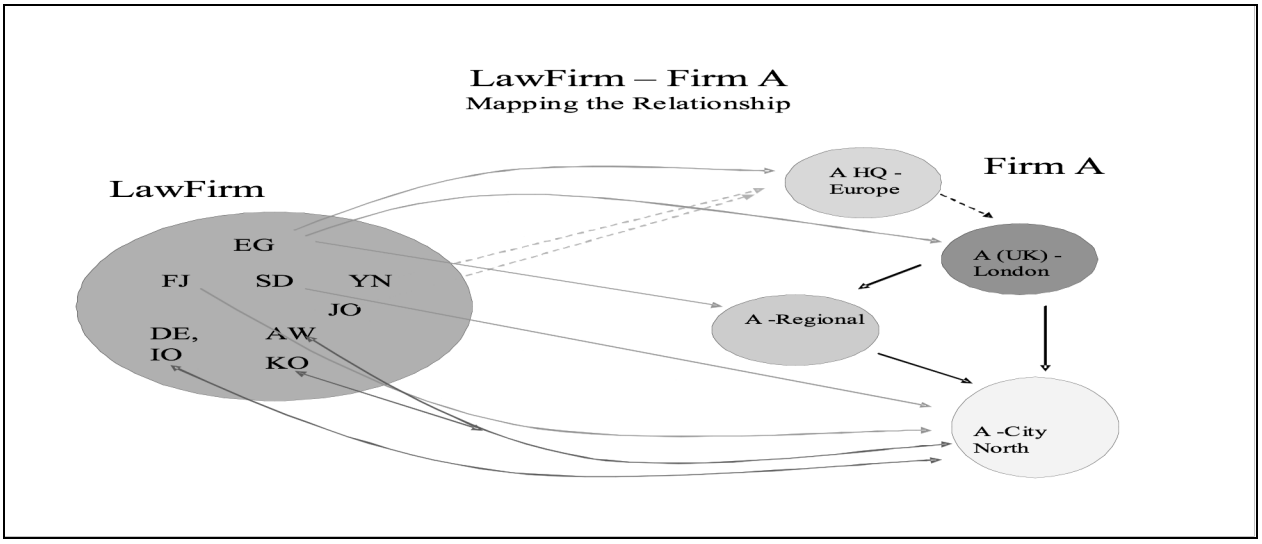

Figure 2. LawFirm and Firm A's Relationship

There were some striking features of the linkages which demonstrated both vertical, horizontal and lateral dimensions of work with A and also the failure to 'tie things together' – a feature of co-configuration and knotworking ((Engeström, 2004). One identified weakness was that there seemed to be a lack of knowledge within LawFirm about 'who knows who' in A. The assumptions being used and a lack of common and agreed strategy of the 'bigger picture' to exert influence and share knowledge. LawFirm to this point lacked the necessary tools to bring together the variety of links that existed at different levels (Daniels, 2004).

In another case different professionals from different departments in LawFirm were working at different levels with a client without any sharing of knowledge or attempts to co-ordinate actions. It was only after a series of important failures that reflection enabled them to see contradictions and tensions that cross-selling produced. It became apparent that early successful work with the client had established a particular storyline. In this storyline both the identity of the client and the professionals were established and the expectations understood. This was vital knowledge and formed the trajectory of future work. That is, the story evolved according to the core direction driven by the values of the participants in the story. Without knowledge of the past, new characters in the story ran the risk of disturbing the expectations, which is exactly what was happening. There was a failure to understand the storyline and knowledge of the expectations contained within it and this was the fundamental cause of negative outcomes and

a loss of business with this client. Throughout, it was assumed that each professional who worked with the client, and there were up to six involved, had the required personal knowledge and experience to provide a service appropriate to the client's interests and in line with the storyline. The research identified many instances where tension and ambiguity were present in relation to the object. These caused disturbances throughout the whole activity system. To facilitate the LawFirm to better exploit these opportunities, we suggested that we pilot a learning process for staff as part of their client engagement.

Towards 'Knotworking'

Collective CPE in LawFirm could occur if personal learning were to create knowledge which could then be shared horizontally across the divisional boundaries. This would allow the various strands of knowledge to be 'tied together'. New tools, rules or roles, could also be used to create the potential to broaden the perspective individuals have of the object across the whole firm. To begin a process of learning for co-configuration, as part of a process of collaborative engagement to improve LawFirm's performance, we introduced a process we called 'Strategic Client Learning'. This process was specifically targeted at the firm's key clients. We agreed to pilot this process with two departments, both of which would identify up to four clients each for consideration. The key features of the process are shown in Figure 3:

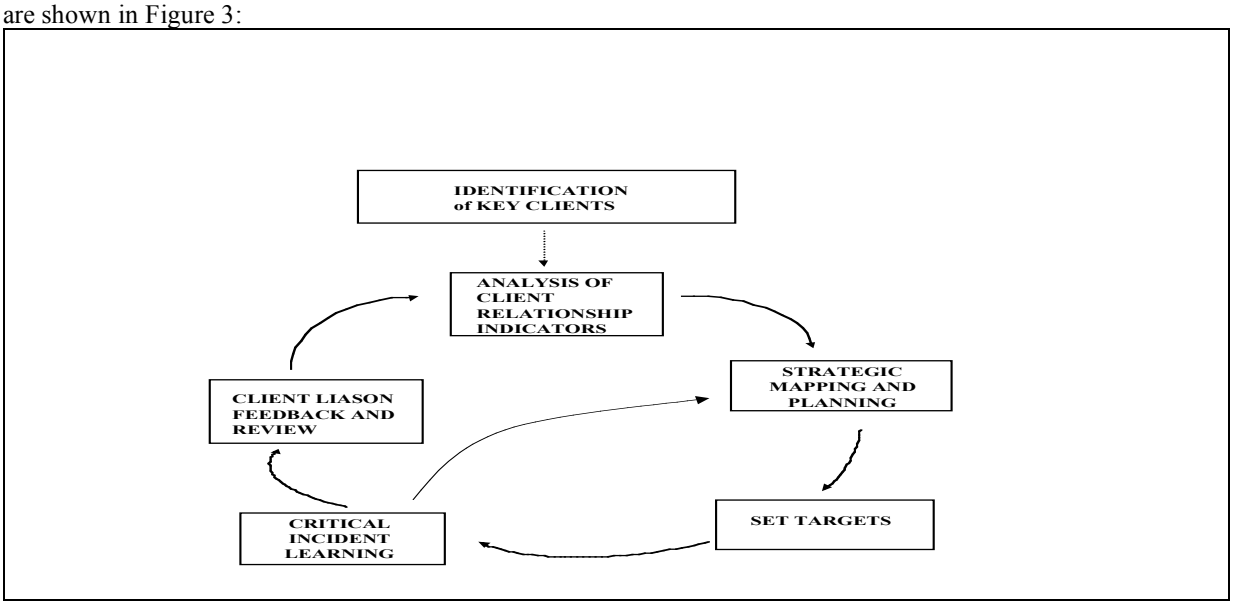

Figure 3. A Strategic Client Learning Process

Although we did not specify that cross-department action should be a criteria for the selection of key clients (cross-selling was specified). Of the eight pilots, three involved cross-division team members from at least two departments and we found that these provided the greatest opportunity for learning to develop configuration; in these areas, knots were beginning to be tied. Of the identified clients, one was a fast-growing retail company we refer to as Client X. This organisation which LawFirm project-managed the contract work for a new property acquisition. In this case, the client team composed solicitors from three departments. Following their use of the new tools and their involvement in the debate and the completion of the relationship indicators, they agreed to develop new relationships with the client's board members, increase the number of people involved in client management and services provision. There was however, no recognition of the value-added by the client, particularly the Chief Executive.

A crucial feature of the work in this case was the very demanding schedule set by the client. The debate that took place also brought to the fore the fact that the Chief Executive of the client had little appreciation of the way LawFirm added-value. The theme of adding value went wider than simply Client X and this indicates the ambiguities inherent in the object of this notion of adding value and giving value-for-money. An issue of intellectual property also existed and Client X was not yet aware of the value of this asset; this provided for them an opportunity for re-shaping a new service. During a review conducted six weeks later, discussion of a number of the critical incidents identified when working with the client allowed LawFirm staff to articulate a need to 'streamline' the project management process and to move forward the development of an IT infrastructure to organise delivery.

LawFirm agreed that a case for a project would be prepared and an emerging Unique Selling Proposition developed. We judged that as a consequence of the activity that had taken place the potential of this learning was transformative for the whole of LawFirm. The current level of thinking and ideas had stretched and broadened the object and provided a range of new artefacts, both physical and psychologically. At a subsequent review, it became clear that the client was seeing value in working with LawFirm and was beginning to compare the service provided, favourably, with others with whom they had worked.

After a six month period, we reviewed the working of the process we have outlined with senior directors of LawFirm. Again it was evident, that by allowing departments to identify key clients, with whom they had potential to extend their services, moving towards a state of co-configuration could produce results. What was very encouraging to see was that individuals with very busy schedules and with very different views were able to meet the challenge to change, exchange knowledge and work to achieve new ways of working. Further the sharing of knowledge became more conscious and systematic even though it was face-to-face and the facilitation ensured that different views were heard and explained. In two of the cases, unexpected events occurred. For example, the impending closure of a local branch of a multi-national finance firm required a swift and co-ordinated response to ensure that as much of the £100k+ fee income could be secured. For another client, one of the major banks, it was important to share with them vital information so that LawFirm's value could be appreciated. Difficulties such as these will always occur in any dynamic context, reinforcing the need to use a shared knowledge approach.

In a number of cases, new tools of mediation were introduced to energise and facilitate the learning process. Although these tools were not always fully developed, they were monitored and adjusted as events unfolded. One of the key ambiguities was the notion of value for money. For professional knowledge-based firms, the object of activity is invariably subjected to 'buffeting' in response to the changing expectations of clients. It is therefore incumbent on firms to move beyond basic services (i.e. those that are indistinguishable from competitor organisations) in order to add value. Adding value to clients requires an understanding of what value means for different individuals within the firm and between clients, as well as an awareness that value is being added in the delivery of the service. For example, involvement in solving key problems for a client and adding to a client's ability to make key decisions (Dawson, 2000). Both require developing relationships with clients to more fully understand needs so that these can be targeted more carefully. For LawFirm, extending the dialogue to clients through regular reviews and liaison meetings remained a challenge still to be realised and one that required the development of new tools.

Conclusion

This paper explores the changing nature of professional practice. It began by conceptualising the development of knowledge within the Law profession. Using a historical analysis it traces the emergence of tacit knowledge (existing in professionals) into codified forms that helped firms exploit a growing market for professional advice. The control of the professional by the Law Society and the rules that allow lawyers to practice is explained. It is within the regulations of practice from which the requirements to undertake CPE emerge and in this context the view of knowledge as a configured resource rather than tacit, situated and emergent is developed. It is at this point in the paper that the threads of our argument are brought together. Namely how can increasingly deregulated law firms facing increasing competition structure themselves so as to leverage the key resource of knowledge to their commercial advantage. The paper gives the case of one law firm with whom the authors have worked over a two year period. Using an activity theoretical perspective the paper examines a law firm located in the North of England. The methodological approach enables the researchers to use tools within an action research tradition to surface issues and ambiguities for discussion and debate. The case chosen and the illustrations provided not only demonstrate the value of this method of intervention, but specifically how CPE occurs at the level of the firm (an explicitly stated next stage of their development).

The case study evidence presented shows the way in which social capital with LawFirm is both generated and destroyed. Each phase of a four stage process of key client identification, stakeholder involvement client support and evaluation is described, the aim of which was to facilitate improved performance through producing a state of co-configuration. The evidence from the case presented indicated that this had indeed been achieved with LawFirm identifying a number of improvements in processes and performance. Two additional outcomes were identified. One, the trialling and development of new tools to aid reflection, the other the importance learnt about the need to understand the different ways individuals perceive value in the provision of a professional service. Both carry the potential for HRD practitioners within professional organisations to play a crucial and valued role in facilitating dialogic skills both for individuals and for groups composed of different specialisms.

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[i] In the UK, CPE is usually termed CPD or Continuing Professional Development

[ii] Figures obtained from the Law Society website, http://www.lawsociety.org.uk/aboutlawsociety.law on 15 July 2006.