



Still punching

After a decade of shaking up the disputes scene, can boutiques thrive for another ten years in a seemingly saturated market?

Muna Abdi

‘Gone are the days where the client would just default to a certain adviser because that is who it has used all along,’ says Signature Litigation partner Daniel Spendlove. ‘Corporates, especially one-off distressed clients, are thinking about who they use carefully and that puts firms like ours in a strong position.’

Boutiques have been a striking feature of the disputes landscape for more than a decade. The rhetoric extols the virtues of the stripped-back model, unconstrained by the extra overheads that come with having multiple practice areas, and the conflict-free feature allows full-service firms to feel confident in referring disputes work to non-competitors. ‘What clients get is a focused offering. We’re not cross-selling other departments. We are simply here to handle a case,’ adds Spendlove.

This apparent USP – the standard pitch given by boutiques to potential clients and recruits – is also the root of the genesis of many of these firms, formed by litigators from top firms across the City, frustrated at missing out on some of the most high-profile cases in the post-Lehman landscape. But they compete with high-profile practices in a saturated market that includes the well-established disputes practices of major UK firms; the ever-expanding and ever-threatening development of City teams of US firms; and disputes-only powerhouses, such as Boies Schiller Flexner, Quinn Emanuel Urquhart & Sullivan and Stewarts (see box, ‘Scale and experience’, page 158).

And while a legion of smaller London disputes boutiques have become increasingly specialised and are considered sound outfits, there are natural scale limitations to the business model. For the smallest of firms, there is still work to be done in getting the right number of people with the right level of expertise who can then attract the right volume of work. And if scale is a limitation, what can boutiques offer that will set them apart?

Reputation over referrals

An obvious downside is that, unlike broad-service firms, boutiques are unable to tap into other departments when the need arises.



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'Boutiques have an inherent advantage of being conflict-free but have the disadvantage of not being able to have the support of product-matter experts,' says Andrew Denny, litigation partner and head of UK public law at Allen & Overy. 'Some of the claimant firms who have more of a full-service model can go to their subject-matter experts; there are pros and cons to the boutique.'

Boutique firms appear to stack up poorly against some of the leading commercial litigation teams in the City in terms of revenue and headcount, but not in profit terms. Herbert Smith Freehills has the largest disputes team in the City, boasting 336 lawyers and 71 partners, while disputes generates around 45% of global revenue (approximately £435m). Clifford Chance has 112 disputes lawyers in London with 20% of its revenue coming from disputes-related work globally – around £340m.

By comparison, CANDEY, founded in 2009 as a spin-off from Tarlo Lyons (now Blake Morgan) and led by Ashkhan Candey, houses 30 fee-earners, including six barristers and one QC. CANDEY is looking to grow to 40 fee-earners in the next 12 months but has a profit per equity partner in excess of £3m.

Cooke, Young & Keidan, established in 2009 by former Baker McKenzie litigators, has 25 lawyers in total. The amount of referral work from larger firms that have been conflicted out has historically been low for boutiques, according to managing partner Robert Coffey, but regardless, their reputation has been built on acting against major corporate banks in landmark cases. 'Our model is to be available to act against those corporates in a way that few of the largest City law firms could or would be willing or able to do,' he says.

Overseas entities, for example, may not operate strict UK adviser panels and may instruct either full-service or boutique firms, giving boutiques a better chance at getting some high-profile work for corporates worldwide. General counsel at Phoenix Group, Grant McCaig, says: 'We find that, given the nature of our business and the sorts of counterparties we may wish to sue, we would go through a process of getting conflicted out by a number of our law firms before we find one that is happy to take on a case.'

The increasing appetite of corporates for using disputes boutiques has not been a result of glowing references from full-service firms. The main avenue has been word-of-mouth between in-house counsel consulting their networks for recommendations, according to Gaby Dosanjh-Pahil, head of legal dispute resolution at SSE. However, she says in-house teams often try to avoid boutiques because not only do corporates usually have agreed rates with their panel firms, but boutiques sometimes fail to do better in terms of price. Another reason for a corporate to choose full-service firms, particularly when it comes to a dispute relating to a specific acquisition, for example, is that the client would prefer to use the firm that advised on the deal itself as those lawyers would have an inherent understanding of the circumstances around the dispute.

Reticence to use boutiques also stems from concerns over the availability of resources and expertise. McCaig says: 'One of the issues we've found with boutiques when we've used them is that they don't necessarily have the specific resource available. If it is a dispute where you would need to throw manpower at it for a specific period of time, sometimes from our experience we get concerned that the boutiques just don't have the capacity to do so.' He has, however, found ways around those issues. 'What we have done previously is align our boutique firm with the firm that handled the transaction under dispute and that sometimes can work.'

Coffey says the resource issue can be managed effectively. 'Clients who are looking for a full-service offering will get this from a bigger firm under one roof, but we have an extensive network of relationships with other specialist firms to which we are able to refer clients where necessary.'

Understanding that the standard boutique pitch is not enough to win clients, Mark Humphries, who left Linklaters to set up Humphries Kerstetter in 2009, focuses his attention on the reputation of his firm, targeting cases where he feels it can add value. 'We are targeting the most complex and the best work. To get that, we need to make sure we don't take on work that gets in the way of that ambition.'

Few boutiques are officially partnered up with litigation funders, despite funders being strong advocates of the model. 'Funders recognise that litigation boutiques are first port of call for claimants who, for whatever reason, either can't afford to pay the cost themselves or they don't wish to and are happy with the slice of the



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Bankim Thanki, Fountain Court Chambers

claim taken by the funder,' says Humphries. 'The funders know that our firms are swamped with cases that we are considering for those that can't or won't pay and therefore as a source of claimant-funded work, the boutiques are ideal.'

Harbour Litigation Funding regularly approaches boutiques that it feels can provide the expertise it requires, but rather than considering each firm on its reputation as a whole, senior director Stephen O'Dowd says: 'We're investing in the quality of the lawyers – that's the key criteria for us.' Harbour has raised over £1bn in capital and has a success rate of 70%. Its most prominent partnership is with Mishcon de Reya, which has reached an overall provisioned budget of £131m, covering eight cases in the areas of rights issues, breaches of contract, investor mis-selling, intellectual property and fraud.

Boutiques like CANDEY prefer to fund cases themselves and although the firm has previously worked with funders, it prefers to share the risk with the client directly, but only in selected matters. Ashkhan Candey says: 'If we had the liquidity of Burford Capital then we'd be able to do a lot more contingency work. But we can't do everything on a contingency, not yet.'

Less is more

While there are obvious limitations to the disputes boutique model, ultimately these players are not being held back in the space they occupy – for now. Partner and head of financial disputes at RPC, Simon Hart, says: 'Litigation is much more a fact of life for corporates and high-net-worth individuals in a way it wasn't ten years ago. That has accommodated a variety of different firms with different models.'

Bankim Thanki of Fountain Court Chambers concedes 'boutiques are part of the terrain now' but warns: 'We see their

business model as at saturation point.' James Sheehan of Essex Court Chambers agrees: 'Boutiques have caused disruption and I don't see that dropping off, but I also don't see them going into a new era – the more there are, the less unique it becomes.'

Unsurprisingly, Candey believes that the relationship between larger players and boutique firms will strengthen over the next decade. 'Larger firms have historically had a litigation department when it's not necessarily their core business. You're going to see a trend of corporate firms focusing on their core strengths and working more closely with litigation boutiques,' he says

RPC senior partner Tom Hibbert predicts that as large firms expand further, there will be more conflict work and so boutiques in particular will certainly continue to benefit. 'If we see more US-UK mergers, the conflict problems that the big firms have will only get worse and that's obviously a big part of the way litigation boutiques operate.'

And the boutiques argue that if there are limitations to their model, there are certainly solutions. 'We have an extensive network of relationships with other firms to which we are able to refer clients where necessary,' says Spendlove.

While boutiques have come far in a decade, competition is intense and the next ten years will be more challenging. However, head of relationship management at Barclays, Chris Grant, says flexibility is key to their survival: 'Boutiques are the ones that have an opportunity to deliver things in a different way and could potentially start to bring more innovation and technology to the table that could make them particularly interesting. If there is a piece of work we're asking you to do and part of that is best placed somewhere else – send it somewhere else. If they can send that work out and do it at a better rate, then we are far more interested in that being a solution.' ■

Scale and experience – the draw of disputes-only powerhouses

Too large and too diverse to be considered boutiques, three specialist disputes-only powerhouses have carved out significant market share and eye-catching profitability since establishing themselves in the UK since the financial crisis. Quinn Emanuel Urquhart & Sullivan, Boies Schiller Flexner and Stewarts have been able to steadily claim a stake in London's premium litigation market, an area historically dominated by full-service firms.

Since launching in London in 2008 and 2014 respectively, US-based Quinn Emanuel and Boies Schiller have handled some of the most complex disputes in Europe. With 21 partners and 64 associates, Quinn reported a global revenue spike of 16% to £83.6m, while profits rose by 13% to £59.3m in 2018/19. 2019 saw Quinn record its most significant win in the £14bn lawsuit against Mastercard, which it won on appeal (see our cases of the year feature, page 38). Currently, Quinn is representing claimants in cases such as *PCP Capital Partners v Barclays*, *Phones 4U v O2*, *Vodafone, EE & Orange*, as well as representing Allianz Global Asset Management in the FX rates cartel case.

Boies Schiller counts corporates such as Apple, Barclays, HSBC, Goldman Sachs, Facebook, Oracle and Uber as representative clients, focusing on high-stakes international and complex litigation, investigations and arbitration. According to London managing partner, Natasha Harrison, although the London office is a lot smaller in comparison to Quinn Emanuel and Stewarts, with 19 disputes lawyers including six partners and two counsel, 'our strategy has been growth for the long term not the short term. It's not a race; it's not about how many people we have sitting in the office. It's more about quality. We're not a firm that just wants to hire laterals.'

The largest disputes-only firm in the UK, Stewarts branched out from a national personal injury business into heavyweight commercial litigation ten years ago. Over the past five years, turnover has grown by 48% from £46.4m to £68.8m, while PEP has grown 9% to £1.23m from £1.13m. Stewarts' sizeable team of 66 partners and 130 disputes lawyers rivals full-service firms, such as Hogan Lovells, which has 136 disputes lawyers in the UK. Stewarts head of commercial litigation, Clive Zietman, says the firm looks to take on cases that would set it apart: 'We don't want to be on anyone's panel because we don't want the low-rate work that might flow out of insurance companies, for example. We're better at the quirky, big-ticket, complex dispute. We don't want to pile it high and sell it cheap.'

One such case is against Ingenious Film Partners, where Stewarts is representing around 280 individuals who suffered losses on their investments following a tax avoidance ruling made by HMRC. The firm is also acting on behalf of a group of



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investors that have brought a claim against Tesco in connection with the financial reporting scandal that was revealed in 2014.

As with disputes boutiques, the challenges for these large specialist litigation firms stem from technical and transactional aspects of a case where they lack the direct input of corporate or finance lawyers. However, Quinn's new co-managing partner, Alex Gerbi, argues it is not vital for specialist disputes firms to have corporate or tax lawyers, as litigation is one of the few 'standalone' practices and work can always be outsourced if necessary.

Harrison agrees but concedes there are certain types of dispute that will always be the preserve of full-service firms: 'We're specialist at becoming experts in different areas of the law. However, there can be times where you can have some very complex assessment structures in place and that would need a transactional firm. There can be limitations – you're just not going to get that work that spins off in the transaction practices in the same way. While it's the really big-ticket disputes where we are in with a chance, there's a whole layer of work that tends to arise out of the transaction department at a big firm.'