



The loneliness of the long distance General Counsel and the changing relationship with their appointed law firms

By Paul Gilbert, Chief Executive LBC Wise Counsel

To complement our research (*Møller PSFG: The Reputation of law firms 2009*) into what differentiates excellent law firms, this paper provides an insight into the way many in-house teams operate. In this paper I explore the reasons why in-house teams are often inefficient or sub-optimal. I then pose questions about how the management of activity by General Counsel will impact on law firms as efficiency improves and explore the changing macro environment and how this too will drive change.

My purpose in writing this paper has been to help business development professionals in law firms to better understand how their clients might approach activity and to challenge conventional wisdom on balancing remunerated activity and investing in client efficiency. It asks more questions than it provides answers, but will hopefully stimulate a debate from which solutions will emerge.

In-house teams

Typically the law department in FTSE 350 companies will not be large and will often range from 3 to 15 qualified staff. The work that is undertaken in-house includes contracts with suppliers, contracts with customers, early stage dispute resolution, marketing, Health and Safety, data protection/data security, intellectual property protection and some corporate activity.

Importantly most in-house teams in FTSE 350 companies have front line responsibility for managing relationships with external law firms; they may also be responsible for which firms are selected, although this is increasingly a decision that is taken in collaboration with procurement teams and with procurement style disciplines.

What keeps them awake at night?

A great many in-house teams are driven by demand, exhibit modest proactive credentials, have little IT support and underutilise metrics; if you ask General Counsel what keeps them awake at night, two things are likely to be mentioned:

1. Business decisions are made today on the sophisticated analysis of financial, risk, market and trends metrics – but

very little of this exists to justify the value of legal services. There is therefore a genuinely pressing need for General Counsel themselves to obtain meaningful data that proves the value of the in-house function, and

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2. There is an increasing burden of tasks and activities to manage where the risk of failure is more acute than ever before and yet very many General Counsel are doing so with a static, even reducing, resource.

The two issues are linked to create a further problem which is that it is far too common to find General Counsel today spending too much time fighting fires, getting into too much detailed activity and focusing on tasks rather than strategy. In consequence the thoughtful, creative planning and deployment of resources to match risk is left to an ad hoc day-by-day judgement call.

The result is that GC's are getting busier and busier while perhaps becoming less and less effective. The sadness in all of this is that unless the cycle is broken, such talented well meaning people working with great integrity are doomed to be frustrated, less valued than they should be by their colleagues in their businesses and probably burnt out.

This is a fundamental weakness in the way we organise legal services in the United Kingdom. An analysis of how teams work might suggest that we value crisis management more than we value ultra effective process; that we value doing things ourselves rather than effective delegation; that we mistrust claims that technology will make our work more effective and

instead we hark back to halcyon days (which never existed anyway) when our word was believed because it was our word.

And yet in the face of the obvious strain all this causes, senior in-house lawyers are not doing enough to change how they work. The responsibility for this should not be put at the door of unthinking chief executives, parsimonious budgets or not having the time to think about change. The responsibility lies with General Counsel.

The performance and reputation of Law Firms in the legal sector

The market in legal services, as in many areas of professional service delivery, has developed rapidly over the last two decades to become a significant business, carried out on a global scale.

However the supply side of this service – the fee earning law firms represent one of the few unconsolidated global markets, with many hundreds of suppliers offering similar services at high price in a manner which is undifferentiated from the point of view of the buyer. Even experienced technical buyers (i.e. other lawyers) find it difficult to see and understand the differences in the quality of advice given by their supplier firms.

Our research aims to create an understanding of the underlying drivers of quality and service that is delivered to businesses by law firms, by tapping into the actual criteria that experienced in-house lawyers are using when making practical day to day choices between firms to instruct on legal work.

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If this sounds harsh consider how many GC's do you know who have a significant grip on the following key indicators of value?

- The relative performance of different lawyers in their teams to manage case load, relationships and to proactively pre-empt new issues. Data that supports effective reviews and assessments for personal and team development.
- Effective processes for workflow management that are transparent, accountable and robust. A commitment to process improvement and personal development.

- Confident budget forecasting and costs management, in advance of writing cheques.
- Knowledge management that is more than "e-alerts" but which is targeted and focused and ensures best practice is learned and embedded in the team. Demonstrable value from law firms doing outsourced work, including activity that offers the law firm incentives to become more effective as well.

It has become a cliché to say that one can only manage what one can measure and clichés suffer from being too easy to say. But clichés are clichés because at the heart of the sentiment is an important truth. The truth in this case is that "gut feel", "intuition", even "experience" risk imparting a sense of smoke and mirrors rather than analysis. In the absence of data to analyse, conclusions are all too easily distrusted by executive colleagues.

What are the likely responses for General Counsel?

In response to these challenges, three areas are likely to develop:

- *Clarifying priorities and structure:* What are the team's work priorities and what value do the team add to those issues? How can the team identify the things to stop doing and how do they manage the transition from undertaking too much low risk activity and preserve relationships?
- *Transforming the relationships with law firms:* What are the outsource trends (costs, case numbers, effective resolutions/completions)? Can the team negotiate with their law firms from a position of expert knowledge? Can they challenge the analysis of why things take so long and cost so much? Can they help their firms find process improvement that will save the business money? Can they hook into their professional support resources in a meaningful way?
- *Establishing performance and management metrics:* What is the cost of the service (internal and external combined) and how is value derived from the mix between work undertaken in-house and outsourced? Does the team know what it costs to run a case in-house and therefore how much money could be saved by increasing the available internal resource? Are the team outsourcing the right work at the right time to maximise the value of their external relationships?

“So what” for law firms?

Law firms working with GC’s like this have two choices; the first to stand back and watch, collecting fees, accepting the inefficiency and providing a sympathetic ear, or second collaborating as the trusted advisor with their GC client and helping to make positive change.

Can law firms intervene collaboratively?

The answer will depend on the quality of the relationship.

Should they intervene collaboratively?

This may depend on how valuable the client is in cash terms and how important it is to secure this cash-flow.

A great many law firms have observed a seemingly centuries old culture of charging for time which has entrenched behaviours passed on from one generation of lawyers to another. Essentially the model is very simple – the income generated from the service delivered has to be around one third more than the cost of delivering the service. The model therefore is perfectly designed to support the pursuit of remunerated activity. Obviously the model does not exclude concepts of quality or cost effectiveness, but it is the case, primarily and dominantly, that remunerated activity is the key to success.

Indeed, while quality has to feature significantly in a successful legal practice, this is measured not in absolute terms related to the deployment of legal expertise, but in perceptions of service from the client’s perspective and therefore emphasising the importance of client relationship management skills.

Thus the most successful lawyers of recent times have been the so called “rain-makers” – those gods of the profession who could not only develop great swathes of remunerated activity, but who could at the same time make each of their clients feel that they are getting personalised attention. When framed in these terms this model it is hard to criticise; and a great many men (and some women) have become wealthy as a result of it. In summary, the most successful law firms have understood four fundamental truths:

- People buy from people and, however grand the edifice, in the end business is given to those whom we trust to do a good job
- Service delivery matters more than the quality of activity because no one, but those directly involved, knows differently

- Value is in the eye of the beholder and not intrinsically related to the deal or transaction or matter
- Activity, activity, activity!

Over the last few years, however, clients have begun to comment on what might be described as an institutional imbalance in the relationship between law firm and in-house team:

- The in-house team’s bargaining power is diminished the closer a crisis looms or the more comfortable a law firm feels with the regularity of activity and the absence of close scrutiny
- All the likely law firms move at a similar pace, to a similar beat – so nothing truly radical happens in isolation. This creates an almost false loyalty based on an assumption that there is little point shifting activity from one law firm to another because all the main players are so similar
- In-house teams do not yet feel confident that new charging models (which move away from hourly rates) will make a significant difference to the overall cost of the activity – reasoning that the law firms will make their money one way or another.

Change may be inevitable

These perceptions of imbalance however have not been enough on their own to create momentum for change. As a result there has not been a discernible drive for a “new normal” and points of differentiation between law firms, as demonstrated by our research, are observed on a micro as opposed to a macro level.

While this is a potential vulnerability for law firms in failing to address their clients’ typical efficiency failings, it has until now worked to their advantage, provided they could keep winning a reasonable share of new business.

These typical efficiency failings include:

- In-house teams do not routinely insist on verifiable performance metrics and often lack even rudimentary technology and IT support from their colleagues in the business.
- Clients do not routinely allow law firms to build significant and varied contacts beyond the in-house legal team, thus creating a natural bottleneck for instruction and advice.
- Clients occasionally fail to provide sufficient instruction and have insufficient clarity around objectives and goals. Errors are then sometimes repeated and clients are often too soft on “project creep”.

- In-house teams will sometimes avoid challenging law firm inefficiency for fear of exposing the issues to the scrutiny of others.
- Clients value good service and if the service ethic is obvious, then any inherent inefficiency of process is more acceptable.
- Many clients do not know how much work they outsource, at what cost and for what value; this doesn't encourage systematic review.
- Clients have a low expectation of excellence in law firm process management and a high expectation that costs will be significant.
- Developing different channels for delivery of advice and guidance with less emphasis on the office environment and much more emphasis on virtual environments.
- Making legal content accessible to non lawyers will be an imperative.
- Creating a brand identity, then maximising brand awareness and promoting differentiation from competitors.
- Recruiting entrepreneurial executive talent capable of implementing the strategic and operational disciplines needed to succeed.

If these failings are observable, then when in-house teams do step-up and become more efficient and effective, the traditional law firm model becomes very vulnerable indeed. There are now two major reasons to believe that the model will change and change dramatically?

The regulatory framework

The Legal Services Act is now law and the competitive environment for legal services providers will look very different in perhaps as little as five years time. Perhaps as soon as 2010 new legal entities will be able to seek authorisation to provide legal services and by 2012 the world will be different – but how different?

Henry Ford is reputed to have said that before the automobile had been invented, if you had asked travellers what they would have wanted most to make travel a better experience, they would have said "faster horses".

Seeing into the future therefore for legal services and the legal profession is similarly constraining. We can all have a vague, speculative thought about legal services becoming "quicker, easier, cheaper..." Most of us have bought into this theory already.

For example, thanks to (1) email, (2) document compilation and (3) mobile communications we have made our work a lot, lot quicker. In addition IT for document and case management systems has also made our work a little easier (at least we can handle more complex work more easily) and, as a result of competition for work and talent (combined with the revolution in technology generally) unit costs for most legal services are now cheaper too.

How many law firms are also considering some or all of the following ideas?

- A significant investment in building and maintaining legal content.

Client side demand for change

Even those holding the most relaxed, optimistic view for benign consequences of change would concede that the sort of client side inefficiency we have previously noted may not be a predictable trend for the future.

However, much more than this, we believe there are very significant signs of change. For example there is much evidence of increasing sophistication in panel set up. In 2007 BOC Linde and Tyco broke new ground with *solus* appointments on a pan European and even global basis. Also in 2007/8 Severn Trent plc revamped its panel in favour of a single commercial law firm appointment. In 2009 Rio Tinto is pioneering legal process outsourcing and indeed every week the legal press is reporting on panels being set up and panels being reviewed.

In addition the rise and rise of the procurement professional will not abate. The only likely change this brings about is that it will force further rigour on the part of in-house teams in their purchasing decisions and the transparency of pricing.

In this environment law firms are striving to demonstrate points of differentiation (not sameness) and the more clients push law firms to demonstrate difference, the more law firms have to identify values and activities which are indicative of new thinking around leadership, value and value add.

Are these changes linked to observable trends in the discipline and structure of in-house teams?

As has been argued, for many in-house teams activity is managed based on informal priorities (who shouts loudest) and nearly always the team is under-resourced to meet the scale of potential demand. The crisis management ethic therefore abounds with teams generally making a good job of rather inefficient time management, resource deployment and prioritisation techniques.

Nevertheless awareness is growing for change and solutions are being sought out. If regulatory change and efficiency improvement therefore drives significant change then there will be an impact on law firms: Consider for example:

- **Recruitment policies** – competing with new providers offering “lifestyle” as well as intellectual stimulation
- **Investment in technology** – where strategic partnership and joint ventures may make current spending levels look like pennies
- **Investment in delivery channels** – downloadable, interactive, bespoke, client driven and publishing – content providers are key players; can you leverage your content?
- **Consultancy services** – can you move to a defined proactive risk support, training and publishing model?

In addition the pressure to be innovative will drive still harder points of differentiation rather than points of sameness. This in turn will feed into the growing sophistication of the in-house teams in the way they select and manage their panels.

Again this does not have to signal revolution necessarily, but in a competitive race, coming a close second might mean losing everything - a fact that should be incentive enough for firms to invest so much more energy in client retention, articulating value, delivering value add etc.

What then are the potential implications of such change on the relationships of the future? Perhaps some or all of the following:

- **The Legal Panel will become the standard?** Ad hoc arrangements will be seen as eccentric and inefficient
- **Established panels will get smaller?** Managing any more than three to five firms is unworkable even where volumes are very significant. Law firms will lose more pitches but when they win, they will win big
- **Client retention will be the key strategic driver** and value will be articulated at every contact point
- **Metrics which show the value of the relationship will be crucial** and sophisticated work/value reporting will be routine
- **Value-add initiatives will be real**, expensive and a long term commitment

If the hypothesis that is behind this paper is correct, then the challenge for law firms is not to rely on income from inefficient established personal relationships, but to accept that through the firm’s proactive involvement the improved efficiency of the client may result in less turnover, but a more secure business relationship.

Is this a trade-off that law firms will accept?