

Matter type as the foundation of know how

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If knowledge management in law firms is largely about re-using the firm's past experience, then how can lawyers find that experience when they need it?

Law firms pitch for new business on the basis that they have handled similar work in the past. When a pitch document is being prepared there will often be questions asked around the firm, along the lines of 'what previous trade mark disputes in the pharmaceutical sector have we handled?' When appointing a law firm, clients expect that their lawyers will know the pitfalls of the situation they are in, guide them through the process, anticipate and plan for what is likely to happen and predict what the other side is likely to say. So how can a firm reliably bring its past experience to bear in the context of the new matter?

Identifying similar matters

Few firms have the resource to create and keep up to date detailed step by step guides for every type of work they handle. The amount of time and effort involved is probably not justified anyway. In a few areas it may be worth having complete end-to-end case management systems, or interactive practice manuals, and indeed in some areas it may be possible to generate this kind of material collaboratively over time using wikis. However, unless and until such material is available, it will be a great help for lawyers to be able to track down similar matters that have been handled in the firm before, and in particular to:

- Find the documents and advice generated
- Identify the big issues that arose
- See what was charged for those matters (and what was written off)
- See who worked on those matters, in order to build a team for the new job, or to know who to call on for advice when required
- See how long the matters took in terms of elapsed time.

In order to make this easy (rather than relying on round robin emails, or asking around, both of which can be fairly hit and miss), the firm needs to be able to identify the type of work that was undertaken on each matter file. Indeed some matters may cover multiple work types, depending on the firm's policy in terms of cross-practice or cross-office working, or have different work types for sub-matters.

Classification

The level of detail of this classification will depend on the firm and the practice area. In some firms 'corporate' may be a sufficient classification, in others it may be appropriate to get to the level of distinguishing 'listings' and even 'listings on secondary markets'. One should not underestimate the difficulty of creating and agreeing a list of work types that will apply across the firm. There may be issues of internal politics that make this task more complex: for example, if one part of the firm believes it handles all the work in a particular area, but then it is revealed that the same work type is

being used for matters in another department. I am not even sure that an industry standard list of matter types would necessarily help.

Many firms have a method of classifying work typesⁱ, but if these classifications are not used in any obvious way the quality of the information in the system is likely to be poor. I confess from my own time as a fee earner that I would usually open files using the most general work type relevant to my practice group, partly because it was the only one I could remember, and also because scrolling down an entire list or, worse, having to think about the issue, did not seem to be a priority. Since these classifications rarely seemed to have any bearing on the information that was reported back to me, I was unmotivated to focus on getting them right. Inevitably there is a chicken and egg situation here – if the information put in is slapdash, then any reports produced on the basis of it will lack credibility.

Clarity of purpose

One needs to be clear about the purpose behind asking lawyers to classify their matters (which will usually occur at the matter inception stage, but ideally should be confirmed at matter closure). The main purpose of the classification in my mind is to be able to identify similar experience within the firm, which may be relevant in the planning and execution of a new matter and also when pitching for new business, or preparing the firm's entries for the legal directories. Firms may also wish to use this classification to identify the relative profitability of different types of work. I would suggest that for this latter purpose it may be more appropriate to group a number of work types together and it would be wrong to try to create a single level of classification which fulfilled both purposes, since there is a danger it will not really properly fulfil either.

Further, it is important to distinguish this type of classification from the legal topic taxonomy that the firm may be using for its know how database, if it has the luxury of having such a database. There will be similarities, but trying to shoehorn the two into one will not do justice to either. This may be illustrated by considering contentious and non-contentious advice in a particular field – say, insurance. When pitching for a piece of contentious work, and planning how to handle it, the firm's non-contentious experience will be of limited relevance. However, research notes on the construction of particular provisions in insurance policies will be equally relevant to both.

It is also often helpful to classify the industrial sector relevant to the matter (which may be different from that of the client – e.g. you may be working for an automobile company on a construction project). In international firms, the jurisdiction of the matter is also relevant and will not necessarily correspond directly to the location of the office in which the work is being done. These classifications may provide further helpful filters to bring down to a manageable level the number of 'similar matters' to put before the fee earner.ⁱⁱ

Presenting information about similar matters

The way in which information about similar matters on which the firm has acted in the past is presented to the fee earner will depend on the systems that the firm has in place. At the most basic level, if at new matter inception the fee earners involved (both the matter manager and the juniors working on the matter) can routinely be given the matter numbers and the name of the principal fee earners on the last five matters of the same type, this could take them some of the way. However,

its value would depend on the fee earner bothering to do something with this information, such as look at the matter files or contact those involved.

If the firm has a matter-centric portal in which financial information, fee earner involvement and documents are brought together, then it may be possible to provide links to the last few matters of the same work type by creating a saved search. A similar, but less sophisticated, saved search approach could be taken within a matter centric document management system if a saved search folder were to be created for every new matter, with the search being for matters of the same work type.

Other approaches could be the automatic generation of a 'matter summary' document, containing key items of information provided at matter inception. If these matter summaries had a unique document type and referred to the matter classification, they could easily be located. Adding some financial information and some – even if very brief – discursive text at matter closure could help to make these documents all the more useful.

Other uses for matter classification

Once this kind of classification is reliably in place, it can be used in a number of ways. If every document on a matter can inherit a matter classification, this tag can be used as one of a series of filters to narrow down the results of a search across all the firm's documents. Further, although (as I have indicated above) legal taxonomy classification is likely to be different from matter classification, it may be possible to identify certain items of know how (such as a suite of standard form documents, or a practice manual) that will likely be relevant to certain matter types and to pre-populate a know how folder in the electronic matter file with these items.

Getting to the point where the firm has a reliable body of correctly classified matters may take some time and effort. However, it may be a worthwhile exercise to be undertaken in a period when people are less busy, as it could provide a firm foundation for knowledge management in the future, without requiring the firm to spend significant sums of money at this stage.

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ⁱ And using matter classification as a tool for retrieving know how is not a new thing. Having written this article I came across a piece by Neil Cameron, describing a project which began in 1995, to use matter classification as the basis of a single knowledge taxonomy.

ⁱⁱ **Matter Confidentiality:** At this point some people start to worry about the confidentiality of client files. Of course, any client information must remain confidential and great care must be taken not to divulge it to any third party. However, the firm is entitled to rely on its own experience. On a practical level, it might be necessary to put specific security measures around certain matters or documents, bearing in mind for example, the insider list requirements of the Market Abuse Directive. Such security measures would probably be in place in the firm's document management system and other systems in any event. A small number of firms have taken the view that they should 'lock down' all matter files, prompted particularly by certain

comments made by Collins J in the 2004 case of Freshfields –v- M&S. That was a case about a conflict of interest and the rationale behind ‘locking down’ all a firm’s matter information (and I acknowledge that this may be a simplification) is that if at some stage in the future the firm might want to take on a potentially conflicting matter (Matter B), it would want to be able to identify a team of people who could not have had access to the documents relating to Matter A. Consequently, any material in the Matter A file that may have know how value has to be anonymised, not just by removing all names and addresses, but by removing any other information that could tie it to Matter A. For most firms this is an expensive sledgehammer to crack a very rare nut. Equally, for most firms with a relatively conservative conflicts policy, the situation is unlikely to arise often enough to justify the administrative effort involved.