

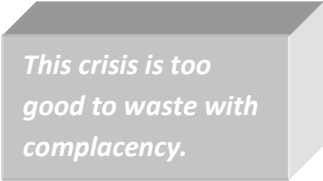
Strategic thinking in a challenging market – preparing for the upturn.

The Legal Week Strategic Technology Forum, held in Marbella, focused on the challenges of the current recession and how firms could be reacting in order to survive and prepare themselves for when the market improves. There were contributions from different support functions including HR, Finance and Business Development, and from in house legal perspectives. There were also contributors from other sectors – including banking, insurance and retail - although perhaps more of a cross-industry view would have been welcome.

As always with this event, the standard of debate and the level of participation from the delegates were both very high, and a number of thought-provoking themes emerged. This is our summary, as 3Kites Consulting, of those themes and their implications.


How will the practice of law be different after this downturn?

In an environment where the revenue pool available for law firms has shrunk, firms will need to adapt their approach to get ahead of the competition and increase their share of a smaller pot. In previous recessions more firms have failed when the economy was starting to recover, than as the downturn began. Some 4000 law firms are predicted to disappear (though these will no doubt be predominately high street firms). It was predicted that after this recession there will be a greater gap between the winners and the losers. For the firms that are the winners, therefore, the prize will be great. As one speaker put it, this is 'a crisis too good to waste'. Several times, however, it was noted how law firms can be complacent about their situation, assuming that the legal market will be just the same in the next upturn as it was in the last boom. Very few firms take forward thinking seriously. It was also commented that law firm governance structures are not necessarily optimally suited to help manage change and that organisational barriers within firms can seriously hinder their ability to react in a flexible and agile way. One speaker suggested setting internal teams the task of imagining they are the firm's competition and working out a strategy to undermine the firm.



This crisis is too good to waste with complacency.

An added factor in the current recession is the Legal Services Act (LSA), which will start to impact the profession over the next couple of years. Some of the larger firms felt that they would be unaffected by this, since they did not need additional capital and international regulatory requirements limited the potential for investment in multi-jurisdiction firms. However, in the debate it was suggested that if other entities emerge that have the capital to invest in different ways of delivering legal services, the competitive position of all the players in the market will be affected, whether or not they are the subject of outside investment.



There is increased competition for a smaller pot of revenue and the potential for new players with access to investment capital as a result of the Legal Services Act.

What should firms be doing in order to prepare for the upturn and the LSA ?

Becoming more client driven: This is a concept that has been talked about for years (and often without any clear specification of what it means), but perhaps it is all the more critical now. It was noted that in general the management information used within law firms is almost entirely inward facing (as well as backward looking). The new breed of chief operating officers in large in-house legal departments are looking to measure success in their legal function by reference to the value of different matters and their outcomes, rather than simply on a win/lose and cost basis. The challenge for law firms is to try to apply the same measure of value to the client when looking at their own performance measures. Understanding how the client sees the value of a particular piece

Firms should be listening to client feedback and measuring performance by reference to the client's view of the work's value.

of work is key to delivering a good service. Capturing this and using it as a measure of internal performance (alongside more traditional measures of profitability) is a further step which could be powerful. Taking the time to conduct reviews of the work done for particular clients and sharing information about how the clients perceive value are important. Many firms say that they ask clients

for feedback, but the in house legal departments represented at the Forum said that this was actually rare, and that often a 'review' meeting, was seen by the firm as an opportunity to sell other services, rather than to listen to the client's perspective.

Although it was acknowledged that technology is unlikely to be the main driver in the selection of a law firm, it was clear that the relationship between a firm and its clients can be enhanced by providing mechanisms for the communication and sharing of information. There is of course a need for some common standards here since clients do not want to have to access multiple different platforms in order to work with different firms on their panel. E-billing is an example, as is the common knowledge platform provided to financial institutions by a group of law firms through the Banking Legal Technology Portal. The clients represented at the Forum were impressed by firms who involved their IT Directors, Finance Directors or other support functions in the relationship, but this was an approach that very few firms seemed to take.

Clients were unimpressed when lawyers tried to convince them that they had a depth of experience in a particular field and know precisely how a matter would pan out, but were unable to give an accurate prediction of the likely cost. Better management information, with the ability to review the costs, timescales, variables and profitability of similar matters, would put lawyers in a position to be more business-like and give clients the predictability they want.

Innovation: There was much discussion about innovation and delegates raised the usual issues about the Request for Proposals (RfP) process undertaken by in house teams in order to appoint their panels. The RfPs often ask firms to demonstrate how they are innovative, but only allow a

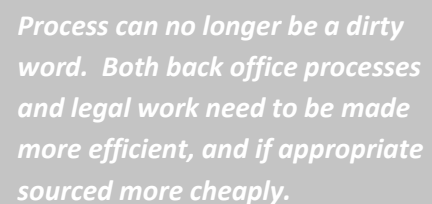
Now is not the time to be cutting back on investment in innovation – but what kind of innovation do clients really want?

small text box for a response. Whilst firms who tried to buck the system and adopt an 'innovative' approach when responding to an RfP were praised, in practice the process required them to go back to completing the form. The clients were often unimpressed by the supposed innovations that firms put forward, and both sides were

disillusioned by the fact that very often these innovative approaches were never actually followed up, until the next panel review when the same unsatisfactory RfP process would begin again. Law firms were therefore sceptical about whether the client really wanted innovation, or whether it was just a box that somehow had to be ticked. It was felt, however, that firms which could genuinely offer innovative approaches that benefitted their clients would have a distinct competitive advantage. These innovations might be in the form of new products, new fee structures, knowledge sharing, or helping clients develop and simplify their technology systems. It was recognised that law firms do not generally have an R&D budget (though many felt that they should), and that their approach to risk did not encourage bold and uncertain steps. Nevertheless, it was felt that now was not the time to be cutting back on innovation. A McKinsey research study was cited, which showed that the businesses that invested heavily in innovation during the 1930s recession proved to be the strongest in the following decades. Careful prioritisation of projects is more important than ever, and arbitrary, across-the-board cutbacks are unlikely to be the right approach.

Process: The comment was made that ten years ago CRM was a dirty word in law firms, but that was no longer the case. Two years ago “process” was a dirty word, but firms cannot afford for it to remain so. In terms of internal processes, it was clear that with reduced headcount, it is vital to streamline and automate in order to deliver the same level of service. Once processes have been streamlined, it is possible to consider outsourcing, or other options to minimise cost.

In the context of the legal work itself, the increased pressure from clients to unbundle work and reduce cost is becoming more and more evident. Some in-house counsel now refuse to allow their law firms to undertake the parts of a job which can be processised (such as e-disclosure or due diligence), preferring either to handle them in-house (within a function which is structured and managed to carry out the work efficiently) or to outsource them to a Legal Process Outsourcing (LPO) provider. Many firms are nervous of subcontracting work to LPO organisations, with concerns about quality assurance and liability leading to a very cautious approach. However, the client view was that firms are going to have to get to grips with these issues and be prepared to manage work which is being delegated to the most efficient resource. The debate on the American Bar Association’s approach to this issue has raised the question whether a law firm’s professional duty not to charge its clients unreasonable fees actually imposes a duty to consider alternative ways of providing parts of the service if they have the potential for significant cost savings.



Process can no longer be a dirty word. Both back office processes and legal work need to be made more efficient, and if appropriate sourced more cheaply.

Technology: Although this event is billed as a Technology Forum, in fact very little of the discussion tends to be about IT. Technology is very much seen as an enabler, and the Managing Partners who were interviewed for one of the sessions said that they saw IT as important for creating a community within firms (especially where those firms are large and geographically spread) as well as facilitating a community with clients. A noted example had been the implementation of a communications system in one firm, providing the ability for people across the firm to see whether their colleagues were available and to use video conferencing from their desks. This had really improved the communication both within and across teams, with one Director commenting that he was less likely to be distracted by email when he was on a conference call if his colleagues could see as well as hear

him. Overall it was felt that a more holistic approach towards support across the firm was important.

Whilst technology may be seen as an enabler, a number of firms still struggle with governance structures and find it hard to align with business strategies which may be too vague, or out of date. One problem is the potentially self-serving nature of IT committees and the diminished influence of their partners whose views may be undermined by the very fact of their continuing support for a firm's IT group. An alternative for some is that these committees be focused solely on a firm's operational and infrastructural issues, whilst IT is represented on other more strategic committees (eg risk and compliance) to gain understanding and provide options for supporting initiatives. If this approach could be extended to areas such as client development and legal process, technology might be able to reflect the needs of the firm, and its clients, more accurately. In firms where such strategic issues are handled by a board or executive committee, technology should be represented there.

Some areas for consideration in the light of these issues

- Is the firm's technology helping to create a community within the organisation and between the firm and its clients, enabling people to work effectively together? Does the firm's IT governance facilitate this?
- Does the firm really listen to the clients' needs? How do the clients perceive the value of the work the firm does, and how can the firm make its own approach to pricing and delivery more closely aligned to this?
- Is the firm investing in predicting the future and in R&D? When the firm's clients ask for an innovative approach, what is it that would really make a difference to them?
- How efficient are the firm's back office and client facing processes? How would the firm react if another organisation was able to provide the same services significantly more cheaply?
- If competitors with external investment are able to
 - attract respected, experienced lawyers, and
 - align them with innovative pricing structures, efficient processes and support systems which have client service as their primary focus,why would clients continue to use your firm?

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