

Legal Week Strategic Technology Forum - Client panel discussion: “Are clients manageable? Future expectations of legal services”

An interpretation of the key points by 3Kites

The content at this year’s Legal Week Strategic Technology Forum was, by common agreement, the best to date. It featured a provocative interview with the managing partner of Lyceum Capital by Allen & Overy’s global senior partner David Morley raising issues and considerations for a sector facing possible investment from private equity houses and others. It also included a panel discussion with three young lawyers who had a chance to outline their requirements for, and frustrations with, IT in private practice.

However, arguably the hardest hitting session was a client panel discussion with three in-house counsel (IHC) – Chris Barnard (GC for Coca Cola Europe), Ian Leedham (Senior commercial counsel for National Grid), and Rosemary Martin (ex-GC for Reuters – now at PLC). This discussion covered requirements for both IT and legal services, as the three panellists sought to get their views across to a receptive audience. This is 3Kites interpretation of the key points raised in the discussion (shown below in **blue**), which we thought you might be interested to read. If you would like to discuss any of the points further, please contact us using the details at the bottom of this document.

It was clear from this session that there are some aspects of the relationship between IHC and external law firms that are broken. With clients’ demands and expectations increasing and law firms often struggling to meet them, the situation can lead to dissatisfaction on the part of the client and resentment on the part of the law firm. This is not in the long term interests of either side, so how can the situation be addressed?

Delivery of the legal service

The client panel emphasised that they were looking for innovation in the way their external lawyers deliver legal services. In particular, they wanted to simplify the process wherever possible. This might include shortening the forms of documents used. There was a strong feeling that negotiating lengthy agreements merely served to boost the lawyers’ chargeable time and add to the costs, without delivering value to the clients. Law firms needed to spend more time thinking about what the clients want, rather than simply assessing what clients can add to their P&L.

3Kites comment: For most law firms these views will be welcome. However, it is hard for a law firm to impose a ‘simplified’ approach, if the other party to the negotiations is taking a more traditional stance and wanting to cover every eventuality. If both sides in a negotiation tell their lawyers that they want a simple approach, it is likely to be easier to achieve. However, we all know that producing something simple, yet still effective, is in fact much harder than producing something complicated, so this will be a challenge for law firms, or, taking a more positive angle, a chance for real quality to shine through.

The client panel said that they were keen for more work to be done on a fixed price basis, which would encourage law firms to move more quickly and efficiently. Speed may increase risks, but the IHC are best placed to assess what level of risk their organisations are willing to take. The

IHC also wanted to see pricing based on the value to the client of the service delivered, rather than just on the time involved. In this context the clients would also like to see more of a project management approach from their lawyers.

3Kites comment: Whilst IHC are in a position to take a view on the level of risk that is appropriate in a given situation, an external lawyer is often placed in a dilemma when asked ‘to have a quick look’ at something or ‘not to spend too much time on this’. Unless there is an arrangement with the client, indicating that the lawyer’s liability for a ‘quick and dirty’ job will be limited, the lawyer is forced to do a complete job, in order to protect their own position. Reaching an arrangement that says ‘we will only sue you if you miss something obvious’, and defining what is obvious, could be a tricky process, but we think that it is going to be necessary for such arrangements to become common if this value based approach is really going to work. Sometimes the very reason for going to external counsel is to get a belt and braces approach, so it needs to be clear when a Rolls Royce job is required and when a Smart Car will do.

Fixed price arrangements are becoming more prevalent in the market, but it is difficult to arrive at a figure that is appropriate, particularly given that the law firms’ major costs lie in their people and therefore the time capacity they have available. Although the client panel emphasised that it was not in their interests to make the law firms unprofitable, the lack of tools to enable firms to price jobs accurately often means that fixed price work is risky for a law firm. Other service industries take a more sophisticated approach to pricing their work than law firms have generally done to date, and careful analysis of the financial information about previous matters of a similar type could be a great help. In addition, a structured project management approach could help law firms to deliver in a timely fashion on fixed price matters, whilst still making money. In the past lawyers may have looked down their noses at the idea of legal jobs being project managed, but those who have learned project management skills are now in a position to use them to real advantage.

Using law firms’ IT to the client’s benefit

The client panel stressed that in house legal departments are seen as pure overhead and their organisations are often reluctant to invest in technology to assist their in house teams. IHC have not seen the benefits of the significant strides that have been made in technology for lawyers in the last 10 years. They look to their external counsel to provide them with technology solutions that may help them. Whilst e-billing has been helpful, this could be extended further and much more financial information could be opened up to clients. Lawyers should know what their IT departments can do for clients and some members of the panel said that they thought that law firms’ IT departments could be profit centres by ‘renting’ their systems out to IHC.

3Kites comment: We think it is important to distinguish between law firms using technology as a way to deliver information and services to their clients, and law firms acting as contracted out IT departments. In the former case, if this is to become a profit making activity, the focus must be on the content and how best to make that content accessible and useful for clients. Discussions about these issues between law firms and clients can result in innovations that provide real value. However, in our experience the law firm comes under pressure to provide these services for free – and even if not, is rarely in a position to price them commercially – so turning this activity into a real profit centre is a challenge. In the case of extranets, free usually equates to undervalued and therefore underutilised. The alternative could be to set a sensible pricing structure for such services that may ultimately encourage use from those clients paying for them.

We think few law firms are geared up to be pure systems providers and we doubt whether many partnerships would have the appetite for diversifying their businesses in this way. Their support desks can barely cope with internal demand when systems go wrong, and having an obligation to clients to keep systems running would mean that difficult decisions would have to be taken about whether to prioritise internal operations, which lawyers may be using to serve many clients, or external services to major clients of the firm.

On the face of it, this could be an opportunity for other providers of contracted out IT services in the market who are better equipped to provide support when there are system problems. As intermediaries, they might also be able to create de-facto standards which could benefit both law firms and clients alike. However, the reality is that, without the highly profitable work law firms can offset such ventures against, those organisations do not have any incentive to provide affordable IT systems and services to IHC teams.

‘Value-adds’

There was an interesting discussion about the frequent requirement in pitch documentation for law firms to indicate what ‘value added’ services they are willing to provide to their clients. The clients said that law firms often promised much, but rarely actually delivered. The law firms’ perspective was that it was often hard to get the client’s attention after a successful pitch to firm up exactly how such services were to be delivered. The client panel commented that hard copy and online legal materials are expensive for IHC in low volumes and that it would be helpful if their law firms provided these. Even better would be if their law firms pro-actively contacted them to inform them of changes in the law that are likely to affect their organisations.

3Kites comment: The ‘value add’ part of pitches (e.g. providing an extranet) often seems to be reduced to a box-ticking exercise. Provided the law firm can make some coherent noises about secondments, access to know how, training or other services, this area does not seem to be a real clincher in winning work, i.e. it is rare for all other things to be equal. The point was made from the floor of the debate that IHC really need to make up their minds whether these requirements actually affect their choice of external counsel or not and if they want law firms to deliver on their promises they may need to give the matter some attention in order to ensure they get additional services that benefit them.

In relation to the provision of legal content from external sources, the main constraint is likely to be the terms of the firm’s licence with the publisher. Some are quite relaxed about firms passing on their content to clients in limited quantities and there may be some freedom to provide ad hoc information to clients. But adding the client’s in house legal department to the firm’s number of licensed users is likely to require a further payment. Whether the publishers will cooperate with the firms acting as bulk buyers for clients remains to be seen, though they are unlikely to have much incentive to do so, and currently they hold a great deal of market power.

Proactively informing clients of changes, or forthcoming changes, in the law is something that many law firms have striven to do, and a few have succeeded. Often it has simply become a question of sending out briefings or newsletters in untargeted mail shots. The firms that can get this right, by providing legal updates personalised to their clients’ situations, will be smiled upon by many IHC.

At the end of the debate Rosemary Martin reflected on how IHC and private practice lawyers have the same backgrounds, and so may find it hard to come up with a radically different approach to selling and consuming legal services. She commented that perhaps the third party investors will be able to engender this radical thinking, and the firms that embrace this will be poised for success.

The client panel provided a number of interesting points which we hope have been accurately reflected and commented upon here. As noted at the start of this article, please feel free to contact one of our consultants using the details below if you would like to discuss any of the points further.

3Kites Consulting, June 2008

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