

Managing for value in a recession

Introduction:

The 2008 series of debates on value comprised twenty different networking events for in-house lawyers taking place in seven different regional centres and resulted in the “Report on Value” that can be downloaded for free from the LBC Wise Counsel homepage (see www.lbcwisecounsel.com).

Following the success of the 2008 Series, the regional events division of LBC Wise Counsel, *LBCConnect*, has launched the 2009 series of regional debates for in-house lawyers on value.

The first round of debates was held under Chatham House rules with an invited audience of in-house lawyers drawn from teams in the South East, the South, the Midlands, and the North West and took place between February and May 2009.

The in-house teams attending the debates represented a wide cross section of sectors and industries including financial services, defence, the public sector, the university sector, from manufacturing, business to business, retail, pharmaceuticals, utilities and IT. The size of team represented also varied considerably and ranged from one team with nearly one hundred fee earners to one with just two lawyers.

This first round of debates considered the issue of managing for value in a recession

Managing for value in a recession:

The role of the in-house legal team in recessionary times, on many levels, does not change significantly; in essence there is a body of work to be done and the legal risk profile of a business is not necessarily linked to the volume of activity – a less busy business therefore does not necessarily equate to less work.

However in three very significant areas, the role of the in-house legal team does change and markedly so:

1. All employees (not just those in the legal team) are acutely aware that cost cutting measures must be real and significant; this puts lawyers under particular scrutiny to demonstrate value for money
2. The cost of outsourcing work must also be managed as tightly as possible. This is more than looking for additional discounts, but requires teams to fundamentally assess the worth of the activity to their business and to ensure that only the most essential issues are put to external advisers

3. The wider remit of an in-house team is to help their employing businesses manage the risk environment more effectively by looking at changes in regulatory oversight, in tolerance to risk and in looking at new rules/regulations. For many businesses the appetite for entrepreneurial risk taking is now much diminished and the desire for more obvious compliance oversight is clear.

What do in-house lawyers feel about these changes and what does it look like in practice?

Lawyers from one public utility business have taken the decision to place in-house lawyers within divisions/ business units effectively therefore decentralising the in-house team.

This has ensured that the overhead cost of each lawyer appears firmly in each business unit's P&L and is intended to ensure that the lawyer is fully focused on the work of the business unit, giving business colleagues a sense of urgency and profile for their legal needs. The role also means that legal risk in each unit is more tightly managed.

The concern expressed by other teams however was that such a model would weaken the resilience of the in-house team as a whole to work cross-functionally and might also lead to inconsistency of guidance and interpretation. Some also felt that it would make running team-wide projects more problematic, particularly where the benefit of the project outcomes might not have a significant impact on a particular business unit.

For other teams the increased workload has become a significant concern. Less work is being outsourced as projects are being pulled back in-house, staff are not being replaced, vacancies are being mothballed and some teams have experienced enforced headcount reduction as well. One team described the situation as feeling like a salmon swimming up the river.

The conclusion many such teams have reached however is that they now had to pull back from trying to be "full service" functions, to teams that had a much more tightly defined remit...In other words not just defining what they should do, but what they should not do.

Again some concern was expressed with this approach (it being felt to partially at least negate the role of the in-house lawyer), but the consensus was broadly in favour of such an approach.

The idea that a limited resource (now made even more limited) could fulfil a demand lead service promise across the whole business was clearly becoming unrealistic – it probably always has been.

Redefining the role:

The emphasis therefore was now directed in two key areas:

1. What work can the legal team do that is most vital, important, relevant and valuable?
2. What other work can still be done in different ways – such as through self help tools, intranet FAQs or training?

In this regard one team described what it called an “empowerment matrix” for contract negotiation. This idea of authorising different levels of self-help was also noted elsewhere with varying degrees of sophistication.

In some businesses, for example, sales teams were trained to various levels of competence and at each level they were able to take on more responsibility. The incentive for the sales team was that the more authority they acquired the less time it took to complete deals.

This process was backed up the legal team who offered refresher training on demand and an audit role. The result was a marked decrease in the percentage of contract activity being held up in the legal team, a speedier process for the business and no obvious deterioration in legal risk management.

Other teams noted that their performance objectives included targets on how much time they spent training colleagues. Some targets were less formal, but one team reported a 10% target (approximately 20 days a year) while the highest percentage we found was 15%.

We believe that transferring know-how is a core competency for any in-house team; we would certainly advocate therefore scalable targets for teams that result in between 10-20% of their time being devoted to training colleagues.

What was less clear to us, however, was whether the teams were able to track efficiency improvement in the business teams they were training. Without diminishing the efforts being made, demonstrating the value of the work is probably at least as important as doing the work. Therefore before the training is delivered, teams should collect the data that establishes the baseline from which they can measure their success.

So, for example, in the contract process what are the bottle necks? How long does the process typically take etc and what (from the point of view of business colleagues) does success look like?

Once the training is delivered the baseline can be reset, the improvement noted and credit given.

More and more teams are also developing training materials and guidance on ethics and compliance. Business “codes of conduct” have been around for many years, but the sense we had was of these slightly mothballed documents being refreshed and given renewed energy as reputational and regulatory risk attains an ever higher profile.

For teams in the financial services sector the rationale is obvious, but there appeared to be a widespread view that this was a subject of general interest and one that put a new focus on the role of the in-house legal team.

Another team spoke of identifying work in three dimensions; first, colleagues who voluntarily push work towards legal; secondly, the work that legal pulls towards it by virtue of compulsory review/sign-off procedures and, thirdly, work that is about making processes and policies more effective and relevant (what we call risk infrastructure activity).

The challenge for this team was to ensure that it was not so absorbed in the activity that occupied the first two dimensions that it had no time for working (as they described it) in the third dimension!

Describing the activity in this way however at least provides a means by which a common understanding can be achieved of the role of the in-house team.

The impact on law firm relationships:

Most teams described a significant tightening of their external legal spend budgets.

Many had felt compelled to undertake, at the very least, a review of the fees that their preferred firms were charging, others had completed full panel set-up or panel review exercises.

There was broad consensus on the following points:

1. Value for money was key
2. Transparency and proportionality were important in all billing arrangements
3. Hourly rates (as a charging model) were under scrutiny, but in-house teams were putting more emphasis on how lawyers in law firms spent their time
4. Value-add initiatives were important, especially when internal budgets had been cut or frozen providing only a very limited opportunity for the legal team to invest in, for example, training or knowledge management
5. There is much more evidence of procurement style buying processes.
6. Finally more evidence as well of in-house teams using small, local law firms for certain types of work to ensure the lowest possible rates

At the same time many in-house teams were also starting to contemplate activity analysis and time recording as a means to demonstrate their efficiency (rather than for internal cross charging purposes).

There is still much nervousness around this, but for some teams owning the process was key; in this way the outputs would be used as a self-help tool for finding a more effective way to work and to deploy resources, rather than as an intrusive Big Brother "spy in the cab".

For law firms however the messages were very clear:

1. Be seen as an extension of the in-house team
2. Add value at every intersection with either the in-house team or business colleagues
3. Be proportionate, cost conscious and articulate value. Never waste time or money and be sensitive to the cutbacks in the client team
4. Look for ways to improve the effectiveness of the relationship

5. Don't "sit on laurels"...being on a panel is not a guarantee of any significant work, so make sure the firm stays engaged
6. Be realistic – volume and commodity type work is now all about the lowest price once a minimum quality threshold are met

Concluding thoughts:

There is less doom and gloom around than one might imagine, but nearly every in-house team is reporting increased pressure as a result of tightening resource. Value for money is therefore essential, but so is having rigorous prioritisation.

Managing legal risk and compliance are now probably more important in these recessionary times and as a result they have more attention in businesses now than even a year ago.

Law firms are responding to this situation as well, but the challenge for all involved is to ensure clients can see (and can value) not just the activity in hand, but also in the effort that is being put into driving for efficiency improvement. In our view this will help to establish the worth of the relationship and will therefore make retaining activity less about cheapness and more about value.

Paul Gilbert

Paul Gilbert is Chief Executive of LBC Wise Counsel.

About LBC Wise Counsel:

LBC Wise Counsel was founded in 2000 and is one of the very first management consultancies dedicated to supporting soft skills development for lawyers as well as strategic and operational best practice in legal services. We have since worked with literally dozens of in-house legal teams around the UK and overseas; through our training events, mentoring programmes and strategic projects.

We believe LBC Wise Counsel has a unique insight into the way in-house legal services have developed over the last eight years and is now in an excellent position to help in-house teams face the challenges to come.

In this report we have added our own commentary and conclusions to the points made in all of the debates and developed our own assessment of the issues facing legal services going forward.