

What next for legal services

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 second round of debates was held under Chatham House rules with an invited audience of in-house lawyers representing 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; the second round of debates posed the question “What next for legal services”

What next for legal services:

1. The end of time?

It has been talked about for years, but does this economic downturn signal the end of the billable hour?

Client concern over law firm fees is deep-rooted and heartfelt; however as much as this is a recurring theme, my view is that we are at the beginning of what will become a fundamental shift from outdated and outmoded billing practices. It is time for in-house lawyers to get a better deal for their businesses and many are pursuing this objective with ingenuity and vigour.

A separate, but related point is the expense of the service (however the charge is constructed); there comes a point when a service is just too expensive.

Corporations are used to having buying power with their suppliers and negotiating deals on equipment, information technology and stationery. This is not to compare legal advice with paper clips (not all legal advice anyway!) but a combination of the lack of affordability of legal advice, restricted budgets across the board and a pricing model that is opaque to say the least, suggests there is huge pressure backing-up in the system to force change.

In-house lawyers know the pressures their companies face. To be competitive again it is imperative to remove waste from every process and to cut costs wherever it is possible to save money and maintain the service. Branches are closed, stock is only re-ordered "just in time", product lines are rationalised, travel budgets are curtailed etc, etc...But when it comes to buying legal services, the same rules have not always applied.

Nearly all law firms have taken significant steps to be more client-friendly, to try to offer added value and to look at creating long-term relationships for the mutual benefit of all concerned; but in almost all cases the basis of charging is still hourly rates. It is hard to imagine any other type of product or service being purchased on the basis of a variable price that is directly linked to the time the supplier takes to deliver the product or service.

It is almost a fanciful proposition and it is no wonder therefore that in legal services it is the root of client dissatisfaction.

On a purely pragmatic basis of course hourly rates are acceptable and will be for some time to come. Litigation is the classic example of the "how long is a piece of string" justification for them and why hourly rates stubbornly persist; the concept, however, is so obviously flawed that even the law firms wonder why clients do not argue more vociferously for a new way forward.

Hourly billing has so many inherent weaknesses:

- It is perceived to encourage and reward inefficiency and delay;
- It does not reward added value, commercial advice or a speedy response;
- It discourages commitment to timescales or to budgets;
- It ensures control is with the law firm not the client; and
- It potentially destabilises relationships because the risk on timing, cost and therefore outcome can all be passed to the client.

Hourly rates however are embedded in the culture of the profession and for decades hourly rates have been virtually the only basis on which law firms could manage the success and profitability of their product. To increase profitability, fee earners must either work more billable time or bill more for the time they work. It is a self-imposed constraint and results in overworked staff, inefficient service delivery and higher bills to the client.

The fact that cultural change is probably a necessary first step should not delay the process; it is in everyone's self-interest to find more effective ways to reward law firms and to free them and their clients from the tyranny of hourly rates.

Models are needed that reward efficiency, commerciality and appropriate speed - where risk is shared, where timescales are agreed and where budgets are managed in a predictable, businesslike manner.

The suggestions that had most resonance however were not solutions that unduly favoured the in-house proposition; indeed transparency and control were held above "cheapness". Law firms also contributed widely to the discussions and crucially

sought not to preserve fee levels per se, but for example to be able to have greater certainty on utilisation.

In many ways this mirrors the in-house issue so both client and supplier are making the plea for more certainty and more control to be able to plan...Planning results in thoughtful resource deployment, better cashflow management and more predictability on workflow management – all points that can help law firms manage their margins better and therefore deliver a less expensive service to their clients.

The rise of the commoditised?

As is self evident to all there is a deep and potentially long lasting worldwide recession that is having a negative impact on nearly every sector in nearly every country. That said however there are steps that law firms should be taking.

Based on the feedback from the meetings, there are five factors in play that will determine the success or otherwise of law firm strategy:

1. Alignment with profitable activity and profitable clients
2. Differentiation from competitors
3. Innovation in service delivery and pricing
4. Lawyers skilled to be business consultants not just competent lawyers
5. Leveraging know how, not associates

Commoditisation is often perceived only to be relevant to high volume, low risk repeat activity, but of the five numbered points above all five have a resonance in the world of the commoditised service; so, for example:

- The more law firms align to profitable activity the more interest they will take in managing cost and managing process...
- The more firms seek to differentiate from competitors, the more they will discuss process, risk and efficiency...
- The more innovation there is in delivery and price the more activity will be seen as commoditisable...
- Lawyers skilled in business process and project management will be highly sought after
- The more know-how is leveraged, the more profitable that know-how potentially becomes...

Whatever we call it, the legal service/product is increasingly a commodity and needs to be managed as such for law firms to be successful.

3. Getting the most from panels...

Looking at this from a law firm perspective can be instructive because for GC's to get the most from a panel, requires law firms to get their act together as well...

There are three significant points to make:

1. Encouraging multiple points of contact with clients
2. Helping secure the value-add proposition
3. Assisting with the account management aspects of the relationship

These three activities are crucial to ensuring that clients see the value of the relationship.

Multiple points of contact.

Developing multiple points of contact with any client helps to secure the relationship; it is like tethering a tent, the more tent pegs that are used the less likely the tent will succumb to any stormy weather. Equally however, in the context of the law firm – in terms of client relationship management or development, the more points of contact there are, the more opportunity there is to see how value can be delivered.

Very often lawyers in law firms understand this principle only in the context of cross-selling to their lawyer colleagues, but in reality it is often easier and more cost effective to sell in one's non lawyer colleagues.

Consider for example how the librarian can support and in-house team; how the IT team might help build or develop the intranet capability of the in-house team; how the support lawyer cohort might help develop training materials for the in-house team to deliver to their business colleagues, etc.

All are examples of relatively inexpensive points of contact, but each activity demonstrates commitment and delivers value. It also makes it harder to move away from the law firm on review; the thinking being that why would a client change their law firm when there are so many "mini" relationships that are established and which are delivering value?

Securing the value-add proposition

In the client's estimation, value add can be a crucial part of the law firm proposition and for the law firm one of the better opportunities to demonstrate both commitment and value to the client.

The in-house team will most likely have a cumbersome bureaucracy to follow within their business to gain the budget and the approval for any additional staff, for non-standard training, for their own I.T solutions etc; this is not always a question of expense, often it is just a tiresome process and therefore is not pursued.

If the in-house team can therefore secure through the law firm some elements of training, additional resource through secondments and much more meaningful management information, they will improve their effectiveness significantly. Furthermore it is unlikely to cost the law firm a great deal in cash terms, but fixes them limpet like to the client.

As this is not traditional territory for relationship partners and unlikely to be of great interest to them either; it is therefore the support teams that can lift much of this

burden off the desks of their lawyer colleagues in the firm. It can then become an accessible, lower cost and more administrative role that embeds relationships and supports the value proposition.

“Account management”

Not too many law firms operate account managers; in other words colleagues who are not lawyers necessarily, but people assigned to a client to be their key contact for both accessing the right lawyers within the firm and supporting/coordinating the value add proposition.

It is probably only relevant in the larger, multi-jurisdictional law firms, but having a “go-to” contact in the firm who can be called on as often as needed to help facilitate the whole relationship in the round, can be enormously helpful.

However accessible the lawyers are in any firm, the labyrinthine nature of many practices needs “de-coding”; making the firm accessible is therefore a vital role. The reassurance it provides helps to embed the relationship and makes considering changing law firms almost unthinkable if it is done well.

Concluding thoughts:

It is said that necessity is the mother of invention, but only time will tell if this recession will reveal significant changes to the way law firms work and in-house teams manage activity with law firms.

What is clear from these debates however is that the downward pressure on costs and the drive for value is resulting in conversations and actions that most teams have not developed before...

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.