Corporate Law Department Management

A practical guide

Essential reading for anyone looking to improve departmental efficiencies and deliver cost effective legal service.

By Caroline Poynton
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FOREWORD

*Corporate Law Department Management* explores the challenges and opportunities that lie ahead for senior in-house lawyers. It is essential reading for anyone looking to improve departmental efficiencies and deliver cost effective legal service.

The report outlines the key issues affecting law department management: managing and measuring external and internal counsel, outsourcing and offshoring, e-discovery, pricing and fees, costs, legal risk, governance, compliance and more.

*Corporate Law Department Management* is structured in three parts.

**Part I** consists of six chapters:

- **Chapter 1** – The rise of corporate counsel (introduction)
- **Chapter 2** – The in-house department structure
- **Chapter 3** – Managing the in-house legal team
- **Chapter 4** – Managing the external counsel relationship
- **Chapter 5** – Risk management
- **Chapter 6** – Leadership (summary)

Each chapter (excluding Chapter 6) is followed by a series of practical articles and interviews with senior in-house lawyers.

**Part II** features the Global Law Department Benchmarks study, conducted by General Counsel Metrics (GCM). The study presents a new approach to law department performance benchmarks. It provides metrics that are relevant, we believe, not only to general counsel but also to law firm partners. In this publication (p137-170), we publish the partial results of GCM’s July 2011 (Release 2.0) benchmark data.

**Part III** concludes with the full results of two Corporate Counsel Research surveys: ‘What’s Hot 2011?’ and ‘Alternative Fee Arrangements’.
ACKNOWLEDGEMENTS

A huge thanks to all those that assisted and gave up their valuable time in preparation of this report: Liz Kelly, general counsel at Nationwide Building Society; Daniela Baker, head of legal at Honda Motor Europe; Eversheds Consulting; Richard Wiseman, chief ethics and compliance officer, Royal Dutch Shell; David Blanco, legal counsel Asia Pacific, Bayer; Jon Olson, vice president and general counsel, Blackbaud; Bruce Macmillan, general counsel at the Legal Services Board; Robert Cummins, assistant general counsel at Intelsat; Richard Tapp, company secretary and director of legal services, Carillion; Scott Gibson, partner, Edwards Gibson; Jeffrey Carr, general counsel, FMC Technologies; John Downing, head of group legal, Imperial Tobacco Group; Glen Silverstein, partner, Leader & Berkon; Ian Leedham, senior counsel, (commercial) National Grid; Melanie Hatton, in-house lawyer and blogger; and Humphrey M. Tomlinson, Group Legal Director, RSA Insurance Group (formerly Royal & Sun Alliance).

Special thanks goes to Rees Morrison, president of General Counsel Metrics, for contributing his company’s Global Law Department Benchmarks survey data (pages 135-170). We would also like to thank Nina Barakzai, chair of the Commerce & Industry Group’s Corporate Governance Committee, for her organisation’s contribution to Chapter 5.
ABOUT THE AUTHOR

CAROLINE POYNTON is a business journalist, with particular expertise in the legal sector. Before going into freelance journalism in July 2007, she was for six years editor of Managing Partner magazine, an Ark Group publication dedicated to senior management in the legal profession. Since working as a freelance journalist, she has written numerous features, as well as in-depth reports, not only on the legal profession, but also on corporate communications and business management generally. In addition, Caroline supports several firms on their communications strategies, including legal recruitment consultancy First Counsel and management consultants KermaPartners.
There is still a long way to go before the global downturn is behind us. For corporate counsel, this critical time is an opportunity like never before to shield their organisations from the risks of on-going uncertainty.

Corporate counsel making their mark
At the UK’s The Lawyer awards 2010, corporate counsel competing for the ‘In-house Lawyer of the Year’ award were remarkable, not because of their technical expertise – although no doubt they have plenty of that – but in terms of their contribution to groundbreaking business projects successfully implemented in a time of economic turbulence.

Jasan Fitzpatrick, for example, who was runner up for the main prize, excelled himself as head of legal at Northern Rock by playing a vital role in one of the most high-profile and complex banking restructures of the financial crisis.

And Peter Judge, head of legal services and procurement at One North East, secured the top prize for delivering the Finance for Business North East programme, the first English JEREMIE (Joint European Resources for Micro to Medium Enterprises) fund that, with the backing of the European Investment Bank, European Regional Development Fund 2007-2013 and UK government funds, is investing £125m in the North East.

“The fund was without precedent in England,” says Judge. “It was designed with great care, drawing upon the skills of a number of talented people from different backgrounds.” He is reticent to accept too much singular praise for the project’s success, consistently crediting the team effort, but he admits that his role was to design the legal structures carrying the funds – structures that would have jeopardised the entire funding if they had not worked. That these same structures are now known as the ‘Judge Model’ and are to be used as the basis for all future UK JEREMIE funds speaks volumes.

And Judge was not just involved from a legal perspective. He helped in the preparation of a watertight business plan, so it is significant that an in-house lawyer came to the fore and played a critical role throughout the project.

Breaking through a perception barrier
That corporate counsel can make waves should not be terribly surprising. But in-house lawyers have long struggled with a perception problem, often viewed as a lowly second to the high-flying private practice partner. Even today, few manage to make an impact at the highest echelons of business leadership.

Judge agrees that many companies don’t understand the business contribution in-house lawyers can make. “You wouldn’t have a company that doesn’t acknowledge the need for a finance director, so financial qualifications are in high demand. But many still don’t recognise the value of the in-house lawyer,” he says.

Indeed, it is rare to see organisations appointing in-house lawyers to the board – although there are signs that the recession might be changing this. In 2009, for example, Mark Harding,
general counsel at Barclays Bank, was appointed to the company’s Executive Committee. At the time, the bank explained the development as part of its broadening of the Committee to ‘position Barclays strongly in an industry that is experiencing rapid change’, and to give it a ‘strong governance framework which is well attuned to the events of the last two years’. 

Barclays is not alone in the financial services sector for recognising the leadership potential of in-house counsel. Liz Kelly, general counsel at Nationwide Building Society, has been selected to participate in Nationwide’s executive leadership programme and says that she is particularly proud of being recognised as having great potential as a leader, regardless of her legal expertise.

Similarly, the recession seems to have helped Honda’s legal team demonstrate value. Daniela Baker, head of legal at Honda Motor Europe, joined the company as a company solicitor in 2007 – just as the financial markets were about to implode. Honda may have withstood the global slump better than some of its rivals but the recession still hit hard, with lay-offs, cut-backs in production capacity and a sales slump of more than 30 per cent at the height of the credit crunch. But the recession did not hold back Baker. “Within 11 months I was promoted to a departmental manager and within four years was made head of legal for Europe,” she says. “I love the variety of work. Much of what I do is around strategy for business. It’s not all legal.”

If anything, Baker says that although they had to deal with the challenges of decreased budgets, the recession significantly increased the amount of work coming into the legal team – largely because they decided to take more work in-house that would otherwise have been outsourced to external counsel. But the team also seized opportunities – for example, introducing a tender policy and document, which helped the business

<table>
<thead>
<tr>
<th>How did you go about controlling costs during the recession? Please indicate your responses on a scale of 1-5, with 1 being least relevant and 5 most relevant.</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduced headcount in the in-house team</td>
<td>37%</td>
<td>33%</td>
<td>22%</td>
<td>2%</td>
<td>6%</td>
</tr>
<tr>
<td>Froze internal salaries or introduced part-time working/sabbaticals</td>
<td>28%</td>
<td>1%</td>
<td>41%</td>
<td>16%</td>
<td>14%</td>
</tr>
<tr>
<td>Limited travel and related expenses</td>
<td>-</td>
<td>12%</td>
<td>50%</td>
<td>1%</td>
<td>37%</td>
</tr>
<tr>
<td>Sent less work out to external counsel</td>
<td>-</td>
<td>4%</td>
<td>9%</td>
<td>50%</td>
<td>37%</td>
</tr>
<tr>
<td>Pushed work back to business divisions</td>
<td>29%</td>
<td>37%</td>
<td>18%</td>
<td>7%</td>
<td>9%</td>
</tr>
<tr>
<td>Renegotiated or froze rates with external law firms</td>
<td>-</td>
<td>-</td>
<td>21%</td>
<td>25%</td>
<td>54%</td>
</tr>
<tr>
<td>Postponed projects</td>
<td>-</td>
<td>26%</td>
<td>28%</td>
<td>31%</td>
<td>15%</td>
</tr>
</tbody>
</table>

Summary: The vast majority of respondents (79% – weightings ‘4’ & ‘5’ combined) “Renegotiated or froze rates with external law firms” during the recession to help control costs.

Figure 1.1 – CCR ‘What’s Hot 2011?’ Survey
Can you outline your career so far?

After finishing my LLM studies in Japan and a brief stint with a local law firm, I worked for the Spanish Embassy in Tokyo as foreign trade advisor. I then joined the pharmaceutical company Nihon Schering K.K. in 2004 working in the strategic marketing department, before becoming the company’s legal officer.

Following the acquisition by Bayer group of the Schering pharmaceutical business worldwide, I was invited to join Bayer CropScience in 2007 and led the Law & Patents Department for CropScience.

In August 2010, I relocated to Singapore to take over a newly created role of regional counsel for Asia Pacific (APAC), directly reporting to the global general counsel of Bayer CropScience in Germany. In this new role I support our APAC regional office in all legal matters of regional relevance, and provide legal support for Bayer CropScience businesses operating in South East Asia.

What are the key challenges you face in your current role?

The most challenging aspects of my role can be summarised as follows:

- Aligning the legal and compliance requirements between our headquarters and the APAC Region;
- Providing timely-creative (rather than late-reactive) legal solutions to safely navigate the legal and compliance landscape of the region; and
- Cultivating a team approach that transcends time zones, native languages and national boundaries, and avoiding unnecessary overlap between local in-house and external lawyers.

Many lawyers make the switch to in-house to be closer to the heart of business decision-making. However, the perception is that they are there to advise on the specifics of law, not to support strategic decisions. What is your view?

If corporate counsel are perceived in the same way as external lawyers – as a legal services provider, but cheaper – they will only be called in when legal or compliance problems arise.

Corporate counsel must pro-actively promote the idea that, through the provision of creative legal assessments and solutions to the organisation’s business strategy, they are a part of the management team, and as essential as other key functions such as marketing and sales. To do this, in-house lawyers must provide business recommendations, not just innovative legal solutions. They must minimise risk exposures and be able to balance business objectives with legal risks. This will help transform the image of corporate counsel from cost centre to source of revenue.

How can in-house lawyers break through to leadership roles?

Most senior executives and top management teams test the performance and
When did you join Royal Dutch Shell?
I have been with Shell for over 30 years and made the decision to go in-house straight after qualification. There is lots of variety and responsibility working in-house, which is why private practice never appealed.

How many lawyers are there in your legal department?
Shell is a large organisation and we have more than 600 lawyers across 60 countries.

What is the typical role of a lawyer at Shell? How much exposure do they get to general business processes?
Our lawyers’ first contribution is technical – without that they’ve got no place in the team. Once they have a reputation as a first-class technician, and as they become more senior, the opportunities to take part in general business processes increases.

There is no limitation to lawyers becoming corporate leaders. Our legal director, who retired at the end of last year, was the first to sit on our management board.

What are the challenges to succeeding as an in-house lawyer?
This will vary tremendously from company to company – and it’s not directly related to the size of the company. It is, however, directly related to the size of the legal department.

Some lawyers are hugely self reliant because they handle all of the legal work for their company. Others are less independent because they act as a go between for the business and external counsel.

At Shell, our lawyers sit more at the self-reliant end of the spectrum.

Has your relationship with external counsel changed significantly in recent years?
Yes, there’s less emphasis on loyalty and more focus on costs. Cash control is the number one priority at the moment.

Shell, like many oil companies, faces a lot of criticism from the public and various pressure groups. How does this affect the legal team?
You have to distinguish between the ethical and legal dimension. Like most responsible companies, Shell has a lot of people thinking about the ethical dimensions of the business from board level down. Lawyers have a role to play

“You have to distinguish between the ethical and legal dimension. Like most responsible companies, Shell has a lot of people thinking about the ethical dimensions of the business from board level down. Lawyers have a role to play in this, but they are by no means at the forefront of it.”
INTERVIEW:
JON OLSON, VICE PRESIDENT AND GENERAL COUNSEL, BLACKBAUD, INC

Please outline your career so far
I’ve been at Blackbaud (Bb) for two-and-half years (I graduated law school in 1988, went in-house in 1992, and was at Alcatel-Lucent for 11 years prior to coming to Bb). As you might imagine for a law department of four people, we handle everything – HR, transactions, M&A, IT, SEC filing, IP, board issues, insurance, data privacy, marketing, etc. I like the generalist nature of the practice, it suits my preference for variety. That said, each type of practice has a different rhythm and pace, so keeping everything in sync is always a challenge. Finding the time to do the strategic tasks, rather than the day-to-day fire-fighting is also challenging.

Why did you choose an in-house legal career rather than private practice?
I have an MBA and I like the interplay between law and business. I like being able to add value to an enterprise more holistically and working in-house allows that. Plus, in my personal opinion, in-house work gives greater insight into law as practiced rather than law as theory.

What do you think are the most significant obstacles to succeeding as an in-house lawyer? And how can such obstacles be overcome?
One aspect that many attorneys don’t get is that law departments are a cost centre whereas for law firms, the attorneys are the revenue centre. As such, in-house departments are always asked to do more with less. Separately, in the in-house setting, you deal more frequently with non-lawyers, so it is critical to develop effective ways to communicate complex legal issues succinctly and effectively.

What particular pressures do you think the recession brought to bear on the corporate counsel role?
The recession has created an even greater focus on cost justification for law departments and has put a premium on the creative management and delivery of legal services.

To what extent do you think the recession has given corporate counsel the opportunity to further demonstrate their value to senior leadership?
Senior leadership better appreciates the role that inside counsel can play in risk management.

The economic downturn has also highlighted the importance of developing performance metrics. Lawyers often resist quantifying legal processes, but I think such measurement is not only useful but necessary.

What are the most pressing issues facing corporate counsel in the year ahead? And how are you going to tackle such issues?
There are lots of areas that in-house lawyers will need to keep a close eye on: new SEC disclosure rules; outside counsel costs; managing litigation e-discovery costs; introduction of new technologies (social media, cloud computing, etc.); risk management initiatives for boards; compliance/code of conduct training;
CHAPTER 2: THE IN-HOUSE DEPARTMENT STRUCTURE

THE IN-HOUSE legal department consistently faces the challenge of working within budgetary constraints. One might assume that the recession has only increased that pressure, resulting in similar levels of redundancy as witnessed in private practice. But it appears to have had a far more interesting outcome; many in-house departments have held their ground, some have even grown. That’s because they have taken on more work in-house, cutting the costs of external counsel and better utilising the existing capabilities of the in-house team. This may mark the beginning of bigger and more powerful departments encompassing broader remits than ever before, and headed up by lawyers who also excel as business strategists (see Chapter 1). If this is the case, however, law departments will first have to contend with far-reaching and powerful market forces that are promising to transform the entire legal profession.

The current and evolving situation
From 2008 to 2009, law departments reduced their total legal spending for the first time in ten years, according to the Hildebrandt Baker Robbins 2010 Law Department Survey. But rather than those cuts falling on the departments themselves, they largely arose from the reduced use of external counsel. In fact, the survey found that internal legal spending and staffing increased slightly. The survey polled 252 participants from 22 industries. Just under a third of those work for companies making more than $20bn in revenues, and 65 per cent claimed revenues at or above the Fortune 500 level. The survey found that US firms decreased their total legal spending (as a percentage of worldwide revenues) by one per cent and worldwide firms by two per cent. That compares with a consistent rise in US law department spend of between five to nine per cent over the course of the previous nine years of the survey. In contrast, though, the survey found that internal law department spending rose by one per cent both in the US and worldwide. Compensation for in-house legal staff also rose by two per cent worldwide. In addition, for most law departments (66 per cent) the total number of lawyers worldwide increased or stayed the same between 2008 and 2009 – the median department being 21 lawyers in the UK and 31 lawyers worldwide.

Notably, the survey found that spending on external counsel decreased by five per cent in the US and six per cent worldwide – with global non-litigation spending, excluding intellectual property costs, decreasing the most at 14 per cent.

Most significantly, law departments seem to think this is more than a temporary cost-cutting exercise. Interviews conducted by Corporate Counsel Research (CCR) for this report, for instance, found many law departments agreeing that costs had to be cut during the recession. Typical cutbacks cited by corporate counsel included limiting travel and related expenses and/or postponing projects. But by far the most popular recourse was to renegotiate or freeze rates with external law firms, and/or send out
less work to outside counsel (see Figure 1.1, Chapter 1, p8).

This is not too surprising given the findings of the first chapter. With in-house counsel keen to make their way up the corporate value chain, and the expertise of in-house lawyers only increasing, it seems fitting that there should be less need and perhaps incentive to outsource work to expensive third parties.

Businesses are also demanding speedy business advice and legal inputs, so there is a real need for corporate counsel to take on the work themselves.

“I think the speed and breadth of electronic communications, and the cross-border dimension of today’s commercial transactions, combined with the ease of access to information on the internet and on in-house systems, have all increased the pressure on in-house legal departments to deliver rapid, robust advice and practical solutions,” says Robert Cummins, assistant general counsel at Intelsat. “For me, this accelerated demand for legal inputs, and the unrelenting scrutiny of operating expenses, means that consulting outside counsel is rarely an option.”

The impact of cost management on the in-house departmental structure

The in-house lawyer is the ultimate jack of all trades. They are expected to naturally have business acumen and understand their company’s business inside out. They are also expected to be instant legal experts across a range of diverse fields, from intellectual property to employment law, company law to litigation. And this is before tackling the increasing range of risk management and corporate governance issues that are a growing part of corporate life. Given this diversity, and as noted earlier, many in-house teams are increasing the size of their own internal departments. This corresponds with a decrease in outsourcing work to external law firms (see Figure 2.2, p27).

Most companies spend from 30 to 50 per cent of their legal budgets on law firms (see Figure 2.3, p28). While few would argue that corporate counsel can do away with external counsel just yet, it’s reasonable to predict that many legal departments will drive law firm use into the 20 to 30 per cent range, particularly as in-house counsel further develop their specialist knowledge. And even where companies continue to rely on external law firms, there are signs that in-house teams are taking far more control of the relationship, particularly in the way in which external costs are applied. This in itself has the power to transform a law department’s future structure and ongoing management.

So instead of just accepting the hourly fee, which has long been the staple method of charging by the legal profession, law departments are demanding cost ‘innovation’, often translating to some kind of alternative fee arrangement (AFA), such as fixed or capped fees (see Figure 2.4, p29). For some, this may culminate in a full-scale review of the way in which the department operates. For others, pricing innovation seems to be more of an outcome of major internal restructuring. Either way, pricing structures will play a pivotal part in the evolution of the in-house department.

The Pfizer Legal Alliance is a prime example of this. The Alliance was devised by Amy W. Schulman, Pfizer’s executive vice president and general counsel, with the aim of delivering better value and quality in the delivery of legal services via improved collaboration with external firms. This was achieved by radically
VIEW FROM THE LEGAL SERVICES BOARD

Bruce Macmillan, general counsel at the Legal Services Board, assesses the impact of the Legal Services Act on in-house legal departments in the UK.

Dear CEO,

Please find attached my legal department budget submissions for the 2013 financial year. You asked me to include commentary on the 2012 year focusing in particular on, to quote you: “Why and how my law department can justify its existence as a trustworthy guide to the firm’s regulatory and statutory compliance given the undeniably catastrophic year that we have just experienced?”

I feel your comment that: “I struggle to work out why I should trust advice on business regulations from a legal department that does not understand the regulations applying to the legal department itself,” is unduly harsh.

However I recognise that we:
- Lost a key piece of litigation because I turned out not to have legal privilege and my advice to you was disclosed in court;
- Had a team member prosecuted for not having a current practising certificate;
- Hired an Australian lawyer to conduct our litigation work without realising what I would need to do to re-qualify them under English law, and I had to give them notice as a result;
- Used a legal process outsourcing provider without regard to privilege on litigation cases while also being criticised by the management consultants for not using cheaper legal providers (in particular Bar Supply Cos and boutique firms);
- Failed to suggest how you could extend the company’s business advisory proposition through adding a legal alternative business structure to our group; and
- Failed to recommend that the group buy in cheaply to the new ABS joint venture for employment law matters with the law departments of the other three companies on the business park.

It looks like, as you put it, “a litany of career threatening failures”. However, on the plus side...

IF NOTHING in the above letter to the CEO raised your pulse then you can probably safely skip to the next article – you are either on top of matters, about to retire – or deserve what you get!

If your pulse was raised then please think carefully about the next 1,300 or so words – they may impact both you and your department over the coming years. It is sensible to become and remain informed and to take advantage of the opportunities that are presented to you, your department and your employer.

Stepping back in time

The regulation of legal services provision in England and Wales has evolved from the 13th century in a haphazard, incon-
sistent and unstructured way. Stephen Mayson has written an excellent article that summarises the history of legal services development so I will not attempt to do so here.

However, from this unstructured framework several things emerged around the turn of this century – initially in an Office of Fair Trading report, and subsequently in a series of public documents that led to the Legal Services Act 2007 (the LSA).

Where we are now?
The LSA was designed to achieve a series of core outcomes in relation to legal services provision in England and Wales:

- **To find a way to drive through and ensure the delivery of the LSA’s requirements**
  This is handled via the creation of the Legal Services Board (LSB) as the oversight regulator and custodian of delivery of the outcomes required of the LSA through the LSB’s own actions and through the LSB’s supervision of the actions of the ‘Approved Regulators’ – the Law Society (through the Solicitors Regulation Authority), the Bar Council (through the Bar Standards Board), etc.

- **To address the perception that a representative body, such as the Law Society or the Bar Council, in having the statutory power to regulate its membership could result in self-serving rather than pro-user and pro-competition based regulation**
  This has been addressed by creating ring-fenced regulatory subsidiaries of these representative bodies, such as the Solicitors Regulation Authority and the Bar Standards Board, with legally entrenched provisions that are supervised by the LSB to ensure their independence of regulatory action.

- **To address the absence of logic in saying that an entity’s ownership or management will necessarily make that entity fundamentally incapable of providing a legal service**
  This will be addressed through the ability, from October 2011, for non-lawyer-owned and/or managed law firms (ABSs) to exist – including, potentially, law departments as law firm subsidiary companies within their corporate groups or inter-law department joint-venture suppliers coming into existence as is already happening among local authorities.

- **To address issues in the way that the legal representative bodies handled escalated complaints from private individuals (and small charities and small businesses) about the service quality provided by the legal service suppliers they had used**
  This has been addressed through the creation, under the supervision of the LSB, of the Legal Ombudsman to handle all such complaints.

- **To address the lack of clarity in what legal services regulation should be about and how it should be applied by the legal services regulators**
  This has been addressed through the creation in the LSA of Regulatory Objectives and Professional Principles; through requirements imposed on the regulators in the LSA and supervised by the LSB on how those regulators act; and through a mechanism that now requires changes to their proposed regulatory arrangements to be approved by the LSB for compliance with the new LSA principles before implementation.
How would you describe your in-house career so far and any obstacles you have encountered?

My in-house career started in 2000 when I made the jump from private practice litigation in the City to commercial work at BBC Worldwide. I spent five interesting years with BBC World, the international television news channel. It was a time of major news events like 9/11, Afghanistan and Iraq, and major organisational upheavals like Greg Dyke’s ‘cut the crap’ crusade, and the fall-out from the Hutton inquiry. In the meantime, I learned a great deal about the practical implications of legal verbiage, and the paramount importance of being ‘commercial’.

In 2005, I moved to Sapient, a thrusting consulting company in the interactive technology ‘space’. At Sapient, there was a huge emphasis on corporate values, consensus-building, project management and process improvement. In-house lawyers were expected to walk and talk with the same drive and discipline as the consultants. It was unnerving at first, and later liberating. It was also my first experience of a SOX-based revenue reporting regime, with the inexorable mounting pressure to close contracts before the end of each quarter. I handled a bunch of big-ticket outsourcing deals. I also worked on ‘Velocity’, an internal initiative aimed at accelerating the contracts process by enabling non-lawyers (including a specialist admin team in India) to take ownership of a large part of the legal paperwork, whilst freeing-up lawyers and other support teams to focus on ‘make or break’ opportunities or risks.

After eighteen months at Sapient, I was hired as head of business and legal affairs for the Emerging Markets division of MTV Networks International. The pace of expansion in Emerging Markets, not to mention the youthful energy of the management, was breathtaking. Each year we were launching an average of four new local-language TV channels in Eastern Europe and the Middle East. Experienced project managers were in short supply, and each head of department was also tasked with overseeing business development in a different territory. My task was Ukraine: through the perseverance of local partners and MTV’s channel operations experts, a new channel was built from scratch in less than nine months, and the launch was celebrated at an all-night event in a former Soviet submarine base near the Black Sea.

In 2008, I left MTV to become assistant general counsel at Intelsat, which operates a fleet of 55 satellites enabling TV, radio, phone and broadband communications anywhere in the world. Intelsat’s general counsel, Phil Spector, has responsibility for the global business development team, as well as more familiar legal functions. The company uses salesforce.com, and small teams of very knowledgeable paralegals to drive hundreds of complex revenue-generating contracts to completion each month.

In terms of obstacles to career development, the most significant ones I’ve encountered (besides my own undeniable shortcomings) have been: the time it takes a new in-houser to un-learn the mannerisms of private practice; the
In recent years Carillion has led the way in terms of its law department management. Richard Tapp, Carillion’s company secretary and director of legal services, explains the department’s development so far.

THE GENERAL counsel’s relationship with the law firm is an unusual one. Elements of the traditional adviser-client model remain, of course, but the challenges of economic downturns, new business models, cost pressure and increasing regulation have brought other, compelling demands.

The challenges
Simplistically, the challenges for delivering legal services have been seen as time and cost. Quality has been taken for granted – although it is not clear that it always should have been. But because business is increasingly complex and innovative, and because we exist in a competitive market with demanding customers, there is a need to seek ever more innovation from law firms to allow us to deliver against affordable timescales and costs.

In Carillion, since we began the process of reviewing legal needs in the early years of the century, the challenges of time and cost have meant that we have followed a consistent process of consolidation, reducing our law firms from more than 50 to the current 14 in our Legal Network. At the same time, we have incorporated the work from the major acquisitions that we have made along the way – and the 100 or more law firms utilised by the acquired organisations.

Evolution
Carillion’s philosophy is to develop value through high-quality, long-term relationships with a limited number of firms in our Legal Network. In developing our relationships, we have focused on innovation from law firms to help us meet these challenges of time and cost – and to help us be one step ahead. In our last review, we brought through a range of more than 100 innovations; each one was developed with our Legal Network firms, and they were prioritised and delivered against defined goals and timescales.

Some – many, even – have been a real success; others have proved not to be worth pursuing. But the process of identification, development and collaboration has brought with it real value. We have learnt that we must be open-minded to new developments – to try, perhaps even to risk, alternatives or improvements, and to allow new ideas to incubate within our business.

The future
For the future, the challenges of the economic landscape, the pressures of client change and the weight of regulation translate into four challenges that will colour the law firm relationship into the future:

- Affordability;
- Structural resourcing;
- Technology; and
- Knowledge management.
CHAPTER 3: MANAGING THE IN-HOUSE LEGAL TEAM

In Chapter 2, we discussed the various trends impacting the growth, structure and likely future developments of the in-house legal team. From the number of forces impacting in-house lawyers – from both internal and external sources – there is a sense that the legal department is in a state of flux. While it is difficult to say with any certainty what the in-house department will look like in, say, ten years’ time, there are some noteworthy trends that have been discussed so far:

- In-house legal departments have actually expanded during the economic downturn, due largely to less work being outsourced to external law firms;
- Outsourcing process-driven work may flourish as departments look to drive down costs further – whether that’s to external LPO providers or internally to other business units;
- As alternative business structures (ABSs) come into force under the UK Legal Services Act, some law departments may take advantage of the opportunities to broaden their own offering, perhaps setting up joint ventures and ABSs of their own;
- Some of the largest companies may opt for the cost-efficiencies brought about by outsourcing the law department altogether – just as they have their HR, IT and other admin functions.

Whatever the future holds, companies need talented in-house lawyers as much, if not more, than ever. To have legal advice from lawyers who intimately understand the business – both strategically and operationally – has proved vital to many companies navigating the choppy waters of increased regulation and corporate risk. Indeed, the corporate scandals of recent years – such as Enron and WorldCom – highlight the importance of sound corporate governance and effective risk management (see Chapter 5).

In-house versus private practice

Chapter 1 demonstrated the rising profile of in-house lawyers. Numbers of in-house lawyers have also grown. As Scott Gibson (see full article, p71), partner at recruitment consultancy Edwards Gibson, notes, the number of qualified lawyers working in commerce and industry in England and Wales has risen by 140 per cent in a decade. The employed sector accounts for nearly a quarter (23 per cent) of solicitors holding practising certificates, with the largest sector being commerce and industry, which employs about 15,000 in-house counsel.¹

Although this rise is significant, obviously the vast majority of lawyers qualify and work in private practice. This feeds a perception that private practice is the place to be – especially when combined with better compensation and a more defined career path. In-house may have its stellar performers, but on the whole it can also be seen as offering little career opportunity due to a flat hierarchy (and smaller department size); less financial compensation; and less respect because many corporate leaders under-
value their legal teams, at worst viewing them as necessary cost-centres.

**Getting closer to the business**

The Nabarro report ‘From In-house Lawyer to Business Counsel’\(^2\), discussed briefly in Chapter 1, reveals that many in-house lawyers aspire to business decision-making positions within their companies. But few as yet seem to have got there. Only three per cent of the 81 lawyers interviewed claimed to have board influence and to be involved in strategic-level planning decisions. And while 38 per cent of the lawyers polled believed their team makes a very strong contribution to the commercial value of the company, only 14 per cent of the CEOs interviewed agreed. Report authors Jonathan Warne and Peter Williamson, both partners at Nabarro, wrote:

“Relatively few senior managers believe their in-house legal function delivers significant economic value to the business. Instead, lawyers are often felt to be there only to make sure the commercial team do not mess up – in other words, to avoid negative outcomes rather than to generate positive ones. Without action on the part of GCs, this is unlikely to change.

“At the moment few GCs hold a position in the upper tier of their company’s strategic, managerial or planning functions. Most perform a quasi-risk management and legal management function, with little understanding in the business of how truly successful they are. Some are content with this. Others, who want to move up the business ‘value pyramid’, face a problem. They are confident of their worth, and they know they contribute commercially, but they don’t have a way to show it. And in-house lawyers who cannot show that they add value to a business are unlikely to become strategically influential.”\(^3\)

This poses two problems in terms of managing a highly effective and valued legal department:

- How do you attract talented lawyers to your in-house legal team if they perceive the problems outlined above?
- How do you retain those same lawyers if you can’t offer them long-term career-development opportunities?

In this chapter, we discuss how senior in-house counsel can attract and retain the best lawyers.

**Back to basics: Why do lawyers choose in-house?**

Much as stories of high-flying in-house counsel might appeal to ambitious and business-minded lawyers looking for the big career break, it is unlikely to be enough to pull talent away from the well understood career path and rewards of private practice. After all, despite the growing size of in-house teams they remain relatively small compared to their private practice counterparts (see Figure 3.1), resulting in fewer available positions to advance. Where law departments are undervalued or seen as little more than regulatory tick-box functions, the appeal is less. This creates a real problem: if in-house leaders cannot attract the right lawyers, they are also unlikely to be able to fulfil a key aim – to prove their team’s worth and move up the value chain, so creating positions to rival private practice.

But understanding why lawyers choose to go in-house may help shape a law department’s recruitment strategy and provide important clues as to how those same lawyers can be effectively managed. In a two-part article recently
Scott Gibson, a partner at legal recruitment consultancy Edwards Gibson, looks at the particular recruitment and retention challenges facing in-house legal teams.

LAWYERS ARE expensive; they epitomise high-value human capital. If you are the head of legal in a commercial concern you will doubtless be aware that your department is usually the most, or among the most, expensive per-head cost of any in the organisation. This axiom, combined with the fact that legal is nearly always perceived as a cost centre in most companies, makes justifying existing legal headcount, let alone trying to increase it, politically problematic for heads of legal. Unfortunately, as the need for quality in-house lawyers continues to increase, so too will the challenge of justifying legal headcount and ensuring your lawyers are paid ‘market rate’ compensation relative to their law-firm peers.

The growth of in-house commerce & industry legal departments

Over the past decade the number of qualified lawyers within commercial organisations and financial institutions in England and Wales (defined by The Law Society as Commerce & Industry (C&I)), has grown at an astonishing rate. In the UK, between 2000 and 2010 the number of solicitors with practicing certificates in C&I grew by more than 140 per cent so that by 2010 nearly 11 per cent of all qualified solicitors were working in-house in C&I1. Moreover, whereas 15 years ago the majority of in-house lawyers in the UK were sole counsel, today that applies to less than a quarter of legal departments.

Regardless of what happens in the wider economy the number and proportion of lawyers in C&I, relative to those in commercial law firms, will continue to increase for the foreseeable future because of three main reasons:

1. Increased regulation, in particular large set-piece governance legislation – such as the UK Bribery Act (2010) or the US Sarbanes-Oxley Act – has demanded that companies review their legal risk;
2. Increased enforcement of pre-existing regulations, as UK and European regulators are now imposing severe sanctions on companies and, crucially, individual directors and officers; and

The importance of quality over cost

The traditional role of the in-house lawyer is primarily to save costs. If the cost of necessary external legal spend (on law firms) exceeds the projected compensation of an in-house lawyer, most finance directors would agree there is a prima facie case for hiring or maintaining the latter. Of course, commercial lawyers will often save costs in a much more fundamental way; depending on the organisation, a well-drafted contract can save hundreds of millions of pounds (although this may never be tested in court if the
THE GLOBAL economic downturn has reshaped the legal profession, as law firms and corporate legal departments have shed thousands of lawyers to contain costs. In previous recessions, these jobs returned once economies recovered, but there is a general consensus that the legal landscape will look very different this time around.

New York Times columnist and author Thomas L. Friedman recently posed this question: “What if the crisis of 2008 represents something much more fundamental than a deep recession? What if it’s telling us that the whole growth model we created over the last 50 years is simply unsustainable economically and ecologically and that 2008 was when we hit the wall – when Mother Nature and the market both said: “No more.”

Frankly, the legal industry, like most corporate companies, has learned to do more with less. This is being fuelled by legal departments that are demanding cost-efficiency and actively seeking lower rates. As discussed in Chapter 3, to help drive down costs and reduce legal spend, many legal departments are outsourcing commodity legal work and using contract lawyers for one-off projects.

Law firms must respond to market demands

Law firms must get better at mirroring the many qualities that are commonly found in-house – better understanding of clients’ products, priorities and finances, and more commercial sense. Legal marketing consultant Larry Bodine sums this up perfectly in an excellent blog post. He says firms that survive the recession will:

- “Have ‘customers’ not ‘clients’.
- Offer flat fees per project or per procedure.
- Have rates that are markedly lower than in 2008.
- Will routinely produce budgets for all legal work.
- Be run like real businesses, which know their costs, can calculate a profit margin, and offer customers “just in time” services at the best price possible.
- Realise that customers are fickle and expect personalised service.
- Have lawyers that know their clients’ businesses, their goals, strategies and objectives, and work to help them make more money or cut their costs.”

Value based pricing

The economic downturn has led to a shift in balance in the client/law firm relationship, with a client-led market fast becoming the norm. The days of the billable hour as autocratic appear numbered as businesses demand more value, accountability and creativity from law firm fee structures.

Hourly billing was originally justified because of its objectivity and efficiency. That is, hourly billing allows clients to compare the rates of attorneys/lawyers and know in advance how much they will be charged for time expended. And it has some advantages (see Figure 2.5, Chapter 2, p30): it’s simple and easy to break down on a bill and provides the ultimate
comparison tool between firms. But it has also come in for endless criticism, which has intensified in recent years: it doesn’t deliver value for money (see Figure 2.6, Chapter 2, p31) nor reflect the true value of the legal service provided; it encourages inefficiency and padding; and, it’s an open-ended cost (see Figure 4.1).

To make the move away from exclusive hourly billing, legal work needs to be seen as a service provided by the law firm, not hours spent doing the work. Those ‘services’ need to be broken down and a value attached to each. This puts alternative fee arrangements (AFAs) firmly back on the agenda, driven by a need on both sides for an economic efficiency not necessarily found under the billable hour.

Slow adoption of AFAs
Alternative fee arrangements take many forms – fixed fee, success/conditional fee, capped fee, value-based fee, risk collars, portfolio pricing, capacity-based pricing, etc. And while there are clear signs in-house counsel have started to explore many of these options (see Figure 4.2, p80), the uptake has been slower than predicted.

There are many reasons for this. Respondents to CCR’s AFA survey point to numerous barriers, but chief among these are “Reluctance by external counsel”, “Difficulty in how to price and structure” and “Unpredictability of matter type”. A lack of basic understanding also gives rise to numerous concerns. Which AFAs suit which types of matter? What is the potential impact on the legal department and its internal processes? Also, hourly billing is based on years of metrics and data, AFAs are not, so there is a lack of information to measure the potential profitability of such arrangements.

Rees Morrison, who has advised in-house counsel for the past 24 years on management issues, suggests several reasons why in-house counsel are not hitting their external providers hard. In particular, he points to a typical GC argument: They like the services they get...
ARTICLE
GETTING MORE FROM YOUR LEGAL SPEND – EMERGING TRENDS AND BEST PRACTICES

By Eversheds Consulting

As legal costs continue to climb, financial pressures are leading many companies to instigate spend reduction programmes and demand more from their legal functions. In a lot of instances, the message to general counsel (GC) could hardly be clearer from senior management: “Get the costs of your legal department down and under control or face the consequences.” Unfortunately, this is forced upon GCs who often lack the time, data and analysis to justify their own internal spend.

A starting point
Measuring value is often seen as a challenging process for an in-house legal team. There may be concerns around resourcing, the introduction of bureaucracy or inadequate returns for the department. But it does not need to be this way. Simple and practical approaches with the right systems and collective approach can be introduced to clarify objectives, improve performance and measure the value of legal spend. This will make it easier to run an in-house legal department, and may also make it simpler to identify areas where GCs and other senior in-house lawyers can attain leadership.

The rest of this article will examine:

- Shared challenges and ways to reduce legal spend;
- Behaviours to enhance client service delivery;
- Increased operational effectiveness;

“Metrics are an integral part of the continuous improvement process, helping ensure that objectives are being met and that the organisation is succeeding, and, just as importantly, identifying which programs are not working and where changes should be made.”

Thomas L. Sager and Gerald G. Boccuiti – DuPont

- Legal spend health check and moving from cost to profit centre.

Increasingly, legal teams and law firms are compared, evaluated, judged, categorised and ranked, with best practices subsequently born. It’s the fated consequence and side effect of a rich and opaque market coming to maturity.

To be clear, there is no single formula or template for measuring value. Business strategies, operational structures and corporate cultures vary enormously, and measurement needs to reflect this. However, there are common themes many companies, including the likes of Tyco and DuPont, have implemented very successfully, which provide some starting points.

Insight leads to better business decisions
It’s no surprise that one of the most prevalent trends in the legal industry during the past few years has been the adoption of legal management systems and
What is your annual revenue?
$4.1bn

How many people are in your team?
We currently have nine lawyers, although we have three open positions, so we should be staffed at 12.

What is your legal budget?
$12.4m. We spend 73 per cent of that on outside counsel.

Do you utilise project management tools?
We are very rigorous in the use of project management tools and techniques. We call our particular approach one degree law. This signifies a removal of the barriers to the efficient delivery of right size legal services. There are two key elements to this philosophy. One is performance based pay. The second is rigorous matter management (and that encompasses billing, status administration, reporting, benchmarking, etc).

What are the pros and cons of hourly billing?
When you pay for a service by the hour, what you buy is hours not service. You do not buy either quality or results. There is obviously a built-in bias to inefficiency when the service provider is being paid by the hour.

This reminds me of a story with my son. He was about 15 years old at the time and he wanted a new video game. I told him that unless he had the money for it we were not buying it, but I could let him do some work to earn the money. We had an iron fence in our backyard that needed painting, so I suggested that he could paint that and I would pay him. He agreed and I asked him how much he would charge me. He said he had no idea, maybe just the cost of the video game. I suggested that I could either pay him by the hour for however long it would take or we could do a fixed price, so he would shoulder the risk of how long it would take to paint the fence. He said, maybe we should do it by the hour because I think I could make more money that way. I said you are absolute right, but that’s why we were not going to do it by the hour.

Even a kid can understand this. It’s amazing to me that we as lawyers, on the buy side, convince ourselves that the work is so complicated and so uncertain that hourly billing is the best way to do things.

Another analogy I use relates to what FMC does. The company makes highly sophisticated, sub-sea equipment for the oil and gas industry – it goes into 8,000 feet of water and is supposed to work for 20 years in conditions harsher than the surface of the moon. We do this every day on a turn-key, fixed-price basis. As a company, we make a lot of money doing this – we take the risk of uncertainty because we are good at what we do. So if a lawyer tells me that he cannot predict how a piece of litigation is going to go, for example, my reaction is that they are pitching for the work because they have handled hundreds of similar cases – I’ve done none. So in the allocation of risk and uncertainty and the time it is going to take,
JOHN DOWNING is head of group legal at Imperial Tobacco Group plc, a FTSE-30 global tobacco company headquartered in Bristol, United Kingdom. It is the world’s fourth-largest international tobacco company.

Downing manages a team of ten lawyers, which includes two in-house litigators. He joined the company in 2005, having worked for seven years in Linklaters’ corporate department.

Highlights of his career include being lead counsel and head of deal execution on the €15 billion public takeover of the Franco-Spanish tobacco company Altadis in January 2008, followed-up by Imperial’s £5 billion back-stop acquisition rights issue, as well as its follow-on takeover offer for Logista S.A.

Which areas of your work do you typically outsource?
The main areas that we outsource are corporate, litigation, finance and tax. Operating in the tobacco industry, we use specialist boutique advisors when it comes to product liability. For general commercial work and mainstream regulatory issues (i.e., regulation as it affects selling or marketing tobacco rather than the product itself), we keep this in-house.

What is the size of your team?
At group level there are ten members in my team. For a large FTSE-listed company, I believe we are slightly unusual in being so small. Most of my staff joined the company directly from private practice, mainly from magic circle firms, so this is their first switch to the corporate side.

Given the profile of team, we do not run trainee programmes.

Your department costs have remained roughly the same over the past two years. You mention ‘sign-off processes’ as a way of controlling costs. Can you elaborate on this?
Put simply, bills must be relevant and proportionate. We never pay an invoice unless we have seen a draft invoice that has been pre-approved, so the team can check if it’s in line with the original quote.

On larger matters, we have a forensic approach to the billing verification process. On a major corporate transaction, we receive the unabridged, weekly timelines of the law firms and staff who have worked on the project. At this stage, there will often be things that we want to challenge, particularly as the firms themselves have not had a chance to vet this information yet.

If you are doing a massive transaction that runs into hundreds of thousands of pounds or more, it’s important you check the charging is right on a weekly basis, while it’s fresh in your mind.

Many legal departments have been criticised for being ‘sign-off departments’. What is your view?
As a legal team it is important that this criticism is not meted out at you or your team. If there are legal teams where this is the case, then they have probably lost credibility. If all you are is a legal
Are alternative fee arrangements (AFAs) here to stay?
Alternative fee arrangements (AFAs) and value driven relationships will start to become the norm. However, I don’t think any particular type of AFA has really taken hold yet, so the format and structure of these arrangements is still very much undetermined.

Law firms and in-house lawyers frequently say they are using AFAs, but in many instances they are referring to discounted rates. Discounted rates are not really alternative fees and often turn out to be a false saving – it is pointless securing a 10 per cent discount on rates if you are then billed an additional 10 per cent on the hours. Frankly, the alternative fee that best lowers costs is a capped, fixed or flat fee.

What are the advantages of AFAs?
The main advantages are predictability, lower costs and better incentives. And this is where I think both law firms and in-house counsel are not going far enough. If the projected budget (based on traditional budgeting measures) for a matter is $1,000,000, why can’t the fee be negotiated down to $900,000? If a particular law firm does not want the work for that price, there are many other excellent firms that will. The number of firms with profits per partner numbers over one million dollars is staggering. It is hard to believe there is no room for greater compromise on fees.

What are the main barriers to AFAs?
The law constantly evolves. Seventy years ago in the US you might not have known if there was strict liability or not in a particular case. Or you might not have known how a court would rule on a contract or corporate issue. Today we have the answers to many of the most common questions and those cases can now be handled on more of a commodity type basis. Cases outside of these better defined confines occupy what I call the ‘unknown zone’. Complex commercial and corporate cases more often sit in this zone where it is more difficult to structure AFAs due to the uncertainty and lack of precedent.

It’s also important to note that in-house counsel can sometimes be reluctant to agree to fixed fees. This is driven, at least in part, by concern that they could end up paying more compared to hourly billing. A common case is one where the case is settled or dismissed very quickly. In instances like this, however, it is sensible for both parties to agree to some sort of early resolution fee. This also explains why capped fee proposals may have some benefits over fixed and flat fees. Under a capped fee programme, the client pays the lesser of the amount billed by the hour or an agreed cap.

Ultimately, both law firms and corporate counsel need to take a transactional view about legal services. Whether it takes 18 months or two years to complete a piece of work, or if the work would have been 20 per cent cheaper under the billable hour, this shouldn’t matter. A fee needs to be agreed that reflects the true value of the legal services provided and one that works for both parties.
Can you outline your career so far at National Grid, and highlight the most challenging aspects of your role?

I’ve been with National Grid for about 12 years – but thinking about the changes, mergers and reorganisations it often feels like I have worked for a different company every year! It has always been a fresh and exciting place to work, with lots of challenges and an interesting workload. The company has changed so much that your internal client is constantly reinventing itself and, of course, you’re exposed to that change. Reacting and predicting changes is often the hardest part of my role.

I assume your department must have changed too, within that organisational development?

There have been a number of reorganisations, so the department structure is vastly different than when I first joined the company. Personally, it has allowed me to develop and progress, but overall the team has reduced with economies of scale, which means we have to be innovative and efficient; furthermore, we have to demonstrate that to the business and our regulators. We have got subject matter specialism in-house but we’ve had to rethink how we allocate work and become more analytical about how we can add value to the business.

How has this impacted your relationship with external counsel?

Ten years ago, few companies had formal panel arrangements, but they are much more common now. National Grid has always operated a panel structure since I joined, but today it is a smaller panel and our processes and analysis of tenders is far more technical. There has been an increased drive towards encouraging project management and problem solving by our panel firms, which has resulted in better communication.

In terms of pricing, the recession has increased the demand for fixed fees. This is symptomatic of in-house counsel being asked for fixed budgets by the business, so they’re pushing the same out onto their law firms. With budgets being squeezed, clients do not want bills they weren’t expecting.

Are fixed fees here to stay?

Many companies are looking into AFAs in order to reduce cost. As an example, Andrew Garrard [legal director] at ITV operates very well on fixed fees for everything, but that involves setting out a clear scope for pieces of work and then agreeing variations, which is a very good discipline.

Ironically, fixed fees used to be how things were priced. The origin of the hourly fee comes from the US and from people thinking they weren’t getting fair billing from lawyers offering fixed fees. It’s come full circle and I think the recession has played a part in this. A lot of lawyers still quantify things by time and then associate a cost – changing this perception of the overall value of a transaction is going to be hard.

While every transaction is different there are tasks that you do regularly,
IN-HOUSE LAWYERS’ responsibilities vary widely depending on the size and structure of their organisations, but in today’s environment, their ability to mitigate risk has never been more vital. With the financial crisis blamed on a reckless appetite for risk-taking in the financial sector, the issue of effective risk management has once again taken centre stage. And the spotlight – and opportunity – has fallen on lawyers.

In the wake of the banking collapse, regulatory pressure on companies remains intense – with new legislation forcing businesses to spend increasing management time ensuring compliance. Research for this report found the vast majority of in-house lawyers claiming that a major part of their role was keeping up with new regulation and ensuring compliance (see Figures 5.1 and 5.2, p114 and 155 respectively) – a challenge when internal resources and budgets remain, at best, static.

Within this environment, corporate governance issues also loom large. The financial crisis compounded a general distrust in business leadership that started with Enron. Sarbanes-Oxley (SOX) was an early reflection of the regulatory outcome of this. Among other rules, SOX aimed to make CEOs and CFOs more responsible for the financial on-goings in their companies. In-house lawyers in the US have had an increasing role to play in ensuring that such business leaders understand their new corporate governance liabilities.

But it is not just the US that has been affected by scandal and ensuing regulation. SOX may be a US federal law, limited to US public companies (and other companies outside the US that have a dual-listing on the US exchange), but it would be hard to deny its global influence in reinforcing a trend to improve corporate governance. In the UK, numerous corporate governance reports were published in the wake of SOX’s enactment, including the Cadbury and Higgs reports; they culminated in the UK Corporate Governance Code 2010. While the code is not as rule-based as US legislation, listed companies are required to report on how they have applied the main principles of the Code and, if they have not, explain why.

Quite apart from the official line, it is perhaps reputational damage that directors fear most. Where directors once enjoyed a certain anonymity, the public and media are now keen to expose those that have breached regulations or transgressed corporate ethics.

We have already seen in Chapter 1 of this report that increased risk has given
corporate counsel an important means to prove their value. But it is also a more challenging environment for lawyers, in that blame for unforeseen exposure to risk may well fall heavy upon the legal team’s shoulders. Randal Barker, company secretary and general counsel at Eurasian Natural Resources Corporation (ENRC), recently resigned his post in the midst of concerns over its corporate governance (described as a “shambles” at Prime Minister’s Question Time in the House of Commons). The company has now launched a corporate governance review, but it’s too late to save the GC.

More recently, the intense scrutiny of Rebecca Brooks and the Murdochs in relation to the News of the World phone-hacking saga may well have diverted attention from the fact that the scandal decimated the legal team. Jon Chapman, director of legal affairs, Tom Crone, head of legal, and Lawrence Jacobs, group general counsel, all lost their jobs. During the House of Commons steering committee James Murdoch also implied that his lawyers had failed to inform him of the extent of the phone-hacking problem.³

In-house lawyers as risk managers
Risk management should be managed top down, bottom up. Boards rely heavily on their senior management, who in turn rely on middle management to inform them of the risks which exist in the organisation, and to recommend policies, systems and controls to manage those risks. This is especially true with legal risk, as senior management are unlikely to be legally trained and will therefore require guidance from their lawyers.

The Commerce & Industry Group (C&I Group), a recognised Law Society group run by in-house solicitors in the
Can you outline your career to date?
I started out in private practice as a corporate lawyer working for international law firm Ashurst. I joined what is now RSA 15 years ago, initially on secondment. I started as legal manager and I am now the group legal director in RSA’s Group Corporate Centre, reporting to the group’s general counsel.

What is the size of your legal department?
We have 70 lawyers across the group and I work within the Group Corporate Centre. The company employs 22,000 people in total.

What are the typical transactions and legal areas you engage in?
It’s hugely varied. As a large corporation, we cover high-end M&A, bond and share issues, internal capital management and restructurings, reinsurance, major commercial agreements and cross-border procurement contracts, etc. Then there is the plethora of legal compliance and risk-management issues – including anti-bribery and corruption, competition law, data protection, corporate governance, etc.

What are the key challenges your department faces?
There are three key challenges that most in-house counsel leaders have to meet head on: managing legal risk and getting the legal aspects of the business properly dealt with; resourcing the function (both internally and externally); and business engagement (getting proper alignment with the business).

What risk management systems do you have in place, and do you conduct legal audits?
We have a number of policies that are adopted by our risk committee at board level. There is also an advisory committee, which I sit on, that looks at what policies need to be implemented and upgrading existing policies. These policies have to be adopted by all of our operations across 32 countries and every local chief executive has to sign off on these quarterly, acknowledging they have been adhered to. If there has been a breach, they need to provide the relevant details so these can be addressed.

We also, of course, have an internal risk function and an internal audit function. We work with the risk function closely in introducing and maintaining policies.

What is the relationship between your company’s corporate risk function and legal department?
Our risk and legal teams are separate functions within the business, so we have both risk managers and lawyers across our global operations. However, in some of our smaller operations and regions, lawyers may also act as part of the risk function. The legal teams often work very closely with the risk team, and there are several policies that are legal specific.
The Global Law Department Benchmarks study, conducted by General Counsel Metrics (GCM), presents a new approach to law department performance benchmarks. The metrics are relevant, we believe, not only to general counsel but also to law firm partners.

Benchmark metrics help a general counsel know how well their law departments are managed compared to other law departments.

“Is my spending in line?” “Do I have a typical number of paralegals?” With the most current metrics in hand, in-house managers can respond confidently when the CEO asks, “Do you deliver value?”

An astute general counsel uses benchmarks to argue for more staff, to defend against staff cuts, to get more out of the resources available, and to promote the contributions of the legal team.

New approach
Let’s consider what GCM’s benchmark survey, a cost-free offering, adds to what other surveys have accomplished and why it provides innovations in benchmark methodology and results.

1. With 1,000-plus respondents, analyses are much more finegrained, reliable, and persuasive.
2. Reports are available in the spring and throughout the year.
3. Graphical display of results for ease of comprehension.
4. Global basis for comparison. Since companies compete in the global marketplace, their legal teams need to match themselves against industry peers from other countries.

In this report, we publish the partial results of GCM’s July 2011 (Release 2.0) benchmark data. The next survey (Release 3.0) will be published by GCM in October 2011, and approximately quarterly thereafter.

Get involved
If you would like to receive up-to-date metrics about your law department and industry sector, take part in GCM’s next benchmark release. Simply visit GCM’s online, confidential survey – [https://novisurvey.net/n/4ka.aspx](https://novisurvey.net/n/4ka.aspx)

For further information about GCM, please visit [www.reesmorrison.com](http://www.reesmorrison.com)
ABOUT THE PARTICIPANTS

- **Departments:** This study covers 317 law departments from 23 countries (2/3 North America, 1/7 Europe). A full list of participants is available at the end of the Appendix (p166), separated out by 21 industries and by country.

- **Revenue:** One quarter of the participants reported revenue below US$500 million. One quarter reported revenue greater than US$5.8 billion. The median revenue was US$1.5 billion.

- **Spend:** The participants reported US$8.5 billion in total legal spending in support of US$3.1 trillion in revenue.

- **Staff:** At the end of 2010, the participants had a total of 8,154 lawyers and 6,783 other legal staff (medians of 8 and 6 respectively). In the smallest “quartile”* are 94 participants who reported from one to three lawyers. The next “quartile” of 77 participants reported more than three lawyers but fewer than eight. Twenty-two departments have more than 100 lawyers.

The table below shows how many participants are in each industry by four revenue ranges. In the smallest range, 75 participants reported between US$50 million and US$940 million in revenue. The next to last column shows 73 participants with more than US$5.8 billion in revenue.

<table>
<thead>
<tr>
<th>Industries and revenue range</th>
<th>$50-490m</th>
<th>$490m-1.9bn</th>
<th>$1.9-5.8bn</th>
<th>&gt;$5.8bn</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aerospace/Defence</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>Business Services</td>
<td>2</td>
<td>3</td>
<td>5</td>
<td>1</td>
<td>11</td>
</tr>
<tr>
<td>Construction/Engineering</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>Consumer Products</td>
<td>4</td>
<td>6</td>
<td>3</td>
<td>0</td>
<td>13</td>
</tr>
<tr>
<td>Energy</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td>5</td>
<td>12</td>
</tr>
<tr>
<td>Extractive, Mining, Chemical</td>
<td>0</td>
<td>4</td>
<td>5</td>
<td>5</td>
<td>14</td>
</tr>
<tr>
<td>Financial Services</td>
<td>7</td>
<td>6</td>
<td>5</td>
<td>7</td>
<td>25</td>
</tr>
<tr>
<td>Food &amp; Beverage</td>
<td>1</td>
<td>2</td>
<td>6</td>
<td>4</td>
<td>13</td>
</tr>
<tr>
<td>Healthcare</td>
<td>3</td>
<td>4</td>
<td>4</td>
<td>1</td>
<td>12</td>
</tr>
<tr>
<td>Insurance</td>
<td>7</td>
<td>7</td>
<td>2</td>
<td>5</td>
<td>21</td>
</tr>
<tr>
<td>Leisure/Entertainment/Media</td>
<td>4</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>8</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>8</td>
<td>13</td>
<td>13</td>
<td>16</td>
<td>50</td>
</tr>
<tr>
<td>Medical Devices</td>
<td>3</td>
<td>5</td>
<td>7</td>
<td>6</td>
<td>21</td>
</tr>
<tr>
<td>National Lab</td>
<td>0</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>Not for Profit/Gov’t</td>
<td>4</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>8</td>
</tr>
<tr>
<td>Pharmaceutical</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Retail</td>
<td>2</td>
<td>1</td>
<td>5</td>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td>Technology</td>
<td>10</td>
<td>3</td>
<td>5</td>
<td>3</td>
<td>21</td>
</tr>
<tr>
<td>Telecomm</td>
<td>4</td>
<td>0</td>
<td>1</td>
<td>4</td>
<td>9</td>
</tr>
<tr>
<td>Transportation</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>8</td>
</tr>
<tr>
<td>Utilities</td>
<td>3</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>75</strong></td>
<td><strong>72</strong></td>
<td><strong>72</strong></td>
<td><strong>73</strong></td>
<td><strong>292</strong></td>
</tr>
</tbody>
</table>

*For an explanation of “approximately one quarter” and “quartiles”, see page 139
PART II – GLOBAL LAW DEPARTMENT BENCHMARKS

UNDERSTANDING THE METRICS TABLES

- Metrics Tables: After the first table, which shows data for all the participants in this study, each table thereafter presents median benchmarks for one of five characteristics:
  
  I. Industry [Table 1 - for illustration purposes, contains data across four industry sectors],
  II. Country [Tables 1-2, those with 6 or more participants so far],
  III. Region [Tables 1-2],
  IV. Revenue, and
  V. Number of Lawyers.

- Benchmarks: In each table, the left column lists the 25 fundamental benchmarks. This study does not list them in any particular order of priority or importance other than to pair related metrics.

- Columns: Other than the All-Participants Benchmark Table, each column of a table displays median benchmark metrics. The “N= ” at the top tells how many law departments are included in that column. The charts that start after the last Table give quartiles, averages, and trimmed means for the All-Participant group.

- Special “Quartiles” for Revenue and Number of Lawyers: To calculate medians for Revenue and Number of Lawyers, we divided the participants into four groups as equal in size as possible. The groups are not precisely equal because we kept together the departments at the highest number in a group. Thus the first “quartile” group for revenue (the companies with the least revenue) has 80 participants because there were some extra with $300 million which we kept together.
ALL-PARTICIPANTS BENCHMARK TABLE*

<table>
<thead>
<tr>
<th>Benchmarks for Companies N=317</th>
<th>25% Quartile N=317</th>
<th>Median N=317</th>
<th>Mean N=317</th>
<th>Trimmed Mean N=317</th>
<th>75% Quartile</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Legal Spending % of Revenue</td>
<td>0.22%</td>
<td>0.41%</td>
<td>1.01%</td>
<td>0.67%</td>
<td>0.86%</td>
</tr>
<tr>
<td>Revenue $ per Total Legal Spending</td>
<td>$117.17</td>
<td>$247.40</td>
<td>$430.43</td>
<td>$359.32</td>
<td>$465.36</td>
</tr>
<tr>
<td>Lawyers per $B Revenue</td>
<td>2.50</td>
<td>5.52</td>
<td>26.20</td>
<td>10.39</td>
<td>13.27</td>
</tr>
<tr>
<td>Legal Staff per $B Revenue</td>
<td>4.48</td>
<td>9.82</td>
<td>77.09</td>
<td>19.00</td>
<td>22.80</td>
</tr>
<tr>
<td>Lawyers per Legal Staff</td>
<td>0.46</td>
<td>0.57</td>
<td>0.57</td>
<td>0.57</td>
<td>0.67</td>
</tr>
<tr>
<td>Lawyers % of Legal Staff</td>
<td>45.96%</td>
<td>56.76%</td>
<td>57.46%</td>
<td>57.35%</td>
<td>66.67%</td>
</tr>
<tr>
<td>Lawyers per Paralegal</td>
<td>1.87</td>
<td>2.82</td>
<td>3.89</td>
<td>3.43</td>
<td>4.50</td>
</tr>
<tr>
<td>Lawyers per non-Paralegal</td>
<td>0.58</td>
<td>0.71</td>
<td>0.71</td>
<td>0.72</td>
<td>0.86</td>
</tr>
<tr>
<td>Revenue per Lawyer</td>
<td>$75,357,142</td>
<td>$181,159,420</td>
<td>$357,031,004</td>
<td>$280,440,456</td>
<td>$400,000,000</td>
</tr>
<tr>
<td>Revenue per Legal Staff</td>
<td>$43,859,022</td>
<td>$101,773,203</td>
<td>$209,351,142</td>
<td>$152,423,322</td>
<td>$222,969,444</td>
</tr>
<tr>
<td>Internal Spending per Lawyer</td>
<td>$208,365</td>
<td>$300,000</td>
<td>$511,710</td>
<td>$332,127</td>
<td>$450,000</td>
</tr>
<tr>
<td>Internal Spending per Legal Staff</td>
<td>$113,772</td>
<td>$166,666</td>
<td>$270,621</td>
<td>$179,321</td>
<td>$233,016</td>
</tr>
<tr>
<td>External Spending per Lawyer</td>
<td>$183,708</td>
<td>$440,000</td>
<td>$781,609</td>
<td>$615,210</td>
<td>$897,678</td>
</tr>
<tr>
<td>External Spending per Legal Staff</td>
<td>$100,000</td>
<td>$223,083</td>
<td>$446,683</td>
<td>$331,383</td>
<td>$460,606</td>
</tr>
<tr>
<td>Total Legal Spending per Lawyer</td>
<td>$435,000</td>
<td>$794,021</td>
<td>$1,283,861</td>
<td>$957,593</td>
<td>$1,291,666</td>
</tr>
<tr>
<td>Total Legal Spending per Legal Staff</td>
<td>$234,571</td>
<td>$424,242</td>
<td>$711,988</td>
<td>$517,230</td>
<td>$710,541</td>
</tr>
<tr>
<td>Internal Spending % of Total Legal Spending</td>
<td>28.09%</td>
<td>42.96%</td>
<td>45.70%</td>
<td>45.43%</td>
<td>60.87%</td>
</tr>
<tr>
<td>Internal to External Spending Ratio</td>
<td>28/72</td>
<td>43/57</td>
<td>46/54</td>
<td>45/55</td>
<td>61/39</td>
</tr>
<tr>
<td>Internal Spending % of Revenue</td>
<td>0.08%</td>
<td>0.17%</td>
<td>0.43%</td>
<td>0.27%</td>
<td>0.33%</td>
</tr>
<tr>
<td>Revenue $ per Internal Spending</td>
<td>$300.00</td>
<td>$607.69</td>
<td>$1,159</td>
<td>$937.38</td>
<td>$1,250</td>
</tr>
<tr>
<td>External Spending % of Revenue</td>
<td>0.11%</td>
<td>0.23%</td>
<td>0.59%</td>
<td>0.39%</td>
<td>0.45%</td>
</tr>
<tr>
<td>Revenue $ per External Spending</td>
<td>$222.22</td>
<td>$458.40</td>
<td>$1,343</td>
<td>$947.09</td>
<td>$932.20</td>
</tr>
<tr>
<td>External Spending % of Total Legal Spending</td>
<td>40.00%</td>
<td>57.14%</td>
<td>55.14%</td>
<td>55.36%</td>
<td>72.37%</td>
</tr>
<tr>
<td>Cost per Lawyer Hour</td>
<td>$115.76</td>
<td>$166.67</td>
<td>$284.28</td>
<td>$184.52</td>
<td>$250.00</td>
</tr>
<tr>
<td>Cost per Legal Staff Hour</td>
<td>$66.92</td>
<td>$98.04</td>
<td>$159.19</td>
<td>$105.48</td>
<td>$137.07</td>
</tr>
</tbody>
</table>

*For an explanation of each benchmark, please see the see first page of Appendix (p165). For definitions of the quartile and terms at the top of the columns, see page opposite.