

The Virtual In-House Lawyer – A New Model For The Changing Economic Climate

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Abstract

Over the last century, there have been radical changes in technology and the way businesses operate. However, provision of legal services has remained fundamentally unchanged. The article, therefore, explores traditional and long-established methods of how legal services are provided and the charging mechanisms which have been inherent in the industry for many years. In particular, emphasis is placed on the areas most clients find objectionable, focussing on time based charging and inclusion of hidden extras. The economic climate means that many companies are reducing expenditure on pure overheads, such as legal costs. However, disputes and litigation are more prevalent when the economic climate is challenging and increases the need for legal advice within most industry sectors.

The article also stresses that clients want lawyers of the right calibre, with the breadth of knowledge to deal with the array of legal topics affecting the company's day to day business. Additionally, the article reviews the demand for pragmatic and commercial legal advice, specifically tailored to the needs of the particular business.

The article concludes that a growing number of virtual in-house law firms meet these fundamental needs and ultimately signify the potential for real change in the way that legal services are provided.

Key Words

Virtual
In-house
Fees

Background

Over the last century, there have been radical changes in technology and the way in which commerce operates. Computers have revolutionised business, with the advent of emails allowing companies to operate swiftly and remotely. Simultaneously, economic pressures mean that companies have to be more streamlined and conscious of costs in order to maintain a competitive edge. This is particularly apparent in times of recession, where those who aren't able to adapt and change run the risk of financial ruin and ultimately insolvency.

Virtually no profession has remained untouched. Even the medical profession has seen quite dynamic changes, with the establishment of walk in medical centres catering to the needs of a busier and more transient clientele.

One profession, however, which remains substantially unchanged is the legal profession and, more importantly, how legal services are provided. Since the mid-sixteenth century, when the profession was divided into 2 branches, probably the most radical changes were the admission of women to the Law Society as solicitors in 1922 and more recently changes in the rights of audience.

However, technology and changing business practices have had only a peripheral effect on how legal services are provided. The traditional methods of solicitors in law firms, barristers in chambers and recently employed in-house lawyers remain the main ways for clients to obtain legal advice. The profession has largely felt neither the need nor the urge to change the time-honoured practices.

Complaints about the legal profession heralds the need for change

So why the need for change? The old adage comes to mind that if it isn't broken, don't fix it. Yet is it correct to say that the legal profession isn't broken? In that sense, can we truly say that there is no room for improvement?

The UK Legal services market 2008; IRN research report in October 2008 states that there are some 10,000 firms of solicitors operating in the United Kingdom. These range in size from sole practitioners providing generalist advice to private clients (wills, probate, conveyancing and the like), through to multi-national city firms advising across a complete spectrum of national and international legal matters.

The report further states that the estimated value of the UK legal services market in 2008 was £15 billion representing gross fee income generated. By far the largest proportion of those fees were generated by commercial clients. Ironically, it is those same businesses which are having to adapt in order to remain competitive in the current economic climate.

Adaptation of necessity means reducing overheads to a minimum, not just to increase profits but often as a survival mechanism. Legal services are clearly an overhead and the budget for overheads is likely to decrease in the future in line with recessionary pressures.

Despite this current economic downturn, the market for legal services per se is expected to continue to grow. This is despite the fact that clients are expressing greater dissatisfaction with the service they receive and how they are charged for it.

Criticisms of the cost of legal services

A major complaint is that fee structures in the legal profession have changed little in the last 100 years. Typically, clients have little option but to pay external legal advisers based on hourly rates, measured in 6 minute intervals. These rates very much depend upon the seniority and experience of the lawyer involved, but may often bear no correlation to the nature or complexity of the work being carried out.

In the Strategic legal advisor general counsel survey (February 2009), businesses reported that nearly half of their routine legal advice was costing them more than £350 an hour. Large corporate firms typically charge between £300 and £800 an hour for legal services. Clients complain that, at a time when budgetary concerns are uppermost, there is no ability to budget effectively, as legal costs are generally not fixed in advance and may escalate considerably. It is difficult to find cogent arguments to counter this complaint.

Added to this is the general concern that there are hidden costs, which cannot be anticipated, such as administrative charges, photocopying and the like which further increase the overall cost of acquiring legal services. Transparency in pricing is seen as desirable by many clients, particularly if they in turn are expected to provide definitive estimates to their own clients.

Another highlighted criticism is that clients want one lawyer to handle their matter. Clients dislike dealing with different lawyers simply because their matters covers more than one legal practice area. This leads to complaints from clients that they are having to spend time and money teaching an external law firm about their business, if they are then passed from one department to another and having to effectively pay twice for the same learning process.

Criticisms of the nature of the legal advice being provided

Yet the criticisms are more complex and deep-seated. The 2009 survey also looked at the nature of the advice being provided. As most lawyers soon learn very quickly, clients want advice from a lawyer who knows their business. The better the lawyer knows the business, the better the quality of the advice being provided as it is relevant and tailored to the client's specific needs.

An intrinsic part of this is that the lawyer needs to be conscious, not just of the legal position, but also the need to provide commercial advice. This formed a major area of concern from clients. They want a lawyer who can give focussed and pragmatic advice.

The unique role of the in-house lawyer

Increase in the number of in-house legal departments has accentuated a further complaint in the minds of many clients. The structure of traditional law firms is completely asymmetric to the role of an in-house lawyer. As many in-house lawyers would happily confess, the in-house lawyer is a unique breed in itself. Save in the largest of departments which can provide the opportunity for specialisation, an in-house lawyer is generally jack of all trades without the luxury to specialise. It is their role, ultimately, to deal with as much of the routine legal work as possible, using out-sourced services as required.

The business expects a lawyer of sufficient calibre, with the breadth of knowledge to deal with the array of legal topics affecting the company's day to day business. Essentially, a large dose of common sense and commercial acumen is critical. In-house lawyers have very much developed as a result.

It is also true to say that many in-house lawyers obtain a set of transferrable skills. The fact that a lawyer works for a leasing company, for example, does not necessarily mean that their basic knowledge differs markedly from that of a lawyer working within the retail sector, for example.

The focus for any seasoned in-house lawyer is to gain the pragmatic, commercially focussed approach which clients are known to prefer. Combined with this is an ability to climb the learning curve quickly, which is almost an occupational hazard for the average in-house lawyer. It is few in-house lawyers who have the luxury of knowing precisely what area of law will appear on their desk the next day. They are normally expected to deal with any and everything. Often they are required to think on their feet, looking for new and innovative ways to help the company to achieve financial success.

Unlike a traditional firm, they must provide a one-stop shop, without necessarily pigeonholing the problem into a conventional legal practice area. They must also learn to adapt quickly as the dynamics of the business change and profitability becomes harder for all companies.

It is that desire for commerciality, coupled with accessibility and reduced costs, which has led many companies to employ in-house lawyers: many, but by no means all.

At the same time, in-house lawyers are aware of the precariousness of their own existence. Particularly in the time of recession or economic stress, the need to reduce overheads is paramount. Legal teams as an overhead often suffer in such times. It makes it even more important that the services being provided by an in-house lawyer, or by the external resources they select, are viewed as value for money and specific to the needs of the business.

Such considerations, it appears might not necessarily affect the average law firm to the same extent. They will generally not be reliant on only one client, so the loss of a client might not have far-reaching consequences. Many within the legal profession could then view the need for change as neither necessary nor desirable. This seems merely to enforce that old adage about something not being broken.

Yet, as the economic climate has increased the need for legal services, many companies have no option but to continue to obtain those services by use of external law firms. Essentially, even where a company employs an in-house lawyer, two factors remained constant: the continuing need for legal advice within most industry sectors and the lack of options available to businesses in obtaining that advice.

A new approach to provision of legal services

So, faced with the criticism of expensive and inappropriate billing structures, hidden administrative costs, lack of commerciality and over-specialisation, the legal profession is starting to see the need for change. Whilst it is true that companies will always purchase legal services on an ad hoc basis, ultimately we, as lawyers, are wanting to be recognised as providing good, cost-effective legal advice with the minimum disruption to the client.

A small but growing number of virtual law firms have arisen which, in particular, seek to address two of the complaints raised against the profession: high costs and lack of commercial focus. This is directly related to economic factors and an awareness of how clients are affected by the economic climate.

The basic nature of a virtual firm is sometimes debated and a definition is far from clear in many people's minds. This is, though, perhaps more a case of a lack of knowledge and awareness rather than the fact that a virtual lawyer isn't capable of having a recognisable identity.

First and foremost, all virtual lawyers will have one thing in common. There is no physical attendance, in the majority of cases, at the firm's offices. Virtual lawyers work remotely, sometimes home based, but plush offices, with a good postcode and impressive marble flooring is generally deemed unnecessary. Such luxuries are seen as adding unnecessary overheads to the provision of the services, with an analogous increase in costs to the client.

In essence, therefore, a key factor of a virtual firm is that it comprises a group of lawyers working for one firm on a remote basis. The technological advancements we've enjoyed means that voice over internet phones (VOIP) can connect lawyers to a central phone system. Laptops and blackberries can be plugged to any mains supply or internet service and, with the use of wireless internet, accessing emails and documents has probably never been easier. Combined with traditional mobile phones, shared drives, emails and the growing use of cloud computing, the virtual lawyer rarely needs to be physically present in an office. This flexibility inevitably delivers enhanced efficiencies from which the client can benefit.

The second general principle of 'virtuality' is that attendance at the client's office is also kept to a minimum. The concept of adding travelling time to a client's bill is again viewed as an unnecessary cost. Phone, remotely accessed portals, email and occasionally fax is usually sufficient means of communication and a physical presence is often considered superfluous.

Thirdly, in terms of definition, there is usually a core group of lawyers who are connected to the firm by means of some form of contract. The most commonplace arrangement is for virtual lawyers to be self-employed or working on a freelance basis. They will normally have their own client following, which they will handle exclusively. That is, of course, very much in keeping with the traditional structure of a solicitors' firm.

A fourth factor, in defining a firm of virtual lawyers, is that they will often need to have referral arrangements with other specialised traditional law firms and chambers to handle the areas in which the virtual law firm lacks expertise. In the same way that in-house lawyers must recognise when specialist advice is needed, so must their virtual counterparts. Those arrangements may vary considerably from firm to firm, but are driven by the need to ensure the best service possible to the client and to add value in a meaningful way.

In many respects, that is no different to the arrangement a lot of in-house lawyers currently adopt. Most will maintain a panel of preferred solicitors who are instructed periodically, depending upon the area of specialisation required at any given time.

Where a virtual firm has a number of internal specialists, referral arrangements are often still a pre-requisite in order to cover any gaps in knowledge. Most virtual firms will not necessarily cover every aspect of law in the same way as a traditional law firm.

A final but very important factor is that virtual firms are starting to adopt more innovative methods of charging in an attempt to escape the confines of hourly billing and the uncertainty which that promotes. They are not necessarily bound to traditional methods of charging. Instead, real thought is given to what the client wants and needs. There is, of course, no justifiable reason why a firm should not agree to whatever fee arrangement best suits the client, rather than the usual 'take it or leave it' time based billing.

Advantages of using a virtual firm

Set against that general definition, it is easy to see at a glance, that such firms represent a marked change in the way legal services are provided and can be provided in the future.

The advantages are also readily apparent, if we keep in mind the basic premise. This premise is that all lawyers should want to provide commercial legal advice, which is cost-effective, geared towards the needs of the business and leaves the client satisfied and happy to keep using that lawyer. In short, adapting to the economic climate and providing the sort of service which clients say they want when budgetary restraints are foremost in their minds.

The key advantage from the client's perspective is that saving on overheads (sumptuous offices and expensive lunches) means an opportunity to reduce the fees accordingly, but not in a way which compromises the service being provided. Clients can often have access to highly qualified professionals at a much reduced cost. Junior or newly qualified lawyers are not generally found in virtual firms, which tend to be the remit of more experienced lawyers.

The perception for the client, therefore, is that using a virtual lawyer means they are achieving real value for money, which is likely to be the case. Every client visiting those swish legal offices knows that the fee they are charged is, in part, helping to pay for that office. The notion that costs are inflated is such an important consideration that many clients only go to lawyers when they need them, so advice is being obtained reactively rather than proactively.

Most companies, however, would wish to avoid fire-fighting by stopping a legal problem before it starts. The classic example is where a company doesn't believe it can justify spending money to instruct a lawyer to review their standard terms of trading, for example. However, they may later be required to obtain legal advice if they become embroiled in a dispute or court case relating to those very standard terms.

At that stage, they have few available options and the consequences of getting it wrong are much greater. At that point, they need to obtain legal advice. The cost of dealing with that dispute, however, will probably far exceed the amount they would have spent on initial review of the contract because the resultant dispute has complicated matters and requires a different level of review. Yet many clients remain dissuaded from obtaining initial legal advice on the grounds that the cost is prohibitive. Value for money, therefore, continues to play an important part in whether a client will seek that initial advice or simply wait until the problem arises.

Litigation lawyers will undoubtedly benefit from the dispute but the company will suffer. The cost of obtaining legal advice is often expensive but the hidden costs are also significant. The company's internal time and effort in dealing with the dispute is often immeasurable. Yet it is clearly a distraction from the main aim of the company: making profit when economic factors may be conspiring against it. How much better then to sort out matters *ab initio*.

Another clear advantage is that all virtual firms must be regulated by the Solicitors Regulation Authority, bringing with it the obligation to maintain a minimum level of professional indemnity insurance. This gives the client the same protection and peace of mind as they would have when using a traditional law firm.

A dual advantage, benefitting both client and the virtual lawyer it must be said, relates to staffing issues generally. Virtual firms provide lawyers with both flexibility and control which is virtually unrivalled elsewhere in the legal profession. It allows experienced lawyers to adopt new working practices and achieve a work life balance which many lawyers are now actively seeking. As a result, the client gains access to a resource which might otherwise be beyond their financial reach.

The disadvantages are few and are far outweighed by the benefits. It is true that working remotely increases the need for team building amongst lawyers and sharing of knowledge. Yet handled correctly, the client benefits most. Certainly, in the United States, virtual law firms appear to be thriving, despite, or maybe because of the economic climate.

The birth of virtual in-house legal services

So the concept of a virtual law firm is now fairly well-established, albeit that many clients are unaware of the existence or form that a virtual firm may take. However, we are now seeing the emergence of a completely radical virtual firm: a virtual firm which promises to take the legal profession out of the dark ages completely and lead it to the cutting edge of advancement.

This new being is the 'virtual in-house legal service'. It bears all the components of a virtual law firm, working remotely and reducing overheads and costs, but there are significant distinctions.

The first real difference between a virtual law firm and a virtual in-house legal service is that the virtual in-house lawyer performs a unique function amongst lawyers, virtual or otherwise. Earlier statements within this article would clearly tend to support such a supposition. An in-house lawyer is unique and so is the virtual in-house lawyer. In summary, the breadth of knowledge tends to be much wider than specialisation in the traditional legal practice areas.

The second key difference is that existing virtual law firms are precisely that. They are law firms without offices. The lawyers generally work on the 'eat what you kill' premise, particularly encouraged where they are self-employed or work on a freelance basis. Further, requiring a client following again mimics more traditional firms and doesn't necessarily encourage co-operation between the virtual lawyers.

By contrast, a virtual in-house legal service will generally employ its staff, won't necessarily require a client following and utilises a method of working which actively

encourages its staff to co-operate with each other. Ideally, they should work together like a giant remote in-house legal team.

Undeniably the client will benefit, therefore, by having access to the entire 'department' but without the associated costs. The client pays for one virtual in-house lawyer, not the whole team.

The third key difference is that, generally, a virtual law firm will adopt the same practice areas as a traditional law firm, which again means that a client might have to use the services of more than one virtual lawyer. This is not usually the case with a virtual in-house lawyer.

The fourth distinction is fundamental and confirms that virtual in-house legal services are in fact radically altering how legal advice is provided. All lawyers are experienced in-house and have knowledge of the unique features of providing advice in a business environment. They can undertake all the sort of work normally handled by the average traditional in-house lawyer and generally possess innate commercial acumen. This instantly addresses the myriad of complaints levied against the way legal services have traditionally been provided.

If the virtual in-house legal service also proves to be cost-effective, there could be clear advantages for the client's business when constrained by budgetary factors.

Using a virtual in-house legal service, a client can also obtain specific services which are not currently available elsewhere. These fall into two categories. Firstly, for a client without current or with inadequate in-house support, services can be provided on a retainer basis. This gives the client access to a virtual lawyer for a day or more a week who is experienced within the in-house market generally and who can reasonably be expected to be able to hit the ground running.

Added to that is the fact that a client can avoid some of the costs, patent and hidden, of hiring an in-house lawyer or additional legal support. The office, training, IT and set-up costs are circumvented. These are borne by the virtual in-house legal service, as is the professional indemnity cover.

By way of contrast, if a virtual lawyer has their own following, it is far more challenging for a virtual law firm to provide cover during absences. In part, this harks back to the client's dislike of having to change their lawyer. However, holidays and other absences can be covered by a replacement virtual in-house lawyer as in-house skills are usually transferrable.

In addition, if a client is employing their own in-house lawyer or additional staff, this is often an unknown quantity and harder to rectify if a mistake is made. If the virtual in-house lawyer is unacceptable, it is easy enough to simply stop using their services.

The second category of special service provided by a virtual in-house legal service is ad hoc support for existing in-house services. This is particularly so where a traditional in-house team needs ad hoc work or help when busy working on other projects. The advantage is that the in-house lawyer is receiving assistance from a virtual in-house lawyer. Clients have said this is particularly useful in smaller teams when a key member is on holiday or otherwise absent for a period of time. Traditional legal firms cannot usually supply experienced in-house lawyers for ad hoc or routine work.

In combination, therefore, a virtual in-house legal service allows a client access to an experienced in-house lawyer on a retainer or ad hoc basis. This is not something which is widely available within the legal profession in its current format. In some respects the closest equivalent is a locum or other such temporary staff but that still falls far short of a true virtual in-house lawyer.

However, it shows the legal profession's determination to respond effectively to the changing economic climate.

As stated above, there are compelling reasons why virtual in-house lawyers do not need to physically attend at an office. Site visits can be kept down to a minimum. Again, therefore, clients can still be charged significantly reduced costs, as overheads are negligible but again without compromising the quality of service being provided.

Clients are often offered the option of fixed or capped fee arrangements in respect of their virtual in-house legal service. Retainer and ad hoc work naturally lends itself to this form of fee structure. This addresses the complaint that, in the economic downturn, clients should be able to budget to cover their legal costs, as is the case with most other professional services.

Conclusion

Going forward, therefore, the legal profession is beginning to respond to the changing economic climate. After centuries with little substantial progression, many lawyers, within all branches of the profession, have embraced the need to mutate in order to survive as times become harder.

The need to address both issues of cost and quality of service is heightened in times of recession. It means that the legal profession can no longer seek to mystify clients into accepting services, when the client is not happy with how those services are provided or the price they have to pay.

Appreciating the need for change was the first step in the process of evolution and this has clearly begun. This alteration is not simply in response to the economic climate but also, and equally as important, as a clear attempt to ensure good quality legal advice, in accordance with the demands of the client. The use of new technology enhances efficiency and in turn leads to cost savings.

The advent of virtual law firms and now virtual in-house legal services has heralded the next steps in that process. They have signified a means by which clients have a viable option to using expensive traditional methods, but without displacing those methods in their entirety.

To the client, this option will indicate responsiveness within the legal profession, which can surely only encourage greater use of lawyers' services. Clients will be less apprehensive of prohibitive costs and lack of commerciality, which may encourage them to seek proactive legal advice. This in turn minimises the negative experience of which so many clients complain.

In conclusion, therefore, it is noteworthy that one of the newest trends in the US is satisfaction based billing. Led by a virtual law firm, it propounds the belief that clients

should only pay if they are happy with the services they receive. It's too early to say whether the UK is ready to adopt this, on a wholesale basis, as being the next logical step in the evolutionary process. Yet, however the legal profession mutates in response to changing economic times, something is fairly certain: virtual legal services have a clear role to play and they are also here to stay.

Ortolan Legal Limited is a company providing virtual in-house legal services through a network of lawyers working remotely. As experienced in-house lawyers, our staff fulfil the same role as the traditional in-house lawyer, working on retainer or ad hoc matters and either on a stand alone basis or in conjunction with an existing in-house team. The company was launched in 2009 and is a legal disciplinary practice regulated by the SRA.