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The 2020 Issue

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2020

VISION

WHO ACHIEVED

THEIR STRATEGIC GOALS?

WHAT LESSONS HAVE THEY LEARNED?

AND WHAT DO FIRMS NEED TO DO TO

HAVE CLEAR SIGHT OF THE NEXT FIVE YEARS?

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2020

In a month's time it will be a new decade – a time for reflection on achievements and whether goals have been reached. This issue examines firms' '2020 Vision' strategies, put in place during the last decade, and asks which of them have been successful. The theme of looking ahead can be seen elsewhere in this issue, as we talk to European firms in London ahead of the UK's possible exit from the EU in January.

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Bliss it is in this dawn to be alive: The next 10 years in the law

Since 2010, change has been gradual. Workplace cultures are largely more thoughtful and accepting than they were a decade ago, but the idea that the practice of law has been disrupted is laughable. Excuse me if I raise an eyebrow at managing partners getting excited about the elite consultancy model and diversity of professional experience when their firms admit only lawyers to the partnership. But there are significant changes afoot. Here are my predictions:

- Equity will stretch and partner pay bands will splinter: By 2026, the highest earners in the top firms in London will be on double what they are now, which will mean that 'average' PEP will genuinely become a meaningless metric.
- By 2024, the most prized laterals will be female and will make up 40 per cent of movers: US firms in London are useless at growing their own or thinking long term about a talent pipeline, but know they need more women to show their clients that they are, in fact, progressive.
- There will be breast-beating on the meaning of legal work as firms search for a binding agent other than money and presenteeism. Corporate introspection and LinkedIn will be infested with emotional hashtags, #Godhelpus. There will be entire conferences about purpose.
- In 2021, all major firms will recognise that a quarter of their female workforce is having a period at any one time, and make tampons and sanitary towels freely available in all loos. (We can but hope.)
- By 2028, most major firms will have banned all flights unless for the managing partner or in emergencies; the top 50 firms will go plastic-free in their workplaces, including in their supply chains; and firms will publish a global water audit. There will be sustained demonstrations outside firms that act for polluters. A top firm will ditch polluter clients for reputational reasons.

- The pyramid will persist, but the most dynamic leadership talent will move to the captive New Law companies, which will break free of their parents, often by listing. By 2024, Peerpoint and LOD will enter the top 50 by revenue.
 - By 2030, 10 UK firms in the top 50 will disappear – some of them by reverse takeover, some by listed legal aggregators and some by US firms. (We have a watchlist.)
 - By 2026, a data/tech/life sciences charmed circle will emerge, which will be a mix of current US and UK tech specialists, one magic circle firm and two US giants. They will appear on the defining court cases of the decade.
 - The size of in-house teams will decrease and a third of the FTSE100 will move to managed services by 2030.
 - By 2029, a number of law firms will – deliberately or inadvertently – have digital influencers in their workforce, and one of them will make a catastrophic reputational error.
 - And not unrelated to the above: the biggest skills gaps in law firms will be digital comms and branding, but law firms will struggle to attract the best talent unless they look and sound more modern, so they'll have to resort to big bucks instead. There will be a revolving door.
 - By 2022, firms will establish conduct teams to troubleshoot internal issues before the SRA appears; law firm general counsel will be the most powerful voices in partnerships, and a new career path of internal policing will flourish.
 - And at some point in the next 10 years, someone will finally solve the biggest cultural problem in the legal sector: what to call a non-lawyer.
- Happy new decade.

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I want to be a GC. How do I gain strategic experience?

THE DILEMMA

I am five years qualified, and two into an in-house job at a company with around 20 lawyers, where the board really takes our GC seriously as a strategic leader. I would like to follow in her footsteps, either here or elsewhere: how can I gain the strategic experience that is so desirable?

John Mayes



General counsel (commercial),
Alexander Mann Solutions

One of the easiest ways to get experience is to ask for it. Ask her if there are any projects you could assist with, with the specific goal of trying to improve your understanding of how the legal team can advance the strategic goals of the business. You are not senior enough to be a threat to your general counsel, so she should welcome your interest in becoming more like her. Avoid being over-ambitious, as that could be counterproductive (and could affect your relationships with the rest of your team).

If opportunities do not present themselves internally, identify some external training courses that offer coaching in the softer skills every junior lawyer needs. The courses themselves may not make you more strategic, but might spark some ideas you could bring back to your day job, and you might meet some people who have been in the same situation and could share their experiences from other organisations.

Alternatively, look outside of work altogether – becoming a school governor, for example, is a real eye-opener into the world of finance, HR, strategy, politics, but you have to genuinely want to be involved rather than just collecting CV points.

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Ask your GC if there are any projects you could assist with”

The views expressed here are personal ones and do not necessarily reflect those of the panel's organisations. If you're a lawyer who wants to put a question to our panel of experts, email richard.simmons@centaurmedia.com

Natalie Salunke



Head of legal, Fleetcor

It would make it known to your GC that you are keen to learn and would like to be a GC some day – not all lawyers aspire to this. She should be able to give you her expert guidance – and also this will ensure she has this in mind when delegating tasks to you or getting you involved in certain initiatives.

There are some conferences and courses that might get you thinking more concertedly about the skills and behaviours expected of you as an aspiring GC, as well as get you networking with your peer group and other GCs. In terms of legal skills you might need to work on, I would think about what knowledge you need to sit on a board, and how to gain exposure to that. GCs are involved in the big acquisitions and big litigation items, so start getting more comfortable with those areas – and don't under-evaluate knowledge of company secretarial matters. See what opportunities there are to sit on any subsidiary boards so you can start to gain experience of being the legal adviser with a seat at the table.

Isabelle Meyer



Deputy group general counsel, Just Eat

Start by sharing your desire to develop with your direct manager, or the GC if you report to her directly, and letting him/her know that you would like to discuss a career plan with a view to gain strategic experience.

Most companies have quarterly or biannual performance reviews. You should be well prepared for your next review and ensure that you discuss your career aspirations with your manager.

As there is turnover in all companies – meaning that you may report to someone else in two years' time – make sure that you agree a development plan in writing.

Performance reviews are usually shared with the HR team, which looks at them for succession planning purposes.

You should also start reading the annual report of your company with a view to better understand the vision and the values of your employer.

Lawyers sometimes forget that the key to success is to become/be seen as a business partner and not just a good technical lawyer.

To provide the most relevant legal advice, we must understand

“

The key to success is to be seen as a business partner and not just a good technical lawyer”

what the business is trying to achieve. A great in-house lawyer will therefore have the ability to provide a solution that is both legally compliant and addresses the business needs.

Remember that the business may not be interested in hearing about all the legal details. You should adapt your language based on your audience, prepare short decks to explain the legal framework for a specific project, give them pragmatic advice and propose solutions that are legally compliant and business orientated. If the business feels that they know enough to reach their objectives while staying on the right side of the law, they will always involve you and see you as a business partner.

As well as being their legal adviser, you will also be consulted for strategic advice.

Sally Davies



London senior partner, Mayer Brown

As an in-house lawyer, there are three things you need to get a handle on how to start thinking strategically. Firstly, you need to understand the business you are in. You need to be curious about what your organisation does, who its customers are, what makes your business unique in the market and where it fits in the sector you operate. Meet with the marketing, sales and accounts teams and ask them what they do. Get to understand all elements of the business by talking with people who know their job. You will start to learn the complexities of how businesses operate.

Secondly, keep abreast of developments in the legal sector. Technology and client demands are forcing change and you need to understand how this affects your team. Keep your knowledge up to date and be aware of legislation that might impact your business. Think about risk and risk management (both legal and commercial) and speak to your GC about how you can support them in their (strategic) role. Start to develop a holistic understanding of the sector and your part in it.

Thirdly, talk to your GC, ask for time in her diary. Seek her guidance as a mentor, or ask her to propose someone else who might be able to give you some insight into a wider role. Ask her how she got into the position she is in with her strategic role.

Your job as a strategist is then to connect all the dots above. For this you will need a logical mind, management knowledge (either taught or experienced) and an ability to see past the obvious. You will need also to learn some of those softer skills that lawyers aren't always great at: listening, empathy and collaboration.

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Meet with marketing, sales and accounts staff and ask them what they do”

■ A longer version of this article is available at www.thelawyer.com

Shaking things up for mutual success



Catrin Griffiths

Royal London general counsel Fergus Speight tasked his team with changing the legal function operating model. Solicitor Peter McCusker led the way, and collaborated with procurement to reboot relationships with external firms

Royal London is the largest mutual life and pensions company in the UK. As a mutual, it is not owned by shareholders; rather, its key stakeholders include roughly one-and-a-half million members. These members share in the profits of the mutual company, which has been around since 1861; the culture and the language is all about long-term benefits.

In 2016, Royal London GC Fergus Speight challenged his team to work together to redefine the legal function's operating model. What would come under scrutiny was the in-house team's existing relationships with its external law firms and rebuilding the way it managed them, with the aim of increasing the value provided by the legal function to Royal London.

This case study explores how Royal London went about rebooting its relationships with external firms and how lawyers worked with the procurement function to create a new model.

Solicitor Peter McCusker was tasked with leading the initiative. "We were given free rein to design our operating model as we saw fit, splitting into a number of self-organising teams, and adopting a number of agile principles as we went along," he says. "This was a bottom-up approach to organisational change."

The team started by developing its objectives:

- Broaden and increase core team capabilities, boosting the ability to deploy the right lawyer at the right time.
- Reduce legal and operational risk through consistency of process and utilisation of resource.
- Redirect resource to focus on strategic project activity by alternatively resourcing business as usual.
- Build a mature supplier relationship management framework capable of ensuring consistency and maximising value.

"Often when we talk about managing law firms and value, it's about panel reviews and driving rates down to meet organisational efficiency demands," says McCusker. "We wanted to look at things a little differently, because, we think there's strength in difference."

"We couldn't ignore it, but we wanted to think beyond the pounds and pence. The fact is we can all add tremendous value to our businesses by cultivating and nurturing relationships."

"In order to do that, a team was created with the purpose of strengthening relationships with our external law firms. It wasn't an easy task," admits McCusker. "Our approach to law firm management was inconsistent, our record keeping had become disjointed, and we found that we had a tonne of MI [management information] reporting that we weren't using."

Apart from for a chunk of commercial property work, Royal London had no panel. It had always operated a 'best of breed' model, which allowed it to be flexible in the selection of our external lawyers. "But this model brings complexity, and that complexity must be managed," says McCusker. "We didn't have a long-term supplier strategy. We found our strategy was near-term, often looking ahead by one or two transactions."

"On top of that, we didn't have a documented strategy which would allow the whole team to consistently pull in the same direction and maximise value to our business."

It was clear that the Royal London team had to build and improve processes and issue rules of engagement. But it also had to tackle the relationship management model.

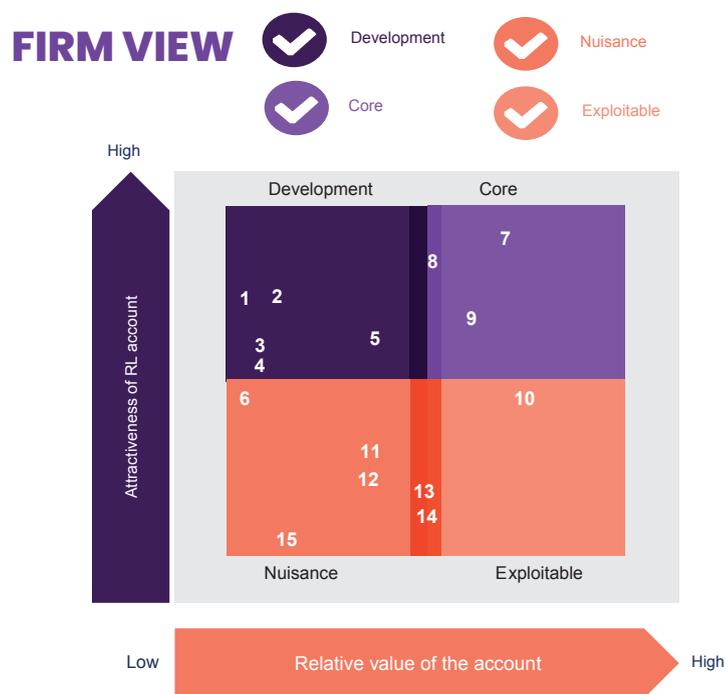
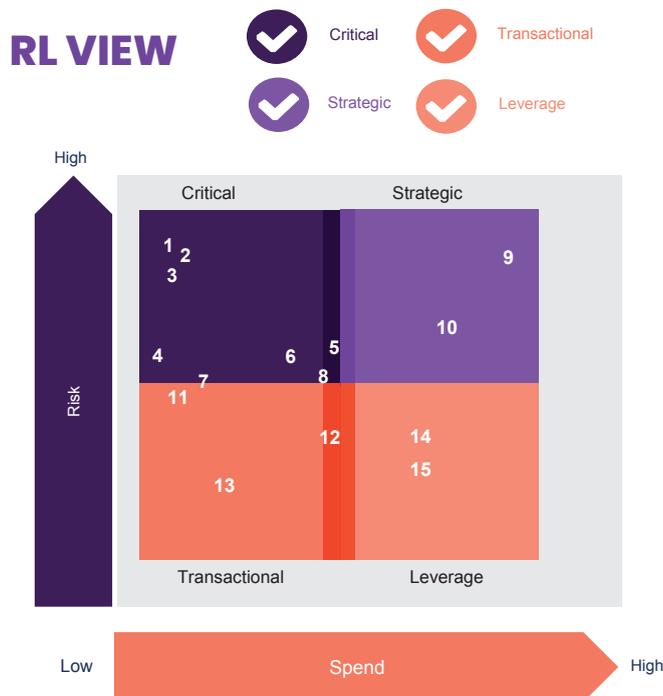
"To truly understand if a relationship is working, you need structure," says McCusker. "Through structure, flows data. And with data, we can improve service and increase value."

So McCusker and his colleagues did something that many lawyers balk at doing. In November 2018, they called in procurement. And they were introduced to the Kraljic Matrix.

The Kraljic Matrix was debuted in the Harvard Business Review in 1983 and was created for industrial purchasing to analyse suppliers, but has since been modified and adapted.

Legal and procurement then got to work mapping Royal London's law firms on to a two-by-two matrix. On the X axis, they considered the 2018 legal spend of each firm that was instructed. The Y axis considered the risk involved in the work those firms undertake.

With this data, the model suggests an approach to maximise the value of the suppliers in a particular segment, says



McCusker. “Starting with the bottom left, with a low risk low spend, these relationships are often transactional and the theory suggests there is limited value in investing too much time managing these relationships.

“Moving to the right, with low risk / high spend, here we should look to leverage these relationships. This might be through reducing costs through rebates, or process improvement initiatives.

“Moving up to the top left, where we have low spend/high risk, the theory suggests these are critical relationships worth developing and expanding. For us, this is the waiting room for our last quadrant, which is the top right.

“In the top right, we have high risk / high spend activity. You can see that this is a fairly exclusive club, which represents our strategic partners. These are suppliers with whom we have strong relationships and long-term partnerships, but we need to seek and extract more value through greater alignment.”

The matrix approach is intended to be refreshed annually, which allows Royal London to add new firms to the roster, while taking account of changes in spending, risk, and wider market activity such as mergers in relation to its existing firms.

So far so good. But there was a problem lurking – a problem of perspective.

Top to bottom

The matrix expresses Royal London’s view of its relationships, but does not consider how its external firms view Royal London as a client.

So the team mapped the same firms again, only this time considering the relative value of the Royal London account, on the x axis, against the attractiveness of the Royal London account on the y axis. McCusker says: “Essentially, from the firm’s perspective, how much do you have to spend versus how much do we like you?”

“At the bottom, we see that low value/low attractiveness results in feelings of nuisance. Worse, as the value increases but the attractiveness remains stable, we, as a business, start to become exploitable.

“It’s a little rosier at the top of the matrix. Where the attractiveness of the account is high, the model understandably suggests that firms will want to develop the relationship further. Where the attractiveness and value of the account are high, firms view the relationship is core, and are incentivised to defend this position, often through increased service and responsiveness – not always through cost reduction.”

By using graphical analysis in this way, Royal London could literally map its relationships in a much clearer way and start to develop a strategy in order to increase engagement with the right firms – which would eventually provide better outcomes to the business.

To take number eight as an example: in terms of value and risk, this firm – which is Wedlake Bell – is right in the middle. “It is slightly above the horizontal, which suggests there is some risk involved in the work they do,” elaborates McCusker. “On the other hand, the annual spend is to the left of the vertical, which makes it a close call between development and minimisation of this relationship.

“Now let’s look at it from the firm’s perspective, or, rather, our perception of their perspective. They’ve impressed our team time and time again, and they’ve used every opportunity to get closer to the ins and outs of our business, which, as we all know, not every firm does.

That is a long-term partner that we want in our corner.”

In other words, the Royal London team saw how this model could help them identify opportunities to invest in the right firm at the right time.

On the basis of this data, Royal London started focusing on deepening its relationship with Wedlake Bell. Six months after ►



To truly understand if a relationship is working, you need structure. Through structure, flows data, and with data we can improve service”

Peter McCusker

the exercise, Wedlake Bell became the first firm to undertake a managed service on Royal London’s behalf.

Royal London outsourced ad hoc legal queries from its customer services teams. This legal referrals service (LRS) is now provided on a managed service basis by Wedlake Bell. Led by relationship partner David Golten, who began working with Royal London a few years ago, the scope of Wedlake Bell’s of its engagement with RL has grown significantly, in part through this appointment as RL’s first managed service provider. LRS has also yielded comprehensive management information, which identifies trends, training needs and self-service opportunities, reports McCusker. The day-to-day relationship is managed by RL paralegal Shona Laidlaw, allowing four senior lawyers previously sharing this work to focus on strategic activity. “[With Wedlake Bell] taking on a chunk of our BAU, we were able to free up our lawyers to do more strategic activity, and that cuts right to the heart of our target operating model,” says McCusker.

Royal London took a leaf out of the private practice playbook. Just as law firms routinely tier their clients as gold, silver and bronze, the legal function implemented its own tiering model. “This allows us to prioritise who we interact with, when we interact with them, and sets out the MI we’ll get when we do,” McCusker adds.

In the top tier, RL has its strategic partners. There are two firms in this category, Pinsent Masons and Eversheds. “Entry to this track requires multiple touchpoints across our business, a multidisciplinary practice, and strong alignment with our lawyers and our business,” says McCusker. “We manage this relationship closely, and that management involves legal and

Royal London’s key learnings:

- Earlier engagement with the procurement team would have been great. We have a strong relationship with our procurement colleagues, and that allowed us to be open and understand each other’s objectives. It’s important to define roles during the development of the strategy, and, more importantly, the role of the procurement team when you’re up and running.
- We stalled on a few occasions thinking that the procurement team might have something ready-made for us to use. In fact, as with most (if not all) of the work on our target operating model, what works for others will not necessarily work for you.
- My one piece of advice to any legal team undertaking any operational change is that there’s tremendous value in the journey. It’s hard graft to work out where the problems lie, and to avoid jumping to solutions.
- Our most productive days were the hardest days – mostly spent holed-up in a room in Edinburgh or London with a shared screen, a few laptops and bunch of post-its – but the output was fantastic.
- Momentum was an issue across the piece. I think smaller milestones would have allowed us to maintain momentum and celebrate success more frequently.

operations professionals in equal measure.” The next tier is Royal London’s managed service partners, of which four are property firms – Cannings Connolly, DAC Beachcroft, Gowlings and Pinsent Masons – and two are BAU-managed service providers – Wedlake Bell and Konexo (part of Eversheds Sutherland). “This requires more frequent, data-driven interaction, and is operations-led with support provided by lawyers where needed,” says McCusker.

All other firms fall into a final tier. Royal London has committed to meet these firms annually, but it’s important that those meetings have substance and structure, says McCusker: “When we do meet, we know who’ll be in the room, what we’re going to discuss, and the MI that they’ll provide.”

An example of how this works in practice is how Royal London has outsourced procurement contracts. The internal procurement team tiers the criticality of Royal London’s suppliers from 1 to 4. Tier 3 and 4 contracts are outsourced to Konexo, while tiers 1 and 2 are of regulatory significance, and therefore strategic. “We’re keeping our internal lawyers involved in the strategic work, whilst at the same time freeing them up for additional project activity,” says McCusker.

The year-long project yielded three key benefits, concludes McCusker: alignment, performance and cost.

“On alignment, we’ve got shared goals, increasing our ability to work as one team to deliver our vision to be a platform of legal services to our business. On performance, we’ve got clear and workable mechanisms to improve performance through MI and continuous improvement. And on cost, we’ve got a consistent model which allows us to benchmark and challenge.”

Mutual satisfaction, indeed. ●

JERSEY: WELL PLACED TO OFFER CERTAINTY THROUGH BREXIT

Neither a member of the UK nor the EU, but with strong links to both, the island will continue to support investment throughout the transition period and beyond

With much uncertainty persisting around Brexit as the UK continues to debate how to separate from the EU, Jersey – not being part of the UK or the EU, but with strong ties to both – is almost uniquely placed to help bridge the Brexit gap and ensure investment into and out of the UK can continue seamlessly and unhindered.

Jersey, a Crown Dependency that is not and has never been a member of the EU, is currently part of the EU Customs Union for the purposes of trade in certain goods by virtue of Protocol 3, an agreement that exists because of the UK's membership of the EU. That arrangement will cease once the UK's membership of the EU ceases. Financial services, however, have always been outside the scope of Protocol 3 and that will not change because of Brexit.

For financial services, Jersey has access to the EU through its own bilateral agreements, which are independent from the UK's EU relationship, and is able to market financial services to the EU because they meet requirements imposed by it.

Strong and flexible

Jersey has made significant preparations to mitigate the impact of Brexit and, as a result, has not only put itself in a strong position to continue to play a positive role in supporting UK outward and inward investment through Brexit, but to play a vital role in the UK's global ambitions in the longer term, too.

In terms of accessing EU investor markets, for instance, Jersey is a 'third country'. As such, after Brexit, Jersey will maintain access to EU markets just as it does today – courtesy of existing bilateral agreements between Jersey's financial regulator the Jersey Financial Services Commission (JFSC) and the financial regulators in 27 EEA States.

These agreements enable the island to offer a strong and flexible regulatory solution for non-EU fund managers through National Private Placement Regimes (NPPRs), which have proven highly successful and tried and tested in key markets such as Germany and the Netherlands, as well as the UK.

Today there are more than 170 non-EU managers making use of this route to market.

Our focus is on working with fund managers and their advisers in the UK to give them clarity around Jersey's proposition, so that when Brexit happens, managers will be able to continue to operate seamlessly through

Jersey's familiar platform. Meanwhile, Jersey's strong constitutional ties to the UK mean it is also well-placed to enable ongoing access to UK investors and opportunities. A significant number of investors in Jersey funds are based in the UK, for example, and Jersey's access to these will remain unchanged, no matter what Brexit brings.

In fact, in March this year, Jersey signed a memorandum of understanding with the FCA to ensure that Jersey funds can continue to be accessed by UK investors, regardless of the outcome of Brexit. It is great news for managers wanting to access the considerable UK investor pool, and an important measure that underlines Jersey's commitment to working with key stakeholders in the UK to support and enable cross-border investment.

Global vision

Further, because Jersey's perspective is global, with around 50 per cent of new business into Jersey now coming from beyond Europe, Jersey is ready and willing to be a key partner supporting the UK as it forges a new identity around the world in the longer term – helping to channel good-quality capital from overseas centres, such as the US, the Middle East, Asia and Africa, into the UK, and by putting UK capital to work in growth markets elsewhere.

Fundamentally, we believe Jersey can play a really positive role through Brexit and beyond, benefiting investors in both the UK and EU.

The overwhelming message is that, while this is a period of real change, Jersey is well placed to provide better solutions, a stable platform and a certain environment, allowing investors in London, the UK, the EU and further afield to look to the future with confidence.



Joe Moynihan,
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THE FUTURE OF A NATION AT STAKE

Being assistant general counsel of Singaporean sovereign wealth fund GIC is rewarding, says Jarlath Pratt, but increased regulation and competition are adding to workload

By Ana De Liz

It's nice working for, effectively, a country investing for the future benefit of that country," says Jarlath Pratt, pointing out one of the rewards of the role

he has had for almost six years as assistant GC of Singaporean sovereign wealth fund GIC.

The fund has investments in 40 countries and more than \$100bn in assets around the world. Pratt is the most senior legal counsel for GIC Europe-wide, heading the legal function for the Europe and Africa time zones.

He is also in charge of the legal aspects of its private equity and infrastructure investments, one of the four pillars of GIC's legal and compliance function, in those jurisdictions.

"Our role is to manage GIC's legal risk, but we also partner with the deals team and give them strategic and other types of advice," Pratt says, adding that for the past six years the investment teams have been doing a greater number of deals, which have become ever more complicated.

The GC, dual-qualified in London and New York, started out as a corporate lawyer at Travers Smith. He moved in-house shortly after the 2008 financial crisis to Barclays Capital, the UK bank's investment arm. After three years, he joined GIC, where he says the work can prove more varied and sophisticated than at his previous posts. "We take part in some of the largest, most complicated and highest-profile deals that take place in the European market," Pratt says.

Being at a smaller organisation, with less bureaucracy, also allows him to be closer to the business teams and the decision-making process, and to be more innovative.

"We've been exploring legal tech as a way of freeing up our time to work on higher-value issues and matters, and we've brought in paralegals since I've been here. London was the first office to bring in paralegals and that's something we really championed, so that we could focus more on deals and key transactions," Pratt says.

Regulatory challenges

Though satisfying, the work comes with many challenges. Among those that he and his team of four lawyers, one compliance officer and one paralegal in London, have had to deal with is increased regulation. In the private equity space specifically, this means harder-to-execute deals, with investments in heavily regulated industries translating into additional workload. Another issue is increased competition.

"There's lots of capital chasing the same deals, and there are lots of people now competing with us for investments, both in terms of funds and direct investment – and that's only growing," Pratt explains.

As a result of the increased number of deals, GIC's compliance team has seen the most growth while Pratt has been with the fund. It now has around 15 compliance officers. In contrast, the private equity and infrastructure team has eight lawyers globally, while the real estate team and the public markets and corporate services team have six lawyers each, spread across

GIC

Assets: Over \$100bn

Size of legal team (global): 35

Headcount: around 1,500

Main external firms: Akin Gump, Freshfields Bruckhaus Deringer, Herbert Smith Freehills, Kirkland & Ellis, Latham & Watkins, Proskauer Rose, Schulte Roth

CV

JARLATH PRATT

Reports to Global head of legal for private equity and infrastructure, Renee Teo

2018-present:

Senior vice-president and assistant general counsel, GIC

2014 - 2018:

Assistant general counsel, GIC

2013-2014:

Counsel, GIC

2012-2013:

Vice-president of private equity, principal investments and M&A, Barclays Capital

2010-2012:

Assistant vice-president of private equity, principal investments and M&A, Barclays Capital

2004 - 2010:

Trainee and associate, Travers Smith



“

When you're doing deals worth up to and over £1bn, then it's obviously important to get the advice of leading regional experts”

■

New York, London and Singapore. The increased complexity of the deals that the sovereign wealth fund has been handling, and its lean legal team of just 20 lawyers (excluding compliance) around the world, means that the GIC's legal advisers regularly work closely with external counsel for strategic and regulatory advice.

It called upon Dechert to manage its stake in data company Refinitiv through its acquisition by the LSE, for example, while in London, Pratt taps Kirkland & Ellis, Proskauer or Freshfields Bruckhaus Deringer for M&A. It also turns to Akin Gump and Sidley Austin for funds work.

“Even if we had a very large legal team, we probably wouldn't have the expertise of 40 different jurisdictions. In very large transactions, I don't think you can manage

risk appropriately by trying to do all of the work in-house, you need to use experts in the relevant jurisdictions,” Pratt says.

“When you're doing deals worth up to and over £1bn, then it's obviously important to get the advice of leading regional experts.”

All in all, the sophistication and intellectual challenge of the deals that Pratt has been giving advice on is what keeps him going, together with working towards being able to provide a rainy-day fund for the country.

“And this is something the Singaporeans feel very strongly. It impacts on the rest of us as well, that we're here investing money for the future benefit of the Singaporean people, which is a nice thing to think about sometimes,” he adds.

Inside line

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HOW BETTER DOCUMENT TECHNOLOGY LEADS TO MORE SATISFIED CLIENTS

Document technology with built-in digital transaction management can help a firm build its reputation by freeing up lawyers' time and vastly improving the client experience



Abhijat
Saraswat,
Litera VP of
international
business

In today's crowded legal marketplace, competitive law firms cannot afford to neglect the client experience. Instead, they must intentionally build a reputation for happy clients. These clients – the ones who walk away feeling that they received a good deal on great service – are the source of firms' repeat business, referrals, and ability to compete globally.

Lawyers with access to document technology that includes transaction management can help your firm build an outstanding reputation.

What does an optimally satisfied client look like?

A 2017 survey of clients at UK law firms found that “Not a single client interviewed was satisfied with what [their] law firms provide”. These clients complained about ‘poor visibility’ into the work their law firms were doing, the costs and timeliness of that work, “‘superficial’ interactions with law firm partners ... and no desire to help them improve their operations to save costs.”

Excellent service for clients includes the following:

- Clients should be satisfied with the experience of the representation. Transactional clients want to have a smooth, transparent process in which they can stay apprised of what's happening in their case.

LexisNexis examined the client experience for the top 50 law firms at its 2019 thought leadership event and found that, among the characteristics of excellent client service, “communication was king”. However, law firms expressed hesitance about whether they could integrate improved communication practices into their “business as usual” routine. A recent study showed that 40 per cent of US law firms didn't respond to an email from a prospective client; more than half didn't respond to voicemails within 72 hours.

Communication with current clients should be a no-brainer, as it's directly billable and therefore profitable, but lawyers struggling to create documents can lack time to return calls or emails.

- Clients should be happy with the outcome or result of the representation. At the end of a deal, clients should

understand what happened and not have any lingering questions or doubts. They should also feel pleased with the results and speed of the transaction.

- Clients should be happy – or at least not upset – about their legal bill. Recent research from the Legal 500, grading law firms on a range of client-service criteria, found that “price in and of itself is not the most important factor” for clients. “What is more important is that clients believe they are receiving value for money – and indeed added value,” it said.

Clients should also not receive unexpectedly high bills. The LexisNexis meeting concluded that law firms might inadvertently diminish the client experience by “providing fee estimates based on unrealistic assumptions”, leading to dissatisfaction when the actual fee exceeds the initial estimate.

Whereas some of these characteristics are about lawyers' personal skills, document technology can aid client satisfaction.

Document technology incorporating transaction management leads to satisfied clients

Document technology can, and indeed should, continue through management of the transaction itself. Transactional legal documents are only useful after they've been drafted, so document workflows—and technology—should continue beyond drafting.

Yet typical technology leaves lawyers and clients to muddle through transactions with hard-copy documents that are difficult to track and manage. The end result is a frustrating, slow process wherein clients don't fully understand what's happening with their deals. When the paperwork has all been signed and delivered, clients are left wondering whether they got a good outcome. To add insult to injury, the eventual bill seems high compared with the services they received. The firm's reputation in these clients' eyes is uncertain at best.

Optimal client service, supported by fully functional document technology, turns this experience on its head. State-of-the-art document technology catches errors in spelling, formatting, definitions and clauses, and streamlines transactions by jettisoning paper. This frees up lawyers' time and focus for value-added contributions and the king of client service: communication.

If you're not building your reputation by providing the best possible client service, consider whether upgrading your document technology – and building in digital transaction management – can help.



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EMBRACING THE CHANGE

In a moment of frustration, Katherine Bellau decided she would be part of transforming the culture at Moneysupermarket Group

By Richard Simmons

“It has not been nine years of smooth glide,” says Katherine Bellau of her time at Moneysupermarket (MSM) Group. “You could look at my career here so far and it might appear to be a nice linear trajectory without any waves in the ocean, but careers are not like that. We all have times of personal and professional challenge and I have had to navigate those too.”

Bellau’s MSM career path does indeed look smooth enough. After training at Dentons and DLA Piper (she was a trainee at the time of the infamous defection of 11 technology, media and telecommunications (TMT) partners from the former to the latter firm in 2004) and a spell lecturing at the University of Law, she joined MoneySavingExpert.com as its first lawyer in December 2010.

Three months later, founder Martin Lewis confided he would be selling the business to MSM, kicking off an 18-month sale process “which ticked everything in the legal textbook that you would want to do as an in-houser”.

Bellau became deputy group general counsel at MSM in 2015, being promoted to general counsel and company secretary at the start of 2019.

So far, so smooth.

Making a difference

But there have been professional challenges nonetheless. As is the case in most in-house teams, MSM has a pyramid structure.

“That’s often the way it is organisationally and you can’t always get to the top, so you have to ask yourself how are you going to make your mark and grow within the framework that exists?” Bellau says.

“You can either sit there and get frustrated, or ask yourself: how do I make a difference?”

She continues: “It was in one of my moments of frustration that I realised very clearly I wanted to be part of making cultural change happen at MSM. I wrote it down in my notebook and I can remember the day it really dawned on me: you can sit around and say ‘I want to make that change happen but it’s too difficult and I’ve got too much work to do’ – or you can look for places to start to influence that change.”

“It is not done by one person, but when there is a glimmer of hope that flexible working will be embraced in an organisation, what do you do to double down to demonstrate the benefits of it? What do you do when diversity and inclusion becomes a meaningful theme in an organisation? You can let other people do it or you can lean in.”

New strategy

Bellau has done exactly that, embracing the change that MSM is going through under new CEO Mark Lewis. Eighty per cent of her team, for example, now work flexibly or part-time.

Meanwhile, the group’s new strategy is to optimise its core business and achieve new market growth and disruption.

To that end, Bellau has made a deliberate effort to persuade her team to explore and talk about “team purpose, organisational purpose, how they map one against the other and how that translates into real tangible delivery.”

She concludes: “I always say to my team, if you are ever stuck in the lift with Mark and he asks you ‘how are you, what are you doing’, you cannot just say, ‘I’m very busy’.

“You have to be able to tell our senior stakeholders what it is you are doing for this organisation and how that adds value and has an impact.”

CV



KATHERINE BELLAU

- Reports to: CFO Scilla Grimble
- 2019-present: General counsel and company secretary, Moneysupermarket Group
- 2015-19: Deputy group general counsel, Moneysupermarket Group
- 2010-2015: General counsel, MoneySavingExpert.com
- 2008-2010: Lecturer, University of Law
- 2005-2008: Solicitor, DLA Piper (including one-year secondment to Virgin)
- 2003-2005: Trainee solicitor, Denton Wilde Sapte and DLA Piper

MONEYSUPERMARKET GROUP

Industry: Digital

Size of legal and procurement team: 10, including six lawyers

Main external firms: Addleshaw Goddard, CMS, Herbert Smith Freehills

“

What do you do when diversity and inclusion becomes a meaningful theme in an organisation? You can let other people do it or you can lean in”

Inside line

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A POTENTIAL POWER SHIFT

These are uncertain times at Electricity North West, but GC Richard Somerville is on familiar territory

By Cristiano Dalla Bona

Richard Somerville gets straight to the point. You need to know from the outset, he says, that a 50 per cent stake of Electricity North West (ENW), the company where he's been general counsel for more than seven years – is up for sale. In a few weeks, everything might stay the same, but it might also be very different.

It is not the first time that Somerville has found himself facing uncertainty. Ever since he joined the electricity distribution network operator, he has dealt with acquisitions and court disputes, expansion plans and public infrastructure projects.

Somerville's first contact with ENW came in 2010. After the departure of general counsel Chantal Forrest, Somerville was offered the opportunity to help with a due diligence process stemming from an acquisition the operator had made four years earlier.

After ENW purchased the electric network United Utilities in 2007, most of the acquired company's employees continued to work under the same provider under a service agreement with ENW. In 2010, Somerville joined to help transfer 1,000 of those employees to ENW, making it the only operator for the North West.

Expansion mode

Once the process was complete, Somerville joined as general counsel. The first months were chaotic; he inherited around 1,200 personal injury litigation files, a situation that led him to hire litigator Gavin Waldron from private practice in 2010.

Most matters had been insourced and more commercial lawyers were needed to tackle the workload around corporate transactions and competition law. Between 2015 and 2018, the team expanded to seven lawyers.

Somerville hired property expert Richard Bingham, who had previously been counsel at Vodafone. Bingham retendered property work, acquiring new rights for electricity provision.

Other additions included personal injury lawyer Joanne Unsworth from DWF in 2015 and commercial lawyer Charles Krieg from Riverview Law in 2016. Later, Somerville brought in trainee Laura Mulcahy and litigator Sophie Fieldsend, who joined as an NQ from a local authority.

Turbulent times

Now, each day, the team drafts contracts and provides advice as ENW extends and maintains its network in the region. The delivery of energy brings with it a slate of responsibilities – everything from employment and public procurement law to commercial utilities issues.

Matters are sometimes affected by unexpected events. In 2013, an ENW linesman fell to his death while clearing ivy from an electricity pole. The company appealed against a £900,000 fine.

It was advised by Crown Office Chambers' John Cooper QC, who stated that the defendant had taken enough risk-assessment measures. But the impact of the death on the business lasted a long time before the prosecution.

"The emotional impact took a toll on everyone. There was no closure for three years," Somerville says. "Cases like these take you out of the business completely."

In 2018, the Court of Appeal upheld the initial conviction, but cut the fine to £135,000, having deemed the sentence too high when compared with the shortcomings identified by the judge.

The vastness of the legal work surrounding electricity distribution often prompts Somerville to call in external counsel, though he shuns a panel. "We don't have the volume for that," he says.

CV



RICHARD SOMERVILLE

- Reports to: Electricity North West chief financial officer David Brocksom
- 2017-present: general counsel and group company secretary, Electricity North West
- 2014-present: general counsel, Electricity North West
- 2010-14: corporate and commercial solicitor, Electricity North West
- 2007-10: corporate solicitor at Nelsons Solicitors
- 2005-2007: trainee solicitor, Morgan Cole

ELECTRICITY NORTH WEST

Total headcount: 2,000

Annual turnover: approximately £500m

Size of legal team: 7

Annual legal spend: £500,001 - £1m

Main external firms: Geldards, Gowling WLG, Norton Rose Fulbright, Squire Patton Boggs

In 2016, he retendered property work, which went to Geldards partner Jamie Gordon from incumbent Hill Dickinson. For competition issues, he relies on partner Mark Simpson from Norton Rose Fulbright. For property litigation, he works with Squire Patton Boggs' Richard Glover.

Externally, the work of the in-house team stretches to advising on the developments of significant clients; for example, the volume of expansion at Manchester Airport, whose electricity is supplied by ENW.

"The reinforcement of its network is generating constant contracting work for us," Somerville says.

Inside line

If you are an in-house lawyer with an interesting story to tell, please get in touch by using our dedicated email service.

 **For more information email**
inhouse@thelawyer.com

FINANCIAL WELLBEING: THE MISSING PIECE

Focusing on lawyers as individuals, our survey reveals a great deal about the connection between an individual's finances and their wellbeing

For some time, it has been believed that corporate care programmes designed to support mental wellbeing and physical wellbeing were missing a third element: financial wellbeing. To answer the question, we worked with *The Lawyer* in creating the first national survey about personal attitudes and perceptions towards personal financial wellbeing. Nearly 500 legal professionals took part, and the report is ready for launch.

The Financial Wellbeing Report divides the findings into three sections to reflect the key stages in a solicitor's career and to help set the context for the findings.

This was the first survey of its kind where the focus was on the lawyers as individuals and not on their work and their clients.

The responses were fascinating, and it has taught us a great deal about the connection between wellbeing and an individual's finances. It has also galvanised the need for firms to expand their programmes of physical and mental health to include financial wellbeing.

To whet your appetite, here are just a few of the questions we put to the legal market and their responses.

We asked all age groups...

Do you feel you are saving enough?

- Just 35 per cent of legal professionals believe they are saving enough for long-term plans.

Do your finances cause you stress?

- 96 per cent of respondents stated their finances caused them some degree of stress.

Why aren't you seeking personal financial advice?

- Lack of knowledge, time and disposable funds were cited as the leading reasons for not embarking on personal financial planning.

What other factors are competing with planning for your financial future?

- Paying off a wedding, saving for a home and saving for the cost of having children were just some of the factors respondents listed as keeping them from planning for their financial futures.

Bespoke roundtables

You may be in a management role in your firm and be interested to hear more about this topic and the role firms can play in supporting staff. If so, we would be delighted to arrange a roundtable event to share our insight. To discuss this in more detail, please contact hannah.rockey@brewin.co.uk.

These are just some of the findings from the final report, highlighting that financial wellbeing is pertinent to all, no matter the stage in your career.

We're looking forward to the official launch of the report and to sharing the full report together with our insight.

You're invited

We would like to take this opportunity to invite you to attend an event in the new year where we will present the most salient findings and expand on some of the facts and figures included here.

You will also be one of the first to receive one of the limited printed copies.

This event is open to all those in the legal sector, whether or not you took the survey.

To register your interest and to find out more, please email hannah.rockey@brewin.co.uk.



Matt Sullivan,
head of
professional
services



Disclaimer

Capital and any income is at risk.

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Cubed: thinking outside the box



Cristiano Dalla Bona

BCLP's Neville Eisenberg talks about the firm's new data-driven initiative that aims to boost efficiency and reduce costs, by offering a one-stop shop for high-volume work

Neville Eisenberg walks into the lobby of Adelaide House, the London headquarters of Bryan Cave Leighton Paisner (BCLP), on a bright October afternoon. Warm sunlight filters through the windows, giving a glimpse of the bridge just outside. The two-term former managing partner of legacy Berwin Leighton Paisner (BLP) has walked along the corridors of this office thousands of times, days that became years. But the ventures that took shape during his tenure at the firm, and animated his vision, have often been new and different, and led him to territories that stretched well beyond law.

In 2007, BLP spearheaded the launch of Lawyers on Demand (LOD), a flexible lawyering service that began with a pilot of eight lawyers and has since grown to more than 100, with revenue exceeding £7m.

In its sophomore year as a combined firm, BCLP is ready to roll out a new service, with the ambition of leaving a mark in the business world and fighting off the competition of both alternative legal services providers and Big Four accountancy firms. This new

“

I believe Cubed will be another game-changer in the market”

Neville Eisenberg, BCLP

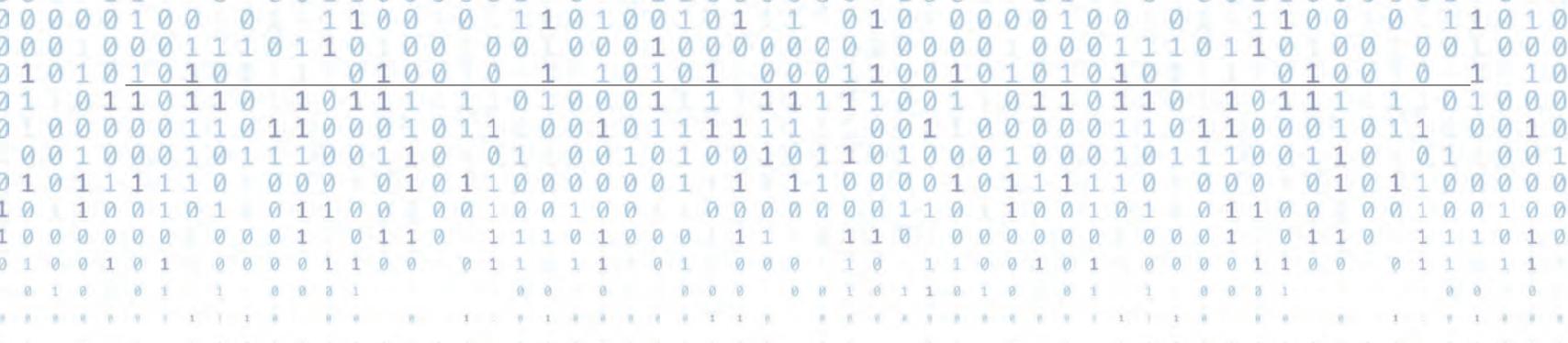
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arm, called Cubed, will concoct ways to convey legal advice to clients by using technology platforms and expanded legal operations capabilities.

Eisenberg, who is currently senior partner at BCLP, took it upon himself to drive the progress of this new business; when it officially launched, he was appointed chief executive officer.

As Cubed goes live with its first service lines and new senior hires, he sat down to talk about how the project came together and why, one year after the merger, Cubed might end up being the firm's most daring bet. In retrospect, Eisenberg has been thinking about the concept behind Cubed for three years, but it is only in the past 18 months that the idea really took shape.

Not coincidentally, the engine that drove things forward was the merger that, last April, saw UK firm BLP and US firm Bryan Cave become BCLP. Last June, the board asked Eisenberg and Denver-based chief innovation officer Katie DeBord, who stemmed from the Bryan Cave side of the merger, to concoct an innovation and



Neville Eisenberg

technology strategy. The duo talked with clients as they dealt with internal issues and heard from players across the market, including consultants, providers and other lawyers. General counsels at client companies described their struggle around developing efficient ways of working. The fact that in-house legal departments are often seen as cost centres for the rest of the business was taking a toll.

When it came to complex work such as transactions or disputes, clients felt the service they were getting from traditional law firms was still high quality. However, when more routine and business-as-usual work was concerned – high-volume contracting and reviewing, data management – the picture began to change.

“In-house legal departments had grown dramatically over the past 10 years; a lot of routine work is now done in-house,” Eisenberg explains. Pressured by the need to save costs, GCs resorted to a number of ways to tackle the issue. While strategies were different, they all presented hurdles. For instance, some GCs began to outsource routine work to alternative legal providers, but there were limitations on how much of this could be done.

Some of them thought about using technology to improve efficiency but, due to the fragmented nature of the legal tech market,

there were few integrated platforms on sale, let alone the fact that they didn’t have the budgets to buy software, or time to evaluate the range of solutions available.

One GC told Eisenberg: “Wouldn’t it be great if a big law firm that we know and trust, stepped up to the plate of developing a high-quality, integrated solution for that routine work?”

Eisenberg recalls: “That was it. I will never forget it.”

Building a business plan

The suggestion of that general counsel crystallised for Eisenberg and DeBord the opportunity that could exist in the market for a new law firm type of service. Over the summer of 2018, the duo put together a set of ideas based on client feedback and their own assessment of the market.

Once they had the thumbs-up from the firm’s board, they prepared a detailed business plan – an effort that took a big chunk of the second half of 2018 and the beginning of 2019.

This phase involved speaking with buyers of legal services in the market, as well as business consultants and technical specialists. It was important to have an idea about what was out there. In addition, to ensure the idea complemented the firm’s services, they had long conversations with BCLP ►

“

The bigger the operation, the more efficiency, speed and cost savings we can generate over time”

■

Innovation Tech Pioneers



The quicker you can complete [negotiations], the more likely it is that they bring significant revenue to companies”

partners, fee-earners and senior professionals in finance and knowledge management.

In early 2019, Eisenberg and DeBord presented to the board and management committee, which oversees the firm’s day-to-day operations. The unit would develop solutions that integrate legal expertise with better platforms around pricing, delivery and engineering, as well as legal operations to manage both business-as-usual, high-volume work and big-scale projects. In the spring of 2019, Cubed was officially greenlit, with a view of launching in September.

Three dimensions

While many aspects of the service were growing clearer, a suitable name came only later. Cubed stuck in the mind of its creators because it conveys the essential nature of this new unit. A cube has three dimensions, just as this service has three main elements to it: a volume service for routine work; depth of legal expertise; and experience in legal operations. At the same time, Cubed eyes three main benefits for clients: cost savings, better risk management, and enhancing data insights.

Over the summer months, after the initial announcement in April, DeBord and her innovation group developed some initial solutions for clients. From her base in Denver, she coordinated teamwork with professionals across St Louis, London and Manchester. These solutions currently provide support around the management of real estate assets; the delivery of services for the life cycle of commercial contracts and loan agreements; and responses to European data access requests. These areas were chosen based on transaction experience gained by the two previously distinct firms over the years and on the work, now

combined for the first time, of their innovation and technology teams.

Virtual collaboration

Before merging, Bryan Cave and BLP had both pursued innovation initiatives to diversify their services. This background meant that the creation of the core team behind Cubed was less about hiring new professionals and more about integrating existing individuals working across the US and the UK in areas that could be relevant to this new proposition.

For instance, the team behind Cantilever, a legal operations consulting arm for in-house teams set up by the firm in November 2018, was also called in to help. The firm’s delivery teams in St Louis and Manchester will be devoted full-time to Cubed. But there were other teams that were identified as potential part-time contributors, including knowledge and legal project management, finance and pricing, and process engineering. All these people were brought together into a virtual team to allow online collaboration.

When it comes to Cubed’s people strategy, Eisenberg wants to promote a concept; the idea that in the future, the delivery of legal services will require the contribution of multidisciplinary teams. In traditional legal services, clients normally seek advice from lawyers who, in turn, tell them what they need to know and do.

In the background, however, lies a diligent business support operation that is vital to the whole process. Eisenberg is adamant that every matter will need the expertise of other professionals: project managers, account managers, pricing experts, software engineers – all of these figures together will ensure that clients get what they need and the service is monitored and improved at the same time. Previously, clients didn’t have visibility on the back-office functions; now these often-unacknowledged experts will be brought to the frontline.

Lasting arrangements

On a day-to-day basis, Cubed teams will deal with a plethora of high-volume services. A big focus will be on commercial contracts – the lifeblood of any company. Dealing with suppliers and complex arrangements, the teams will help companies negotiate and

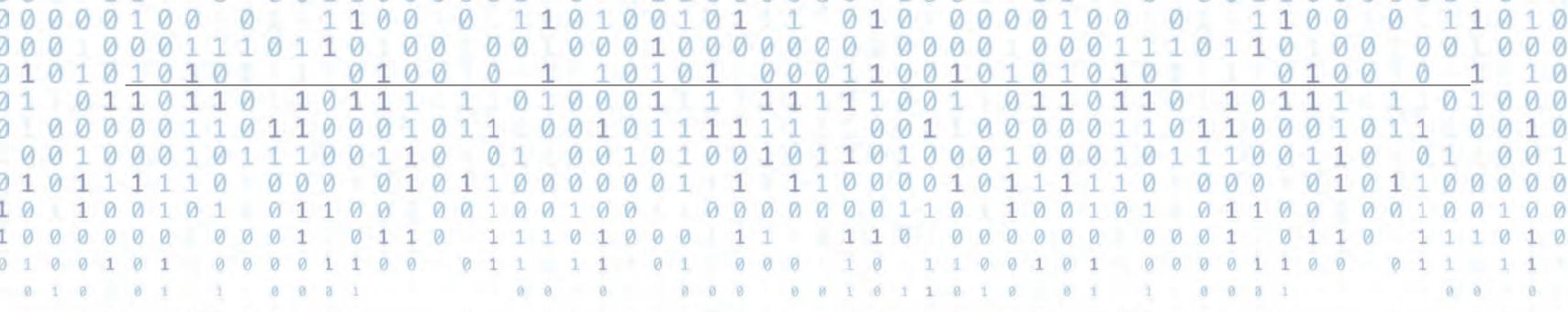
sign up contracts as efficiently and as cost-effectively as possible. This requires ensuring that the work gets done at the right level, sometimes introducing technology platforms. Once the right system is in place, it’s a matter of collecting and analysing each stage of the work stream to drive valuable data insights on what works and what doesn’t. For instance, when negotiating contracts, time is wasted on clauses that will never be disputed. By capturing relevant data, companies can see whether or not they need to negotiate particular clauses.

Another element of this contract service is speeding up the negotiation process itself. “The quicker you can complete them, the more likely it is that they bring significant revenue to companies,” Eisenberg explains. Once the contracts are signed, the next step is providing a framework for documents to be stored and managed overtime. Contracts – including corporate agreements, federal papers, supply arrangements – last for a certain period; there might be trigger events within a period that companies need to be reminded of. Managing the life cycle of those contracts can be really valuable, and this is where Cubed aims to step in, by creating the right software to have long-term control of the situation.

Then there is volume work around real estate – the bread and butter of legacy BLP and a practice that, according to UK 200 data, last year accounted for 19 per cent of the merged firm’s revenue. Companies and insurance clients with large commercial real estate portfolios have considerable amounts of routine minutiae around leases and licenses to manage their assets. Providing a virtual storage facility that speeds up the process of agreeing new leases for properties, for example, helps getting paid rent quicker. In a way, it contains risks such as being alerted when a lease expires. This is true of loan agreements, too, which are signed when banks lend money to buy properties. “There are different and quite narrow areas involved, but the broad principles behind the service are quite similar,” Eisenberg explains.

A question of scale

While BCLP has a long-time combined experience around legal services delivery, it has never proactively built up scale around



Katie DeBord



“

It’s an exciting initiative for the firm, but also for the evolution of the legal services generally”

Neville Eisenberg

the volume work often relegated to dusty back-office functions. Now, things are about to change.

“The bigger the operation, the more efficiency, speed and cost savings we can generate over time,” Eisenberg explains. Cubed aims to extend these services to a wide range of organisations and generate value that clients alone will never be able to achieve. It is a “pot of money” that nobody really looked into, as its founder puts it. This is due to the fact that this type of client work is based on long-term agreements that can last over five years, rather than one-off projects. An extended arrangement gives time to put in place a proper system for each client, and gives Cubed the opportunity to continuously improve service and gather data on the quality of its work.

One of the first key hires for the business was specifically meant to bolster scale. Last September, Cubed brought in Jody Jansen,

who was previously head of architecture and innovation at Gowling WLG, as its first chief technology officer. As part of his role, Jansen will review the firm’s technology capabilities and curate the development of a new integrated technology platform, which will be used for collaboration on client projects.

When thinking about the future, Eisenberg is not eyeing ABS or IPO plans as a natural growth trajectory. Unlike other providers in the market, he thinks that what differentiates BCLP is the depth of legal expertise it has across the world. He wants to mobilise lawyers behind this project, and get as many as possible involved in helping to design solutions, talk about the service to clients, and ensure it is the right quality.

Life after LOD

On many levels, the circumstances surrounding the launch of Cubed are likely to

generate hype, as it officially enters the market. For Eisenberg, it marks a new chapter at a time of life when most people would relish the memories of glories past. For BCLP, it represents its biggest strategic investment since the merger.

So far, though, Eisenberg just sees it as filling a gap. The more he discusses it with clients, the clearer it becomes that law firms are still best-placed to take on this kind of initiative, regardless of growing competition. When asked about long-term impact, he takes on more ambitious tones.

“It’s an exciting initiative for the firm, but also for the evolution of the legal services generally. When we set up LOD in 2007, other law firms followed us in setting up similar flexible resourcing businesses,” he says. “And when I think of the concept and scale that we are planning for Cubed, I believe it will be another game-changer in the market.” ●

Court has Vinyl say on Eminem album

An action relating to the US rapper's debut record was among a raft of intellectual property and data disputes in the first half of 2019, with 8 New Square topping the list of active firms by number of cases and case days

By Beatriz Veyrat

Intellectual property (IP) has been in the spotlight in 2019, with the prevalence of emerging technologies resulting in a growing number of start-ups and established players alike facing up to new IP and data quandaries.

Cases in the first half (H1) of 2019 included an action concerning Eminem's first album, *Infinite*, featuring two record companies and one distribution company. Ultimately, the court found that Let Them Eat Vinyl and Plastic Head Music Distribution had infringed the original record company's copyright but were not liable for secondary breaches of copyright stemming from the first.

The case saw juniors Richard Colbey (LAMB Chambers) defending, and Jamie Muir Wood (Hogarth Chambers) bringing the action against Let Them Eat Vinyl (*FBT Productions, LLC v Let Them Eat Vinyl Distribution Ltd & Anor*).

The six most active IP and data sets

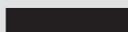
8 New Square is at the top of the list for H1 2019, acting on 23 IP and data cases over 93 case days. To put these figures in

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There were 47 IP and data cases heard in the first half of 2019, and 8 New Square was instructed on approximately half of them



context, there were 47 IP and data cases heard in the first half of 2019, and 8 New Square was instructed on approximately half of them, a market share of 48.9 per cent, well ahead of its closest rivals.

The bulk of its instructions in H1 came from Marks & Clerk, Pinsent Masons, Taylor Wessing and Bird & Bird, all of which instructed the set on three IP and data-related cases in the first half of 2019. An additional two instructions came from Herbert Smith Freehills.

Three New Square ranked second by cases, winning instructions totalling 54 case days. The set now holds a market share of 31.9 per cent for IP and data cases in H1 2019. Its top five instructing firms were: Allen & Overy (A&O), Marks

& Clerk, Pinsents, Hogan Lovells, and Innovate Legal.

A&O opted to instruct barristers from the set on three occasions; Marks & Clerk, Hogan Lovells, Pinsents and Innovate did so twice each.

11 South Square ranked third by cases and market share in H1, with 12 cases (53 case days). The set commands just over a quarter of the market (in terms of IP and data cases heard in H1 2019), a 25.5 per cent share. It received the bulk of its instructions from Powell Gilbert (responsible for four instructions) while Bristows, Pinsents, CMS and Pearl Cohen Zedek Latzer Baratz were each responsible for a further two instructions.

Fourth in line, Hogarth Chambers amassed instructions on 10 cases over 24 case days during the first half of 2019. With a 21.3 per cent market share, its top instructing firms were CMS, Pearl Cohen Zedek Latzer Baratz, Wiggin, Simons Muirhead & Burton and Lewis Silkin (each responsible for one instruction).

Brick Court Chambers took fifth place as measured by the number of IP and data cases it worked on in H1 2019 (six cases and 35 case days) with a market share of 12.8 per cent. The set was instructed once by each of the following firms: Gowling WLG, CMS, EIP Legal, Macfarlanes, Freshfields Bruckhaus Deringer, Hogan Lovells and Reynolds Dawson.

Sixth place was claimed by 5RB, with five IP and data cases across 12 case days

and a 10.6 per cent share of the market in H1. The set, known for its media practice, was instructed by Howes Percival, Bates Wells, SCA Ontier and Simons Muirhead & Burton (once each).

Busiest barristers acting in IP and data

All bar one of the busiest barristers in H1 2019 (when measured by cases) are male; a finding that suggests gender parity in IP and data-related instructions still has a long way to go.

In fact, the overall ratio of male to female barristers, as data taken from *The Lawyer's* Litigation Tracker for IP and data during the first half of 2019, is 4.4 to 1

– in other words, almost five times as many male barristers appeared on IP and data-related cases in H1 2019 as females.

The list of the 10 busiest barristers includes nine silks and one junior. Mark Chacksfield QC was in first place, having worked on five cases over 31 case days.

Katherine Moggridge, the only female barrister to make it into the list, ranked joint first (as measured by the number of cases) winning instructions on five cases lasting 15 case days.

James Abrahams QC of 8 New Square ranked joint first alongside Chacksfield and Moggridge, with a further five cases under his belt, totalling seven case days.

Next in line was fellow 8 New Square silk Adrian Speck QC, with four cases and 21 case days in H1. In joint second were silks Hugo Cuddigan QC and Thomas Hinchliffe QC, each with a further four cases (15 and 12 case days respectively).

Rounding off are four silks: Andrew Waugh QC, Adam Gamsa, Thomas Jones and Richard Meade QC, all of whom were instructed on three cases.

Data on the busiest 10 female juniors underlines they are not instructed as frequently as their male peers. Moggridge, the top-ranked female junior, was the only one of this group to receive multiple instructions (five cases over 15 case days).

Top chambers by cases

Rank	Chambers	Cases	Case days	Top 5 instructing firms
1	8 New Square	23	93	Marks & Clerk (3), Pinsent Masons (3), Taylor Wessing (3), Bird & Bird (3), Herbert Smith Freehills (2)
2	Three New Square	15	54	Allen & Overy (3), Marks & Clerk (2), Pinsent Masons (2), Hogan Lovells (2), Innovate Legal (2)
3	11 South Square	12	53	Powell Gilbert (4), Bristows (2), Pinsent Masons (1), CMS (1), Pearl Cohen Zedek Latzer Baratz (1)
4	Hogarth Chambers	10	24	CMS (1), Pearl Cohen Zedek Latzer Baratz (1), Wiggan (1), Simons Muirhead & Burton (1), Lewis Silkin (1)
5	Brick Court Chambers	6	35	Gowling WLG (1), CMS (1), EIP Legal (1), Macfarlanes (1), Freshfields Bruckhaus Deringer (1)
6	5RB	5	12	Howes Percival (1), Bates Wells (1), SCA Ontier (1), Simons Muirhead & Burton (1)

Ten busiest barristers by cases

Rank	Barristers	Chambers	Cases	% share	Case days	Gender	Instructed by
=1	Mark Chacksfield QC	8 New Square	5	10.6	31	M	Marks & Clerk (2), EIP Legal (1), Pinsent Masons (1), Taylor Wessing (1), Bird & Bird (1), Herbert Smith Freehills (1)
=1	Katherine Moggridge	Three New Square	5	10.6	15	F	Pinsent Masons (2), Hogan Lovells (1), HGF Law (1), Allen & Overy (1), Innovate Legal Services (1)
=1	James Abrahams QC	8 New Square	5	10.6	7	M	Hogan Lovells (1), Pinsent Masons (1), Taylor Wessing (1), Innovate Legal Services (1), Powell Gilbert (1)
=2	Adrian Speck QC	8 New Square	4	8.5	21	M	EIP Legal (1), Pinsent Masons (1), Gowling WLG (1), Taylor Wessing (1), Bird & Bird (1), Browne Jacobson (1)
=2	Hugo Cuddigan QC	11 South Square	4	8.5	15	M	Powell Gilbert (2), Kempner & Partners (1), Haseltine Lake (1)
=2	Thomas Hinchliffe QC	Three New Square	4	8.5	12	M	Kirkland & Ellis (1), Hogan Lovells (1), Pinsent Masons (1), HGF Law (1), Innovate Legal Services (1)
=3	Andrew Waugh QC	Three New Square	3	6.4	26	M	Allen & Overy (3)
=3	Adam Gamsa	11 South Square	3	6.4	12	M	Kempner & Partners (1), Bird & Bird (1), CMS (1), Pearl Cohen Zedek Latzer Baratz (1)
=3	Thomas Jones	8 New Square	3	6.4	8	M	Taylor Wessing (1), EIP Legal (1), Pinsent Masons (1), Bird & Bird (1)
=3	Richard Meade QC	8 New Square	3	6.4	5	M	Taylor Wessing (2), Bird & Bird (1)



WHAT NOW?



Matt Byrne

Law firms start to strategise for Vision 2025

Where do you start, if you're a law firm managing partner tasked with formulating and fronting your firm's 2025 strategy?

To start with, have some clear action points and serious deliverables. For example, which clients are you going to work for? How are you going to win them away from the competition? Who is going to do that for you? In other words, what specifically are you going to do, who's going to do it and how much is it going to cost?

"Firms need a detailed plan of execution," says Jomati's Tony Williams. "I always suggest that they do an annual report on strategy. Give themselves a scorecard. It helps keep them honest. Strategy is easy, execution is hard."

Just saying "we want a PE practice" isn't going to cut it, says Williams. Who uses you now? Are you talking about PE funds into real estate, and if so is that for developers or investors? And what's your message to them?

"That requires a look around the landscape to see who's already

“

Firms need a detailed plan of execution. I always suggest that they do an annual report on strategy”

*Tony Williams,
Jomati*

■

doing this and figuring out whether you can develop a proposition,” adds Williams.

It requires taking a hard look at your practice. After 2009/10, today's stand-out firms saw that the traditional banks would not be as powerful as they once were. Instead, the prize clients would be alternative investors because the regulatory landscape changed. They placed some big bets and those bets have come off.

A world of upheaval

The world and everything in it is going through a period of unprecedented change, which means it has never been more difficult to devise a five-year strategy.

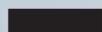
With a general election in the UK, US/China trade wars, Brexit, Trump's possible re-election and a potential global downturn in a world increasingly powered by disruptive new technologies, there's no shortage of upheaval, turbulence and potentially destabilising factors at home and abroad.

It makes second guessing what's going to happen next week, never mind in five years, a mug's game.

“

The challenge is to show the market something different because law firms are a homogeneous lot, although that's changing as well”

Andrew Grill



“If you'd asked me 10 years ago how long interest rates would stay at 1 per cent, I'd have said five years tops and I'd have been wrong,” says Williams. “But managing partners have to be careful. The fact of the existence of those things, and their destabilising impact, is not an excuse to bury your head in the sand. You can't just say ‘it's not worth planning so let's not do anything’.

Preparing for the inevitability of change was the topic addressed by Andrew Grill, the keynote speaker at this September's Business Leadership Summit.

Grill, a so-called “practical futurist” and former IBM global managing partner, had one simple message for the assembled legal market leaders: “Disrupt yourself or you will be disrupted”.

As Grill emphasised, disruption is coming to everyone, including the legal industry, which is facing the same exposure to disruption as every other sector.

Grill even put a time line on it, claiming that within 18 months the three forces that drive disruption (the search for high profits, the impact of new technologies and consumer demands) will have had a significant impact on firms and the legal services sector.

His challenge to the audience was for them to look and see where they might be able to remove the friction points in their business and reduce the risk of new players coming into their space.

In terms of being a top tip for anyone formulating a strategy for 2025, that's not a bad one. And according to Williams, the influx of new roles and professionals into the market over the past decade, many of them linked to technology, may have made a difference.

“There is more analytical data on types of work, relationships and so on,” confirms Williams. “The tools are there, but it's a bit like

gardening. It's great to have a shed full of tools but it only works if you know how to use them. This will be the really interesting thing between now and 2025.

“Technology is moving towards being central to a firm's strategy. But the problem with law has always been not the direction of travel, but the speed of travel. Law is still such a profitable business, why change?”

A people industry

For big firms, the key in the future will be about how they articulate the deal between the business and its people, whether that is for trainees, young partners, senior associates or any other professional. “What will we provide to you and what will we expect from you?” says Williams. “Today people say ‘I want to learn, I want continuous feedback, I want to be treated well’ and so on. Firms have to get used to that and they'll have to pay a lot more attention to the fact that good people will leave them. And in that context, firms will have to invest time and energy in making sure that leavers leave as ambassadors and not detractors. They're waking up to that – they weren't a decade ago.”

The key building blocks of a 2025 strategy? Focus, identify the clients you really want to act for, the work you really want to do, the resources you really need to do it. And a bit of luck.

The challenge is differentiation. How are firms going to create a level of momentum? How are you going to make any lateral think ‘yes, I'll at least talk to them’.

As Williams concludes: “These are the questions you need to be answering with your 2025 vision.” ▶

KEEPING THE TARGET IN FOCUS




Richard Simmons

From Eversheds and Clifford Chance to Mills & Reeve and Freeths, plenty of firms set out their 2020 vision. How many achieved it?

In the summer of 2012, London was welcoming the athletes of the world to its doorstep for the Olympic Games, and Eversheds chief executive Bryan Hughes was putting the finishing touches to a strategic plan that looked far into the future.

The plan was given the optician-friendly, if not startlingly original, name of ‘2020 Vision’, implying the firm had perfect sight of what the years to come should hold.

Unveiling his plan to Eversheds’ partners and associates that summer, Hughes’ thoughts were aspirational rather than tangible in nature, with the firm aiming to overtake its competitors by “setting the standard” in things like innovation, relationships and quality. He also told *The Lawyer* that, ultimately, he wanted Eversheds to be global, but that he wanted to achieve that on Eversheds’ terms.

In conference a year later, partners backed Hughes’ vision of Eversheds becoming a truly international firm, which was deemed one of the “core standards” of the 2020 strategy.

Hughes departed in 2017, having delivered his dream of bringing transformative change to the firm. When he had been appointed CEO in 2009, Eversheds was essentially a large UK national – indeed at one point it was the largest UK national firm by lawyer headcount. By the time he left, he had secured his crowning achievement – a merger with American firm Sutherland Asbill & Brennan – and Eversheds was a far more international proposition.

Does simply securing a merger make one truly global? Of course not. Working alongside Hughes back in 2012 was Lee Ranson, who is still with the firm as co-CEO. “We’ve all seen very large firms



where you question: are they delivering the level of global service they probably aspire to?” he says. “The merger is the necessary prerequisite to get the building blocks in place; the real work starts once you have announced and gone through with it.”

But in numbers terms at least, the stats look good for Eversheds. “I am not saying we are done,” Ranson says, “but if you look where we were in 2012 and where we are now, the hard data shows that revenue is up 50 per cent from £360m to £550m, the number of countries we are in is up from 28 to 34, the number of offices has risen from 45 to 69, and the number of lawyers from 2,000 to 3,000. Those are the hard metrics of that journey towards globalisation... and it would be hard to have this conversation not having achieved that US piece of the jigsaw.”

The other key aspect of the vision was around setting the standard in ‘innovation’ – a dangerously adaptable word that law firms often

“

If you look where we were in 2012 and where we are now, the hard data shows that revenue is up 50 per cent from £360m to £550m”

Lee Ranson, Eversheds

”

attach to any project that is new or involves technology. However, it has to be said that Eversheds has done more than just pay lip-service to the idea of thinking differently about the provision of legal services. As the merger was the key development of the firm’s global strategy, the culmination of its innovation plan was the launch in 2019 of Konexo. This is Eversheds Sutherland’s own version of an ALSP, and will take on the growing challenge of rivals such as the Big Four, Axiom, LOD and UnitedLex by providing advisory services, managed services

and interim resources to national and international clients in the UK, Europe, Asia and the US. The plan: grow it; then IPO it.

But Konexo is not a late-stage move as the firm seeks to catch up, rather the latest stage of Eversheds Sutherland’s investment in a range of consulting and related offerings, such as outsourcing division Eversheds Ignite and interim lawyer business Eversheds ▶

2020 Vision

Agile. This business is currently worth around £40m a year. Meanwhile, revenue from the three legacy teams (ES Consulting, Corporate Secretarial and Insolvency) that form the basis of Konexo grew by 38 per cent last year.

“I don’t think you could say what was coming with any degree of certainty in 2012, but what you could say what was heading our way,” Ranson recalls. “You could see tech having an impact on other sectors and it beginning to influence the legal sector. Clients were starting to talk about tech challenge law firms. Our plan was relatively unscripted in 2012, but we started to put more thought into change and innovation.”

Innovation for innovation’s sake has its dangers, however: at one point, Eversheds’ own attempts to forge a new path meant it started to wander off into the jungle with little idea of what it was setting out to discover. “We talked a lot about innovation, but at first we didn’t make the link to its impact on the total client experience,” Ranson says. “I remember visiting a client and having a Eureka moment. They told me they didn’t feel the benefit of the innovation law firms were talking about, even though it was happening. I remember going back to the office and thinking, ‘We need to constantly test the link between client experience and innovation, so that the client always benefits from it.’ Our innovation had started to develop a life of its own and we had to rein that back.”

What other learnings does Ranson have from attempting to implement the firm’s strategy?

“If I could go back and talk to myself, I think the first point is that the eight-year period was too long, and we probably weren’t specific enough about what reaching the destination would look like – we had to keep coming back to it,” he says. “[When you set a target] human nature is to start late as possible and in hindsight, I would have been clearer around what the metrics of success are.”

When Ranson became CEO in 2016, one of the first things he did was look at the constituent elements of the firm’s vision, setting targets and, crucially, ensuring there was regular reporting on those targets. “You’ve got to have a plan, but more than a plan you also have to have the discipline to make sure you are consistently

reporting your progress to ensure the execution is actually happening.” He concludes by citing a 2017 article from Forbes about the strategy of US law firms and how many had actually executed their plans. “There were some common themes: many firms didn’t involve wider partnership, didn’t involve the client, didn’t consider disruption enough and were basically continuing with the status quo.”

“That has really informed my thinking as Eversheds Sutherland looks to the future.”

“

If I could go back and talk to myself, I think the first point is that the eight-year period was too long”

Lee Ranson, Eversheds

”

Eversheds’ innovation efforts in 2019

Propel: a litigation technology unit aimed at producing solutions that will help deal efficiently with high-value and long-running disputes. It boasts a combined headcount of almost 13 people, including five legal technology assistants, three analysts and two project managers versed in the use of the firm’s in-house platforms.

‘Techtember’: a 2019 initiative to familiarise its lawyers with existing technology apparatus available at the firm.

Konexo: the firm’s own version of an ALSP will take on the growing challenge of New Law rivals by providing advisory services, managed services and interim resources to national and international clients in the UK, Europe, Asia and the US. Brings legacy teams such as ES Consulting, Corporate Secretarial and Insolvency under its banner.



Freeths needs 11 per cent growth next year to hit its 2020 revenue target of £100m, set in 2014



Freeths

THE VISION: Double turnover by 2020

ACHIEVED? On track

In 2014, Freeth Cartwright – then in the midst of a rebranding and fresh from a spate of mergers – set out its goal to double turnover between then and 2020.

Turnover back then was £49.9m, meaning the firm had basically set itself a target of £100m. At the time, chief executive Peter Smith said it would look to achieve that target through more acquisitions. “We’re looking for mergers that will bring additional services to the group,” he said. “Not completely different, but something that adds value.”

Freeths is bang on track to hit £100m, having recorded remarkably consistent growth since 2014. What is slightly odd is that it hasn’t done it in the way Smith described. Having gone through three significant mergers – with Kimbells (Milton Keynes, 2011), Kent Jones & Done (Stoke, 2012) and Henmans (Oxford, 2012) – there have been no more since.

“We did look for mergers after that, but we didn’t think the opportunities were right,” Smith says. “There were points at which we were at an advanced stage in discussions but stopped at the last moment.” Merger talks eat up a huge amount of time and in 2016, Freeths had endured enough of them. “We made a conscious decision to change our approach,” Smith recalls.

While remaining open if the right opportunity came along – it didn’t – the firm switched to a different expansion method: entering

new markets from scratch and growing through lateral hires. It hit two key legal markets it was absent from: Leeds in 2014, and Bristol earlier this year, as well as Liverpool to give it 13 offices nationwide. The firm has also invested in its London offering, previously just a base to meet clients, and is set to continue its push in the capital in the next five years. London revenue has doubled in the past two years, rising from £4.5m in 2016/17 to £6.4m, and then £9m in the last financial year.

“The reason for setting a target is so it means something to the people within the firm: not growth for growth’s sake but growth to allow depth of investment resource,” Smith says. Alongside its revenue target is “what we call our parallel strategy within the firm: to gain an increasing number of larger clients and operate on a national scale as well as having a strong, viable presence in each of our locations.”

Though the 2025 strategy will not be finalised until next March, Freeths’ focus remains on the domestic market. “We think there is a gap where previously national firms which are looking internationally have taken their eyes off the ball when it comes to the UK.”

And will Freeths hit that hallowed £100m mark on schedule? It needs 11 per cent growth in 2019/20 to do so. “We will be there or thereabouts,” says Smith. “Our year-end is the end of March, and we had a strong performance at the half year stage.”

Mills & Reeve

THE VISION: Hit £100m by 2020

ACHIEVED? Achieved in 2018

Upon becoming managing partner in 2015, Mills & Reeve’s Claire Clarke set goals. Some of those targets were measurable: the goal to grow from an £82m business to a £100m one, for example, and the desires to increase profitability and grow faster than the top 100 average. Other goals were not so tangible: to “build an innovative culture”, for example, and to “set high expectations and support achievement.”

Clarke didn’t set out these markers alone. “We thought that Justin [Ripman, senior partner] and I sitting alone in a room writing thoughts down was less likely to be successful than if we involved a wider group of people,” she recalls, and so the firm set up working groups looking at various aspects of the firm, and its 2020 Vision was born out of those discussions.

As far as the headline figure is concerned, the plan was a roaring success. Average profit per equity partner (PEP) has, astonishingly, not fallen since the creation of *The Lawyer* UK 200 in 2002 (though it was flat between 2010 and 2012). Since it put its 2020 strategy in place five years ago, PEP has grown from £341,000 to £419,000.

And revenue for 2018/19 was £110.9m, Mills & Reeve having passed the magic £100m revenue mark in 2017/18, two years ahead of schedule. That round number was chosen because the firm felt it was the point at which it would start to feel the benefits of economies of scale. “After that point it starts to become less obvious, but we do want to keep growing,” says Clarke.

What about the less tangible aspects of the strategy – “building an innovative culture”, “being a great place to work” and so on?

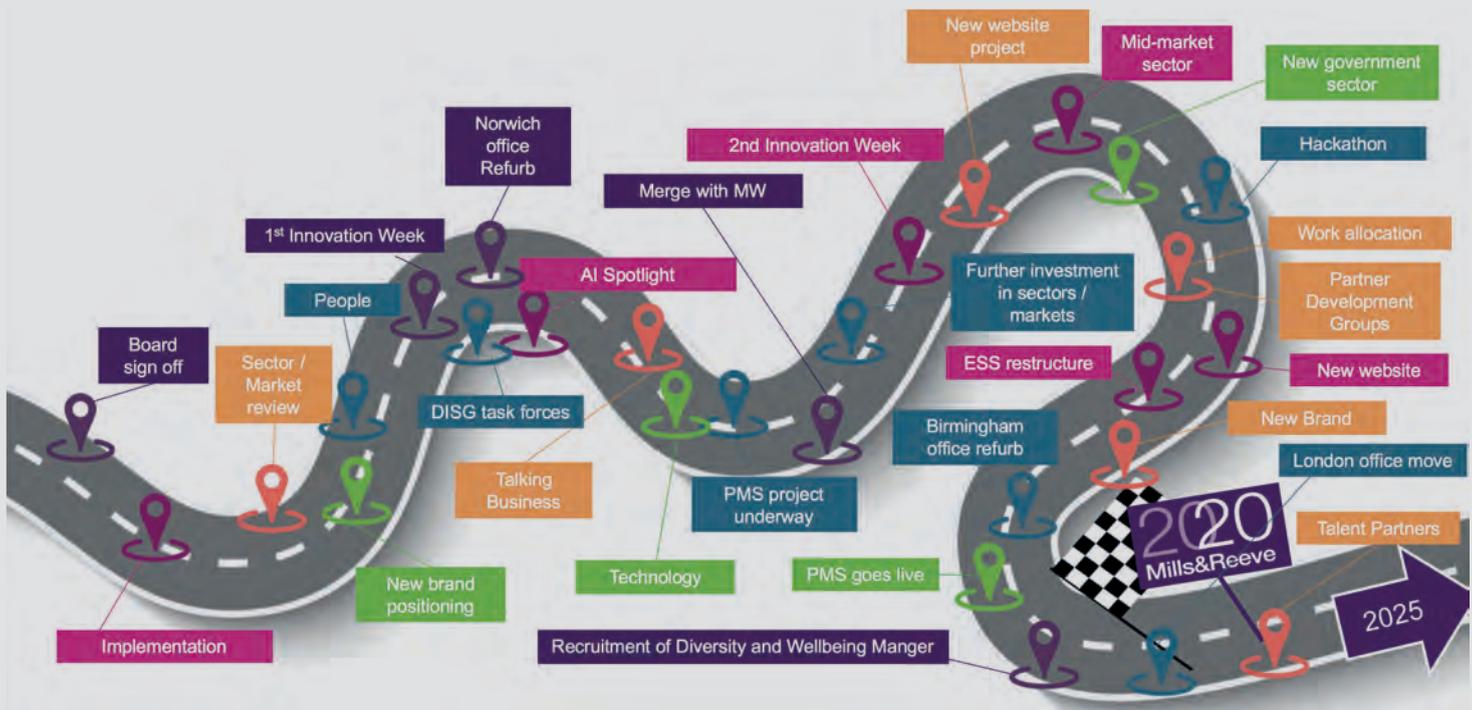
“With innovation we were going from a standing start,” Clarke admits. “We weren’t a particularly innovative firm; we wanted to build an innovation culture; we embarked on steps along the way; you move the dial a bit. You have to believe in it, and keep messaging it, and bring people along with you – which are the basics for achieving anything really, aren’t they?”

When you are starting from zero, pretty much anything counts as progress, but Mills & Reeve has genuinely moved the dial from being a rather staid regional-cum-national law firm into one that is starting to think more deeply about how it operates. On the people management side, for example, the firm has paid out

In 2015, Mills & Reeve set a revenue target of ‘£100m by 2020’ and has smashed through it two years early



Mills & Reeve's 2020 strategy roadmap



record-breaking bonuses to all staff after revamping its remuneration structure: a move which could have happened at any time but which one senses might not have without staff satisfaction being formally enshrined in the strategy. Meanwhile, the firm has run two innovation weeks, a hackathon, introduced non-partner innovation champions, while the head of learning and development Trevor Comyn serves as a quasi-innovation partner.

Mills & Reeve may have more to do on this front, but the building blocks are in place.

Clarke is fresh from a partners' meeting to thrash out the plan for 2025 and beyond. They key there: a "refocus" on the client. "You can see from our 2020 strategy that we had a number of top-line aims; moving towards 2025 we want to put the client at the heart of the strategy. We want to be leaders in talent development, in innovation and in other areas, viewed through the lens of the client. The main thrust is a refocus on the work we have done already, but now putting the client experience front and centre."

“

You have to believe in it, and keep messaging it, and bring people along with you”

*Claire Clarke,
Mills & Reeve*



Clifford Chance

THE VISION: Become the world's leading corporate M&A practice by 2020

ACHIEVED? Not yet

Clifford Chance always had a mountain to climb in terms of corporate perception, particularly in the City. The general view is that you can't beat the Big Three (Slaughter and May, Freshfields Bruckhaus Deringer and Linklaters), but Clifford Chance has been plugging away regardless and winning roles on big-ticket deals. In 2019 alone, it advised the consortium that bought Merlin Entertainments, Inmarsat on its private equity sale and CK Assets on its acquisition of pub chain Greene King. Less City-focused, the firm worked with Saudi Arabia's Public Investment Fund in the sale of a stake worth \$70bn (£54bn) in Saudi Basic Industries Corporation and represented the banks behind the \$5bn flotation in Hong Kong of Budweiser Brewing Company.

These wins have helped Clifford Chance maintain its position as one of the world's leading corporate practices, but it is certainly not the firm to rule them all – the lofty goal set out by corporate head Guy Norman in 2012, when he launched an eight-partner strategy group, the Vision 2020 team. In 2016, it

was ranked 19th in terms of US and European public M&A deals by value compared to 21st for 2018, according to Refinitiv. Ironically, in private equity, an area in which Clifford Chance has been most hit by defections, the firm jumped 15 places over the same timeframe.

Instead, it's the people story that is most striking, with Norman claiming in 2015: "It's important to keep bringing through the younger talent."

He's been true to his word, promoting two in London corporate for the last five years, as well as three in 2016. While not wildly different from its peers' promotion rounds, Clifford Chance has nevertheless enabled some of these juniors to quickly become names in their own right; Chris Sullivan is one of the stand-out stars of the firm's PE practice, Daud Khan stood in as easyJet's interim GC, while Jonathan Kewley plays a core role in the firm's tech group. There's momentum in corporate, sure, but in the legal world perceptions take a long time to change.

Rachel Moloney

“

It's important to keep bringing through the younger talent”

*Guy Norman,
Clifford Chance*

Clifford Chance corporate promotions in London since 2015

Year	New partner	Undergrad uni	Trained at	Year qualified	Joined CC
2015	Gareth Camp	Nottingham	Freshfields	2002	2013
2015	Graham Phillips	Birmingham	Linklaters	2004	2012
2016	Alexandra Davidson	Bristol	Clifford Chance	2009	2007
2016	Katherine Moir	Oxford	Macfarlanes	2007	2011
2016	Christopher Sullivan	Oxford	Clifford Chance	2008	2006
2017	James Bole	Cambridge	Clifford Chance	2005	2003
2017	Jonathan Kewley	Oxford	Freshfields	2007	2014
2018	Cheng Li Yow	LSE	Clifford Chance	2005	2003
2018	Daud Khan	Cambridge	Clifford Chance	2007	2005
2019	Jennifer Mbaluto	Nairobi	Hamilton Harrison & Matthews	2015	2011
2019	Alexander Chester	Oxford	Clifford Chance	2010	2008





As a work product, matters+ has been excellent for the lawyers in my team. The data and analytics produced has enabled me to significantly improve the legal function's delivery model – we've overhauled the way in which we instruct external counsel to get a service more aligned to the needs of our business and at a more competitive price point. I've also mapped my internal resource to reflect more closely the legal work actually being generated by the business and I have introduced self-serve contract automation which has gone down a storm with the business.

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Guy Winter Joins Fasken

Welcoming a Key Player
in the Energy and
Mining Fields

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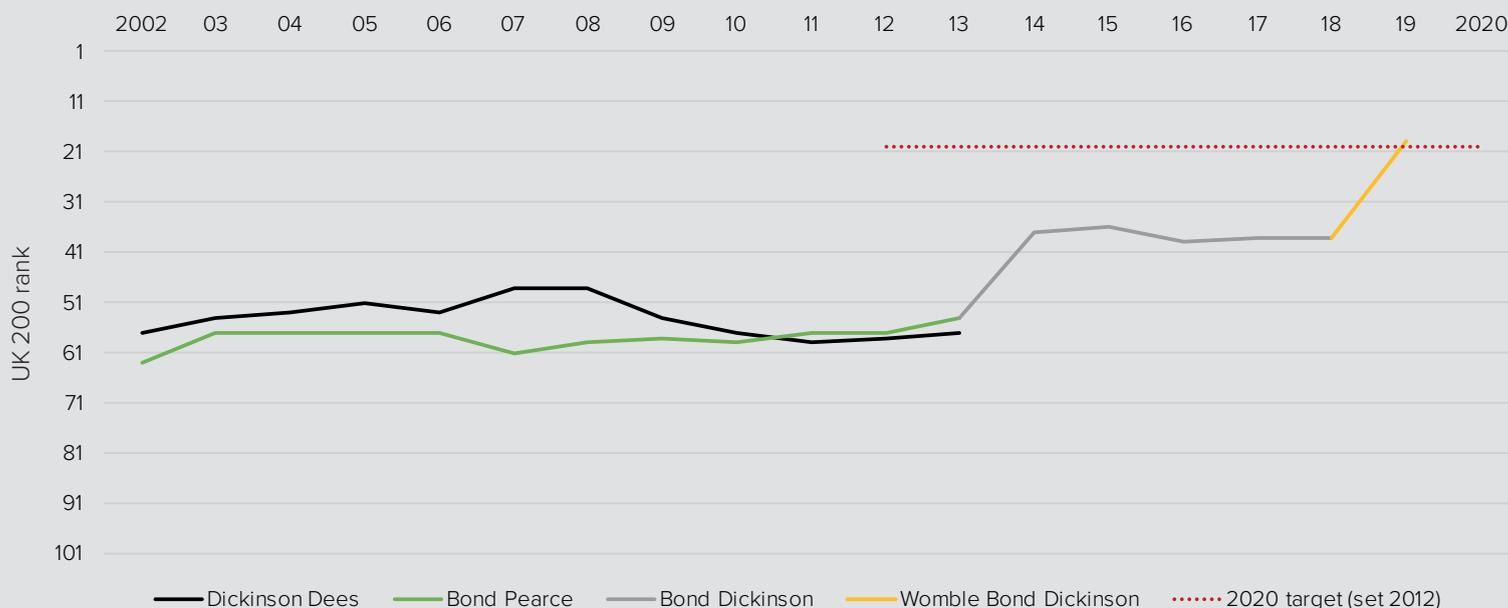


We are pleased to welcome Guy Winter to our London office. Our clients will now benefit from his leading expertise in capital markets and M&A transactions as well as strategic legal advice in the Energy and Mining sectors.

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Dickinson Dees, Bond Pearce and successor firm Bond Dickinson all found it hard to climb the UK 200 rankings without mergers



Dickinson Dees

THE VISION: Make top 20 by 2020

ACHIEVED? Sort of...

In 2012, Dickinson Dees set out its goal to be a UK top 20 firm by 2020, and it has managed it... sort of. The successor firm of Dickie Dees entered the UK top 20 for the first time in 2019, but only thanks to an American merger with Womble Carlyle. UK revenue of £109m means that without that US tie-up it would only have ranked 39th in *The Lawyer* UK 200, actually falling one place from 2018, its last year as a solely British firm.

Nevertheless, it is mission accomplished, both for Dickinson Dees and the firm it initially merged with in 2013, Bond Pearce. The two firms' strategic plans – the former's '2020 Vision' and the latter's 'Green Arrow', were, in fact, very similar.

"The cornerstone of both was the need to diversify geographically and to have more scale," recalls Jonathan Blair, the co-chair of Womble Bond Dickinson, the firm that exists in 2019.

Back in 2012, he was managing partner of Dickinson Dees. "London is the global legal centre," he said, as it was going through its merger with Bond Pearce. "To deliver our '2020 vision' we have to have a sizeable London office."

London has grown, for sure (it is now the fourth largest in the UK after Newcastle, Bristol and Southampton, and the second largest after Newcastle in terms of partner numbers). But Blair's thought processes of 2012 have been rather superseded by the US merger.

Not that international expansion was completely off the radar back then. "Step One of our strategy was a financial focus – looking closely at our numbers and KPIs that we were focusing on," says Blair. "Step Two was built around internationalisation. That

featured in our thoughts coming out of the recession in 2009/10 and in the prospectus we put to the partners in 2012, though it evolved more than we were anticipating. We identified three territories that it was clear were important to focus on – France, Germany and the USA – and entered into strategic alliances with firms there."

The same week the UK was deciding to leave the EU, Bond Dickinson was voting for an alliance with Womble Carlyle.

To hear Blair talk, it is as if there was little thought of a US merger before that point. The alliance simply "caught hold of imaginations internally," he says, and as a function of the fact it was going well, partners saw that it would be "far more powerful if we did combine. We didn't put a strategic alliance in place without a view to merging 12 months later, but having recognised something special, it was a legitimate move for us to take."

Going back to a plan and "fiddling with it all the time," is a bad idea, Blair says, but firms should not be afraid to consider different paths when it comes to the execution of the strategy.

"Set a route, move forward and deliver on that; what you need to make sure of is that you check in when circumstances change.

The vision didn't change for Bond Dickinson, but the execution of it did.

"As we edge ever closer to 2020 the board is looking at our strategic plan for the coming years," Blair finishes up. "It's an interesting exercise to look back and reflect on how we got to where we did. And we probably won't get to the next destination we set in the way we thought we would either."

Top 10 talent raids of 2019



Rachel Moloney

There were some surprising moves – and a few somewhat predictable ones – between legal firms. Here are our top 10 lateral hires of the year

The legal hiring market is a paradox. At times it seems to lack all originality as recruiters seek high-flying magic circle partners for roles at American firms – yet every so often there’s a move that takes everyone by surprise, such as Goodwin’s raid on Taylor Wessing, a

prime example of a US firm going a bit left-field for talent.

Our list of the top 10 lateral moves in 2019 includes a mix of familiar and lesser-known names, as firms target the usual corporate expertise as well as tech, white-collar and insolvency.

THE TROPHY HIRE



NAME: Adrian Maguire **LEFT:** Freshfields Bruckhaus Deringer **FOR:** Kirkland & Ellis

Just nine days into the start of the year, Kirkland & Ellis made the high-profile, albeit predictable, move of hiring Freshfields Bruckhaus Deringer’s Adrian Maguire into its private equity team. The move epitomised what readers of *The Lawyer* have come to love about lateral hire stories: big money, UK/US firm power dynamics and magic circle reunions (in this case with former boss David Higgins).

Due to the above factors (Maguire is understood to be on slightly

less than Higgins’s \$10m/£7.8m pay packet), his move grabbed the headlines despite it feeling a bit déjà vu. And while some may argue that no lawyer is worth \$10m, Maguire is surely one of the few lawyers in the City who could legitimately command that much. He is highly sought after in the private equity sphere, having acted on multiple deals while at Freshfields for Cinven, Advent and Warburg Pincus. The real key will be his ability to transfer them across to the Gherkin.

THE 'TWO IN ONE' HIRE

George Knighton



NAME: George Knighton and Simon Toms **LEFT:** Allen & Overy **FOR:** Skadden

While Kirkland wanted Maguire to enhance its private equity credentials, Skadden Arps Slate Meagher & Flom hired a duo from Allen & Overy's corporate practice to fill a gap that had been there for more than two years. George Knighton and Simon Toms are being seen as Michael Hatchard's replacements, despite the veteran partner standing down in 2017.

Skadden has, in the past few years, tended to prefer hiring in pairs, also bringing in White & Case

duo Richard Youle and Katja Butler in 2017 to succeed retired private equity partner Alan Murray-Jones.

Knighton and Toms' departures won't help A&O, as it battles its reputation of a "banking first, corporate second" firm that can't compete in public M&A with Slaughter and May, Freshfields or Linklaters. However, Skadden in London is also fighting the perception that it merely services the US. Will Knighton and Toms break the mould?

THE GROUP HIRE

David Mardle



NAME: Andrew Davis, Robert Young, Adrian Rainey, Malcolm Bates, David Mardle and Tim Worden **LEFT:** Taylor Wessing **FOR:** Goodwin

Goodwin will not be getting a Christmas card from Taylor Wessing this year, as the US firm took not one but six partners from its UK offices this year; Andrew Davis, Robert Young, Adrian Rainey, Malcolm Bates, David Mardle and Tim Worden. The latter four were announced in one swoop that will create a significant dent in Taylor Wessing's UK life sciences and corporate technology practices.

The new joiners have led Goodwin to open in Cambridge; colloquially

called Silicon Fen, owing to its growing tech scene. Opening an office and hiring so many partners in one go proves Goodwin is serious about boosting its life sciences and tech credentials, an area that has proved fruitful for the likes of Taylor Wessing, Bird & Bird and Osborne Clarke. It's also a wise move away from the traditional US law firm pull towards private equity and high-stakes corporate; that market is saturated and it's better to carve out a niche.

THE UNDER-THE-RADAR HIRE



NAME: Lorraine Reader **LEFT:** DWF **FOR:** DLA Piper

Not all significant lateral moves involve magic circle partners seeking new challenges or higher pay cheques. The switch-around of DWF's Lorraine Reader to DLA Piper was strategically interesting for several reasons, particularly as it came just months after DWF revealed it would be the first firm to list on the main market of the London Stock Exchange.

Reader was at DWF for five years, where she led its investment and funds practice with a particular focus

on real estate portfolios. That sector has ironically proved tough over 2019, but Reader's client base of private equity houses and funds ties in nicely with DLA's ex-KWM team, who are striving to take advantage of DLA's extensive international platform and follow the money in terms of real estate investment.

For DWF, expanding in new jurisdictions on the back of a historic IPO is all well and good, but no firm wants to lose up-and-coming female leaders so soon to the event.

THE RISKY FIRST HIRE

NAME: Mona Vaswani **LEFT:** Allen & Overy **FOR:** Milbank



For Milbank Tweed Hadley & McCloy, there is obvious rationale for setting up a white-collar practice in London. It's a highly profitable area if done right, with investigations work on the rise and few US firms able to offer both high-level expertise in finance, as well as corporate risk.

And the firm's hire of Allen & Overy's Mona Vaswani also ticks all the boxes; the magic circle firm's head of fraud with experience in

banking litigation and regulatory disputes.

No, the risky part of this move is for her, not Milbank, as she leaves the safety of A&O and goes it alone. While the US firm does have a sizeable disputes group with Julian Stait at the helm, it has no City pedigree in Vaswani's area and so the responsibility for its success lies with her. For some lawyers, this is the dream mandate: the perfect opportunity to lead and build.

THE FIRST-TO-JUMP HIRE

NAME: David Avery-Gee **LEFT:** Linklaters **FOR:** Weil Gotshal & Manges

Back to corporate, Linklaters lost its first proper public M&A partner in the City this year in the form of David Avery-Gee to Weil Gotshal & Manges. The move echoed that of George Knighton and Simon Toms, who left Allen & Overy for Skadden; they are all in their mid-40s and looking for their next challenge, also forming part of the two US firms' succession plans after veteran retirements.

Avery-Gee fills a spot last held by Peter

King, who left in 2017 for a new role in the UK Treasury. Avery-Gee has also been touted as a possible successor to Mike Francies, the firm's London office head.

Avery-Gee worked on multiple Glencore deals throughout his Linklaters career with senior partner Charlie Jacobs, though he may struggle to carry over such a prized institutional client of the magic circle firm. His reputation, though, as one of Linklaters' former corporate rainmakers may hold him in good stead at his new digs.



THE LIKELY HIRE

NAME: Ed Harris **LEFT:** Hogan Lovells **FOR:** Paul Hastings



Recruiters and private equity teams alike have been circling Hogan Lovells' corporate group for some time, so Ed Harris's departure from the transatlantic firm was inevitable. It was just a question of when.

As Hogan Lovells' London head of private equity, Harris was a familiar name in the sector, particularly growing a reputation among mid-tier houses such as Pantheon Ventures, EQT and Terra Firma. However, sources remarked that he lacked

the platform from which to expand his practice further. He moved to Paul Hastings, along with counsel Leanne Moezi, in the hope of achieving just that.

Paul Hastings is a firm that has been visibly attempting to grow in the City, particularly in corporate and private equity. His practice will work in tandem with that of Anu Balasubramanian, who joined from DLA last year and counts a number of other houses as clients. It's the more for merrier for Paul Hastings.

THE HIRES MADE UNDER UNFORTUNATE CIRCUMSTANCES

NAME: Lord Garnier QC and Andrew Caldecott QC **LEFT:** One Brick Court **FOR:** A number of chambers

Lord
Garnier
QC



Every so often, the legal world waves goodbye to a beloved law firm or barrister chambers. This year, One Brick Court closed its doors, leaving a number of its media and defamation stars in need of a home. Lord Garnier QC was the most notable barrister on the list, moving over to 4 Pump Court, where he went on to win an instruction from John Major, as the former prime minister joined Gina Miller's prorogation battle against the Government.

Another well-known QC to leave

was Andrew Caldecott, who joined media set 5RB along with six juniors. Caldecott's biggest case in the past year was an instruction from Linklaters as it applied for an injunction against a former employee who threatened to publish documents that he said would "expose the firm's ongoing struggles with women in the workplace".

Garnier and Caldecott are highly sought-after QCs, but the closure of their set proves business can be challenging for niche chambers.

THE NICHE PE HIRE

NAME: Neil Ferguson **LEFT:** Jones Day **FOR:** Latham & Watkins



Latham & Watkins already had one of the most prominent private equity practices, but its latest hire this year marked an expansion into a relatively niche area; real estate and infrastructure private equity.

Firms are eyeing up opportunities in this sector, although Latham has already nabbed some of the biggest stars, including Clifford Chance's Brendan Moylan, Allen & Overy's Conrad Andersen and, this year, Jones Day's Neil Ferguson.

Aside from his focus on real estate deals for clients such as Goldman Sachs, China Vanke, Hansteen Holdings and Bain Capital Credit, Ferguson was also seen by many as something of a Jones Day lifer.

That's pretty poignant for a firm that, although it is no stranger to leavers, tends to lose laterals rather than loyal dependables who have ascended the ranks from Gouldens. Jones Day won't want to be making a habit out of that.

THE LEADERSHIP HIRES

NAME: Michael Fiddy and Amy Jacks **LEFT:** DLA Piper **FOR:** Mayer Brown



Michael Fiddy

Amy Jacks

Restructuring is in at the moment, leading a couple of firms to invest and take a punt on this active area of law. Mayer Brown managed to scoop two DLA Piper leaders this year; global restructuring co-chair Michael Fiddy and UK practice head Amy Jacks. Fiddy was a veteran of DLA, while Jacks was making her way up the food chain too, having made partner seven years ago.

Despite the opportunities offered by restructuring work, Mayer Brown will need to pick which areas it

wants to really excel in. The magic circle have been competing with the likes of Kirkland & Ellis and Latham & Watkins, while there is another band of active players that includes Fiddy and Jacks's former firm, DLA. The pair will likely take on cross-border work, putting them in close quarters to other firms with large US practices such as Weil Gotshal & Manges and Akin Gump Strauss Hauer & Feld. They'll need to settle in quickly to take full advantage of the current climate.

Turning uncertainty into high street success

Eleven GCs and legal counsel take part in a roundtable to discuss the future of the retail industry and how best to support businesses as they deal with the changing landscape

Round the table

Ian Benjamin, restructuring and insolvency partner, BCLP

Carol Osborne, co-leader of M&A and corporate finance, BCLP

Richard Simmons, features editor, *The Lawyer*

Sarah Binder, general counsel, Pizza Hut Europe (Yum! brands)

Tessa Briggs, in-house legal counsel, Southern Co-operative

Giulia Gasparin, general counsel, River Island

Mary Geraghty, associate general counsel, Starbucks, EMEA Ltd

Mark Havas, head of legal, L.K. Bennett

Maria Passemard, head of legal operations, John Lewis

Nigel Paterson, general counsel & company secretary, Dixons Carphone

Robyn Sandilands, head of legal, Pets at Home

Shiv Sibal, general counsel and company secretary, Card Factory plc

Chris Thomas, general counsel, Odeon

Helen Woollett, group compliance counsel & data protection officer, The Body Shop

On a wet and windy November evening, 11 GCs and senior counsel from a diverse group across the consumer market, gathered at a roundtable hosted by The Lawyer and Bryan Cave Leighton Paisner. The round table was chaired by BCLP co-leader of M&A and corporate finance Carol Osborne with restructuring and insolvency partner Ian Benjamin, and centred on achieving retail success within the current climate of uncertainty.

Ian Benjamin: We have an interesting cross-section of consumer-facing people here – direct retailers who are receiving supplies and selling them on, people who are both suppliers and retailers directly, hospitality and food and beverage – who are all facing different stresses and strains. Hopefully the lead-up to Christmas will be positive, but then with an election thrown in, we will have to wait and see.

Since Toys R Us [went bankrupt] in 2017, the effect on UK retail market has been significant. While my personal opinion is that it is going through a metamorphosis and it's not the end of the high street, how are you each managing the knock-on effect? You are all very different – regarding larger retailers like John Lewis, if some of your suppliers are experiencing difficulties because they've felt the effects of Debenhams or Arcadia, how is

it affecting your ability to trade with them? If your suppliers have been affected by large retailers going under, are you continuing to get as much product to store, if the customers themselves aren't buying as much?

Sarah Binder: Franchising allows you to see the high street from a different level. In the UK, for example, we have 65 franchises, most of which are delivery outlets, as well as one that operates one of our restaurants. We have a lot of restaurants in out-of-town shopping town centres – what is difficult is being able to adjust your concept quickly enough because the high street is changing. Being able to move to different sites is something that needs to be done, but is quite difficult within the current constraints.

Helen Woollett: Everyone is currently going through huge store adjustments. We are also a franchise business, which means that we are looking at our store portfolio very carefully. We're also looking at expanding into other countries, particularly for franchise. We are not relying on the UK to be very robust, even though it's a strong market. Diverse businesses that are non-UK are really benefiting.

Binder: I agree with diversity by country and diversity by type of store. There might be six months where a shopping centre and



Mapping the future of the next generation of leading GCs. An initiative from *The Lawyer* and Bryan Cave Leighton Paisner

high street falls down, but the drive-throughs and the airports are performing. Sometimes airport outlets are down and the shopping centre ones are up, and that can be driven by cinema, for example. If there's a big film out it's pulling people into the site. Diversity is how we are managing.

Shiv Sibal: We are probably unique in the sense that we are still opening more space. I think it's because we have an incredibly tightly controlled model for the way we open stores. You won't see many Card Factory stores in central London, because the rent is too high. Because of the cash-generation in the business we can control our landlords rather than the other way around. We have a vertically integrated model, which we are leveraging in different ways. You don't have a greeting card culture in every country – we've signed a deal with an Australian retailer where we'll roll out our entire estate, so

there'll be no real estate risk because they are their properties, but we will get our brand exposure out there. It's an incredibly rapid roll-out model – 330 stores in six weeks. It's about replicating the core strength of the business elsewhere, and then mitigating the huge risk of taking on space.

Nigel Paterson: The sentiment is down on the UK retail sector. When I joined we were the 75th largest company in the UK, but we're now out of the FTSE 200. One of the things we need to do in this period of uncertainty is communicate with our investors about all the other businesses we have in the Nordics and Greece, because the total value of the group is probably the same as the value of our Nordics business. There's no doubt that the sentiment and negativity of UK retail is dragging us down. What we crave is some measure of political certainty – twice this year we have taken out additional

stock in case of Brexit. We need clarity on what the political framework we will be working within is in the future.

Maria Passemard: Regarding our property portfolio, we have been looking very closely at our stores. For many years Waitrose was on a growth strategy – we've had to address this and dispose of under-performing stores. With the stores that remain, we are looking at other ways of enticing people in. We recently announced a tie-up with Boden, where you can click and collect their products from our store. Boden is our demographic market, so it is hoped the customer waiting for their parcel will do their shopping too. We are also looking at trialing some other shops with Amazon. There may be a halo effect, though we don't want it to distract from the main operation of our business which is selling food. In terms of John Lewis, there is a big push to change ▶

Key findings from this GC2B event to help you on your way

BEING PART OF THE COMMUNITY AND GIVING THE CUSTOMER A PREMIUM EXPERIENCE IS MORE IMPORTANT THAN EVER

GC2B

TO SHOW THEIR VALUE TO THE BUSINESS, IN-HOUSE TEAMS NEED TO BECOME LIKE LAW FIRMS AND HAVE THE DATA THAT PROVES IT

ASK THE CUSTOMERS WHAT THEY WANT, AND THEN BUILD AROUND THE WAY THAT THEY WANT IT

DATA PROTECTION SPECIALISTS ARE A KEY COMPONENT IN THE EFFORT TO BUILD LOYALTY BETWEEN CUSTOMER AND BRAND



Carol Osborne, BCLP; Chris Thomas, Odeon; Helen Woollett, The Body Shop

groomers in store, dog agility classes, pet nutrition experts, we hold birthday parties. People visit as a day out with their kids to see the rabbits. This forms an interactive offering that is very successful. We are looking at what we can control rather than external factors we can't control.

Chris Thomas: We are in a similar position in that people are coming out for an experience (there are definitely no rabbits – just Peter Rabbit!). We are still in retail, we are in hospitality, we are trying to drive food and beverage. We want to be part of the community and be the place where people go for leisure. We call our customers “guests” and occasionally big corporates can forget about the guests. But the central part of the operation is knowing exactly what guests want – how can we ensure they are getting the best experience from us? Rather than just building and expecting them to come, ask the guests what they want, and then build around the way that they want it.



Shiv Sibal, Card Factory

“

You need to listen to your consumers and adapt to them – see if you can deliver what they want”

*Chris Thomas,
general counsel, Odeon*

the shopping experience. With so much online, there has to be a reason to go and visit the store. You can't plan for the level of uncertainty there has been. You end up not having the stock in place or you have so much stock that it is costing a fortune.

Tessa Briggs: With food retail, we have been largely insulated against what has been happening elsewhere on the high street. We have a very local focus and support local suppliers. But we have done similar services and branched out in similar ways – you can drop off parcels in Co-op stores and we have brought in Amazon Lockers – this maximises the local focus. We don't have an online presence, so it is all about the convenience for customers in-store.

Robyn Sandilands: The pet care industry has been quite resilient too. We are really embracing the shopper experience in terms of what can be offered, so we have pet

Passemaid: A few years ago, Odeon's competitors would have been Cineworld and Showcase. But Chris, is your competition now Netflix, which is getting movies to televisions quickly without releases in cinema? You have to give people a reason to leave their house and not just watch movies for free on their laptops.

Thomas: Yes, you need to listen to your consumers and adapt to them – see if you can deliver to them exactly what are they are asking for. In Islington, we are starting a dining experience as part of our Luxe brand.

Sabal: Sentiment in our industry is critical. Every person I speak to says “Funky Pigeon and Moonpig must be killing you”. But that's 2 per cent of the market. We sell one in every three cards in the country. People want to go and choose a card because of sentiment. And the cinema is the same.

Briggs: We are a co-operative, so, though we don't have a loyalty scheme in the way that some other retailers do, we have members and they are our owners. We have an obligation to them to find out what they want and provide it.

Carol Osborne: So it is about a deep personalisation and focus on customer. Then there is diversity and spreading your risk. Is that changing how legal departments



Maria Passemaid, John Lewis

serve your clients? Do you need people with different skill sets and are you changing the way you staff your teams?

Binder: You certainly need an adaptable team because of the speed at which things move. The people that are generalists are like gold dust.

Paterson: There are certain skill sets we are increasingly needing. We are trying to move away from being a store where people make one-off transactions to running loyalty schemes to embed deeper relationships. This requires data protection specialists, who can help manage and use customer data.

Woollett: Because The Body Shop was bought by a Brazilian company we are interacting with a lot of Brazilian lawyers. Speaking Portuguese has become very useful to us, so I have hired people that speak multiple languages – it's like an insurance policy against what may go wrong, in terms of data protection lawyers.

Sandilands: Becoming a business partner is more and more important. You're not just there as a lawyer, but there to sit on the executive team and be part of the strategic discussion. It's very much being a business partner lawyer, rather than being a lawyer involved in business decisions. It does place a lot of pressure of teams, so they have to be very agile.

Paterson: As a legal function, we see the business end-to-end and we don't represent a PNL. So to a forward-thinking CEO, we can bring in a unique perspective. We are objective. In a world where so many businesses are struggling, it is quite easy as a lawyer to be able to persuade the rest of the management team that what they need is someone there who is able to calibrate risk at the top table.

Passemard: Good luck working in retail if you're trying to persuade management that you need a bigger team. It's a tough ask. We looked at the work our internal team were doing then asked the business what they



Robyn Sandilands, Pets at Home

PICTURES: MAT QUAKE, SUBSTANCE LONDON

thought of us – are we giving the service they want? They said that we were not visible enough. We ensured that the team was on the higher-value work. This meant finding a home for the lower-value side of things, so you may need to outsource the work differently or set up a new arrangement. You may need more legal spend, not on headcount, but on sending the work out externally. The people in your team that know the business can give strategic business-focused advice instead of dealing with endless contracts and deals. We've had to invest in these alternatives. We have outsourced employment and property work and are looking at an ALS for our commercial legal team.

Binder: We've become a little more like a law firm – more so than we could have ever imagined as an in-house legal function. Particularly with the rise of legal tech. It is thought that because we are in-house we'll never do a time sheet again, but demonstrating our value to the business involves showing what our lawyers have spent time working on and what the value to the business is. You need to be able to show this data and so we are moving into a more rigorous world around tracking our hours and producing reports. Are we ascribing our people to the work they should be doing and how much time are they spending on that?

Thomas: Bestowing the virtues of business partnering doesn't mean we are the people that get an email at 4pm on a Friday night with something to complete for Monday morning. That's not business partnering – that's just using us as someone to throw

last-minute work at. As lawyers we can't help being helpful. We are trained so that when clients ask us to jump, we ask how high.

Sabal: It's important to have a supportive sponsor within the business that recognises the important of the function. A CEO told me that sometimes it is okay to just say no. This takes some lobbying on our part, which depends on the approach of the team and how business-facing they are. ●

WHAT'S NEXT?

Continue the journey

i The GC2B journey will continue in 2020. Contact delegates@thelawyer.com for more info.

This is an edited version of the GC2B discussion. The full version can be found online.

International finance lawyers: convergence is here to stay

The Lawyer and Paul Hastings hosted a roundtable, including an external counsel fluent in US and English law, focusing on how evolving capital markets will affect the way legal services are offered

In attendance

Catrin Griffiths,
The Lawyer

Luke McDougall,
Paul Hastings

Peter Schwartz,
Paul Hastings

Ian Barnes,
Bank of America

Jessica Foong,
HSBC

Kate Hatcher,
CVC

Helena Heaton,
Lloyds Bank

Colette Pithie,
Goldman Sachs

Jarlath Pratt,
GIC

Paul Shields,
Société Générale

What is on the horizon for finance lawyers? That was the broad question being asked at a breakfast roundtable hosted by Paul Hastings and *The Lawyer* in October.

With participants both from the lender and sponsor side present, the discussion ranged from current thinking on deal structures, to how finance lawyers in-house might configure their resources within a rapidly changing transatlantic market.

The conversation between the European and US markets is intensifying. “US investors are more focused on looking at European terms,” noted one lawyer. For some institutions, this means creating a whole work stream of making their US capital markets colleagues comfortable with what is on offer.

It has also had a knock-on effect on what skills and experience are needed by firms in terms of recruitment. “You really want to look for more New York-related experience,” said one.

While many accept there is increasing convergence between US and European markets, there is, nevertheless, a distinction in practice. “European investors seem to be more flexible than US investors and accept more sponsor-friendly terms,” said one



Helena Heaton, Lloyds Bank;
Ian Barnes, Bank of America

lawyer. “Yes, they’re becoming much more familiar with European documentation,” agreed another. “You have to take on board both sides now.”

However, even if there is a convergence, few lenders or sponsors resource it that way. London, Paris, New York – the teams are all quite siloed and not terribly integrated, admitted a participant.

While high yield, as a quintessentially US product, is always going to be governed by New York law, English law is often viewed as a neutral forum – particularly with Chinese investors, who are uncomfortable with the enforcement implications of using New York law, given the current tensions around international trade and sanctions.

“In project finance in Latin America, there’s been a shift from New York law to



Jessica Foong, HSBC; Kate Hatcher, CVC

“

We are looking to external counsel who can run the whole thing, whether it be New York law, English law, or both, and be full service”



Jarlath Pratt, GIC; Luke McDougall, Paul Hastings

English law over the past six months as a result of the trade war,” commented one participant. “This is because a lot of those projects are funded by Chinese banks, and they’re increasingly getting the word from the top, which is: we do not want to be in a New York court, at all, in any conflict. And so the next and most obvious option is English law.”

There was a general consensus around the table, too, about the importance that Asian investors in general will have in the future of Europe and Central Europe, particularly when it comes to direct foreign investment. “Europe is starting to fracture in its approach to China,” said one lawyer, while another said: “In Japan there was something like \$8bn (£6bn) of new investment money raised this year.”

Furthermore, any post-Brexit pushback on using English law on European deals has largely dissipated. Arbitration clauses – now increasingly common – generally stipulate London as the forum for dispute resolution, although Singapore and Switzerland are certainly seen as attractive alternatives. But

according to the participants, there is no attachment either way to a particular governing law in market terms. As one lawyer commented, “Transaction teams don’t care, they’ll do whatever necessary to just get the deal done.”

Deal decisions inevitably have an impact on the internal set-up at lenders and sponsors. No matter what the size of the institution, there are two abiding themes: cost and time pressure. “We are looking to external counsel who can run the whole thing, whether it be New York law, English law, or both, and be full service,” said a participant, noting – with agreement from others around the table – that the requirement for a harmonised transatlantic approach was crossing over from leveraged finance to infrastructure investing.

At the heart of these teams is the ‘lawyer of the future’, a model counsel who sits in London, but is also inherently connected with other desks, and able to do all of the due diligence before presenting feedback to the client. “The last thing you want to hear from your external counsel is: ‘Oh you’ll

Threading needles and staying neutral

Luke McDougall, finance partner, Paul Hastings, London

Paul Hastings was very pleased to sponsor the roundtable discussion on transatlantic finance and we thank all the panellists for their valuable contributions.

There was some real diversity of positions and perspectives here, but certain key messages came out for lawyers involved on complex international financings, namely:

- Governing law means very little to clients, only what’s needed to get the deal done
- Cross-border and specialist advice should be packaged in the background, and delivered in the context of the financing
- The ‘super lawyer’ or ‘lawyer of the future’ is someone conversant in all products, capable of soliciting specialist support and adept in the delivery of synthesised advice.

In summary, clients on financing transactions don’t really want to see how the sausage is made!

The conversation also wended through many of the tight spots finance lawyers get themselves in. In-house counsels noted how the practice of designating lender counsel has ultimately challenged how legal services are offered. We also heard that regulatory change has massively expanded the scope of in-house legal work.

One very pleasing aside was that news of English law’s demise has been overstated. It looks as if the oldest common law will remain the most-used for some time yet, but it’s increasingly helpful to be conversant in New York law as well.

need to call Sue in our New York office and she’ll help you out’,” said one lawyer.

The expectation for lender counsel to give independent, robust and coordinated advice was clear – both sponsor-side and bank-side. “Our capital markets team really do want the bank lawyers to be there as a second pair of eyes,” said one participant, noting the need to minimise the risk of missing out on key issues and points of contention. “You want a light touch from external counsel, but you also need to have faith in them to pick up the right issues,” said another. ●

BETWEEN BRUSSELS AND LUGANO, WHAT WILL FILL THE GAP?

After Brexit, current rules on jurisdiction and enforcement will no longer apply in the UK. It could take years to accede to the Lugano Convention, so what happens in the meantime?



Sara Masters QC,
barrister



Fiona Whiteside,
barrister

If and when the UK eventually leaves the European Union, and when any transition period expires, the Recast Brussels Regulation will cease to apply in England and Wales.

The UK Government under Theresa May announced its intention to accede to the Lugano Convention. Lugano is the EFTA equivalent of Brussels I (the predecessor to Brussels Recast). The current Government has not departed from this, but with negotiations not having begun and the agreement of all other contracting states required, Lugano could be several years away. What might fill the gap between Brussels and Lugano?

Hague Convention on Choice of Court 2005

Where a contract contains an exclusive jurisdiction agreement entered into after 1 October 2015, the Hague Convention may well apply. The convention is currently in force in all EU member states, as well as Mexico, Montenegro and Singapore. The UK has deposited an Instrument of Accession, which is conditional on a no-deal Brexit, to ensure continuity. The position in the event of a negotiated exit from the EU is unclear, but it seems probable that the UK would still accede. It is unclear whether the convention will be applied retrospectively (i.e. to London jurisdiction clauses concluded before Brexit). Recent advice from the commission is opaque. The issue of whether anti-suit injunctions will again be available from English courts to enforce a jurisdiction clause covered by the Hague Convention is controversial but is a definite possibility.

Common law

In the absence of an exclusive jurisdiction clause, as matters stand, the common law rules would apply. In a nutshell, if the rules authorise you to serve, you can sue. The rules on service are set out in part six of the CPR. But permission to serve out overseas is discretionary and raises questions of comity and forum conveniens. Applications for permission to serve out are normally *ex parte*, so an increase in litigation will not necessarily

follow. However, challenges to jurisdiction may prove a tempting delay tactic for foreign defendants reluctant to engage with substantive proceedings.

As to enforcement in England and Wales, in the absence of a bilateral treaty, the final and conclusive money judgment of a competent foreign court is enforceable as an action for the judgment debt. Whether an English judgment is enforceable overseas would obviously be a matter of local law.

Beyond Lugano

The May administration envisaged a wide-ranging agreement between the UK and the EU, “which would cover a coherent package of rules on jurisdiction, choice of jurisdiction, applicable law, and recognition and enforcement of judgments in civil, commercial, insolvency and family matters”. This remains to be seen.

An interesting recent development is the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. As matters stand, this is of little current interest. The only contracting state so far is Uruguay. But if the EU accedes, this could provide for mutual recognition and enforcement of “any decision on the merits given by a court” between the UK and the EU; a significant development.

The enforcement of arbitration awards will be unaffected by Brexit, as that is governed by the New York Convention 1958.



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PRIVATE PROSECUTIONS: THE CODE, COSTS AND DUTY OF CANDOUR

The introduction of the Code for Private Prosecutors aims to provide a benchmark for best practice, observe high standards of integrity and guidance on any challenges

On 17 July 2019, the Private Prosecutors' Association produced the Code for Private Prosecutors, aiming to provide a clear statement of best practice in the conduct of private prosecutions. The publication was timely: recent cases suggest private prosecutors are not always sufficiently mindful of the duties which they owe the court.

Johnson vs Ball

On 29 May 2019, a District Judge at Westminster Magistrates' Court granted an application for summonses against Boris Johnson MP, on the application of Marcus Ball and Brexit Justice Limited. The misconduct offences related to Mr Johnson's conduct during the EU Referendum campaign.

On 7 June, the Divisional Court (Rafferty LJ and Supperstone J), quashed that decision on judicial review. On 20 September, the court made an order for indemnity costs against the prosecutor for the sum of £101,130 – the entirety of the costs incurred in the High Court and below.

The prosecution had been commenced "in breach of the duty of candour" owed to the court. It was "politically motivated and vexatious" and there was "plainly no proper legal basis for the issue of the summonses". The bringing of the case was "unreasonable to a high degree" and "deserving the punitive element of an order for indemnity costs".

Duty of candour

Johnson came a year after the High Court (Gross LJ and Sweeney J) allowed an application for a judicial review of the refusal of Leeds Magistrates' Court to dismiss summonses issued on the application of another private prosecutor (Karwan [2018] EWHC 1233 (Admin)).

It was argued by the prosecutor in the case that, in the context of an application for a summons, there is no duty of "full and frank disclosure".

However, the High Court disagreed: the grant of summonses can have far-reaching consequences and there can be no doubt that a duty of candour exists. Compliance with that duty is the "foundation stone" upon which such decisions are taken and its importance "cannot be overstated".

As much as in the civil context, "a prosecutor seeking an ex parte order must put on his defence hat and ask himself what, if he were representing the defendant or third party with a relevant interest, he would be saying

to the judge, and, having answered that question, that is what he must tell the judge..."

In Karwan, the court made an order for indemnity costs against the private prosecutor, in respect of all costs incurred by claimants in the High Court and the magistrates' court case, a sum of £250,000. The private prosecution had been commenced on foot of culpable breaches of the fundamental duty of candour. From first to last, the prosecution had involved unreasonable conduct, resulting in a significant waste of court time and resources.

Conclusion

Private prosecutions allow individuals or companies who claim to be victims of crime to pursue justice themselves. They can offer an efficient alternative remedy where a prosecution has not been pursued by the state, and deter future offending by, for example, employees, targeted fraudsters and competitors.

But it is essential to remember that the standards applicable to those conducting a private prosecution are of the highest order. That starts with the requirement that an application for a summons must disclose all of the information that is material to the court's decision, which includes any material adverse to the application, or which might militate against it. As the private prosecutors in Johnson and Karwan discovered, a failure to meet that exacting standard can have severe consequences.

The nature and extent of the duties upon private prosecutors, at all stages of the process, are set out in the PPA's Code for Private Prosecutors, which can be found here: <https://private-prosecutions.com/wp-content/uploads/PPA-Code-for-Private-Prosecutors.pdf>

Adrian Darbishire QC and Rachna Gokani authored this article and acted for the claimants in the two cases described above.



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From ABS to IPO, firms unleash their NewLaw weapons



Cristiano Dalla Bona

Criticised for being slow to react in 2018, traditional firms were, in fact, preparing their strategies and waiting to attack

In *The Art of War*, the ancient Chinese strategist Sun Tzu wrote that all warfare is based on deception; when you are ready to attack, you should appear inactive.

Law firms seem to have taken note of this military tactic. Last year, market observers condemned traditional firms for being slow in their reaction to the threat of new players. In the background, those firms were making plans that, over the course of 2019, resulted in articulated investments aimed at turning technology and innovation into revenue streams.

With the threat posed by the expansion of Big Four accountants and a huge growth on the alternative providers front, the market is still fluid and unpredictable.

In this context of uncertainty, the ability to build out a long-term strategy will determine who will thrive – and who will miss out.

Radical choices

In 2019, the gloomy visions of a legal business attacked from all sides by aggressive Big Four accountancy firms turned into a reality. Last January, Deloitte Legal made its long-awaited debut. After a nine-month search for a leader for its new UK legal arm, it brought in former Allen & Overy banking partner Michael Castle. Having spent 20 years at the magic circle firm and now tasked with building up the legal function of Deloitte, Castle embodies the connection of two worlds that have never



been closer to each other – with huge potential for collision. There is traditional lawyering on one side; on the other, an array of consulting, managed services and technology development capabilities.

Only a few months after Deloitte Legal took shape, EY swooped for Thomson Reuters’ managed legal services business Pangea3 in an attempt to further bolster its offering after taking on NewLaw business Riverview last year. After the purchase, EY carried out an internal reorganisation that will see EY Riverview Law and Pangea3 combined under the same managed services brand, marking the end of a process to integrate the two newly acquired businesses. The combination of the two units under the EY Law umbrella followed the approval recently obtained by the accountancy firm from the Solicitors Regulation Authority (SRA).

On the private practice side, law firms have not waited to be scooped. There were investments on new business offerings and alternative subsidiaries across the board. Some of these efforts were more daring than others. After two years of bureaucratic work and internal regulatory checks, Reed Smith finally received its long-sought alternative business structure (ABS) licence. The licence was conceived by EME managing partner Tamara Box as a way to “future-proof” the entire business. The potential benefits are there to see: the ability to bring in professionals without formal legal training such as consultants, operations directors and technologists; the capacity to obtain external cash injections; and most importantly, the permission to widen service lines beyond law.

Reed Smith was not alone in rethinking its business model. In March, DWF floated on the London Stock Exchange, becoming a publicly listed company. The firm gained a considerable war chest, a combined £80m overdraft granted by HSBC and Lloyds that will fund the reorganisation of the business, a select number of acquisitions and corporate and working capital purposes. Its first annual report since listing gave insight into the growth of its NewLaw business lines. For instance, its Connected Services arm brought in £18.5m. The firm also disclosed that it had injected £800,000 into its research and development unit, DWF Ventures.

Only a few months ago, *The Lawyer* reported that DWF had laid out plans to make its managed services business the largest part of the firm in the next few years, through international expansion and a new go-to-market strategy. As part of the strategy, it is understood that the firm has set an internal target for the managed services unit of striking one outsourcing deal every quarter, with conversations with clients already under way. The target-setting followed the recent win of a tender process that will see BT outsource a major part of its in-house services to the firm. As part of the contract, which was

“

It was about getting capability in to allow our clients to leverage technology far more efficiently and effectively”

*Ben McGuire,
Simmons & Simmons*



struck for an undisclosed sum and lasts five years, DWF will contribute insurance and real estate advice to the telecommunications behemoth.

Recently, it emerged that Mishcon de Reya has similar plans, as it gears up to hire bankers to explore the IPO route and means of raising capital.

The summer of NewLaw

While not radically changing their business model or organisational structure, other firms made strides. Simmons & Simmons took it upon itself to acquire an entire business to bolster its UK headcount with data scientists and design experts instead of running endless recruitment feats. In July, it bought Wavelength, a legal engineering firm with offices in London and Cambridge; as a result, its founders, ex-Bird & Bird lawyer Peter Lee and former Taylor Vinters lawyer Drew Winlaw, became partners.

Simmons & Simmons innovation head Ben McGuire, who was instrumental in the acquisition, explains: ▶



Data capture, pricing and engineering skills are becoming increasingly necessary”

Neville Eisenberg,
BCLP



“It was about getting capability in to allow our clients to leverage technology far more efficiently and effectively. The business is essentially a legal tech consultancy, so they fit at the interface of law firms and clients and tech and science, linking them together.”

The Wavelength acquisition happened during a summer that saw multiple NewLaw developments. A number of firms debuted subsidiary businesses to branch out into new service lines and open up new cash flows. One month before Simmons pulled through its acquisition of Wavelength, Eversheds Sutherland had debuted Konexo, the firm’s own version of an ALSP that was built on its existing consulting platform to go head-to-head with the Big Four accountants operating in the contract lawyer, managed legal services and consulting markets. Konexo’s structure allows to attract external investment, consider joint ventures and acquisition opportunities to accelerate its growth plans. The firm is currently applying for an ABS licence to allow Konexo to attract what co-CEO Lee Ranson called “significant external investment”. The firm confirmed it was targeting a total revenue of £100m for Konexo within five years.

That same month, Bryan Cave Leighton Paisner (BCLP) set out to look for ways to convey legal advice by using technology platforms and expanding its legal operations capabilities as part of a new service called Cubed, which was spearheaded by senior partner Neville Eisenberg as chief executive officer. The idea was developed alongside BCLP’s chief innovation officer, Katie DeBord, who took charge of the product development team within the unit. Eisenberg said the unit was sparked by clients’ growing interest for more

comprehensive services from law firms. “Data capture, pricing and engineering skills are becoming increasingly necessary,” he said.

After its move into new palatial headquarters at the Fruit & Wool Exchange near Liverpool Street, Ashurst took time to reorganise its Ashurst Advance internal efficiency unit. Launched in 2016 and designed as a way to pull together the disparate strands of the firm’s NewLaw service delivery mechanisms on a global basis, the unit was made into a firm division with the same level of importance of, say, corporate and financial services. Now led by partner Chris Georgiou, it houses two main practices: internal efficiency arm Ashurst Advance Delivery and digital transformation arm Ashurst Digital Ventures, which will focus on creating products for clients.

This string of launches underlined the need for firms to have a plan around diversifying their services to win mandates and satisfy client demand for added value. “Law firms are currently segmented into three categories,” says John Croft, president of the provider Elevate. “There are those that are doing nothing, hoping that nothing goes wrong. Then there are those that are building out their own alternative solutions or other capabilities through internal resources. The third bucket includes firms that are resorting to external providers.”

Considering the growth of the ALSPs market, this third bucket looks destined to expand.

Providers come of age

Just as law firms embarked on long-term internal projects to ensure they are fit for the future, the market of providers was no stranger to coups de théâtre. Once considered a niche at the service of private practice, these companies are now grossing high turnovers, competing for the same panels as law firms and expanding by way of acquisitions and joint ventures.

Provider Elevate’s financial results, reported by *The Lawyer* as part of this year’s UK 200 report, underline this trend. Turnover reached a record £76m last year, including £20m generated in the UK. The global revenue figure, which includes turnover from several of the acquisitions Elevate has made over the past year, is a 58 per cent increase on the £48m it generated in 2017. The company’s clients include law firms such as Clifford Chance and Hogan Lovells, as well as corporates such as BT, NetApp and Starbucks.

At the same time, UnitedLex’s turnover is currently \$350m. The US-headquartered company’s turnover makes it around the same size as Osborne Clarke (£268.6m) and bigger than Irwin Mitchell (£263m), DAC Beachcroft (£242.7m) and Fieldfisher (£242m).

UnitedLex was also rumoured to be part of the competitors for the managed services deal struck by DWF with BT, showing how providers and firms are now going head-to-head for juicy mandates.

This growth spurt reflects a slate of high-value deals and the nurturing of close relationships with law firms. Providers have been described by several heads of innovation in private practice as more mature in their approach to private practice clients as opposed to previous years. The relationship was improved by a trial-and-error progress, collaboration efforts and constant feedback from customers. “Part of the onus is on law firms to help start-ups elaborate a proof of concept and understand what you need from them,” says Laura Bygrave, innovation lead at Deloitte Legal. “Given our size and resources, we need to make that as seamless as possible. But it only gets easier when there is a two-way communication and transparency relationship.”

As businesses mature and strike profitable deals, they become attractive targets for acquisitions. In July, Thomson Reuters acquired collaboration platform HighQ, expanding the business intelligence behemoth’s

portfolio and its capabilities in developing new products through artificial intelligence and technical improvements. Acquisitions are still among the best “exit” options for legal tech and broader technology start-ups, culminating in companies earning a massive market share with the capability of plugging in more clients.

However, just as HighQ obtained its Cinderella story, flexible resources provider Axiom found itself in front of a difficult question: how to scale. Axiom recently walked away from its long-awaited plans to IPO, revealing instead that it garnered big cash from private equity firm Permira. The decision showed how Axiom, in the end, might have seen a private investment as a more secure way to develop its growth strategy instead of a risky stock exchange debut. Both tech giants and rising start-ups, which initially eyed public listings as a launching platform for sky-rocketing growth, are now in for a bumpy ride, possibly scaring others away from pursuing the same path. For instance, since going public, the shares of Uber and Lyft have plunged.

As companies quickly expand, this growth problem is likely to become more pressing: what’s the logical ▶

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“

Too many start-ups have been focusing on areas such as document automation or contract management”

*Jonathan Patterson,
DWF Ventures*

”

next step as they cash in investments and expand? This is also true of Axiom Managed Solutions (AMS), the company that spun off Axiom ahead of its now scrapped IPO. It is currently in a sale process that has flexible lawyer service Lawyers on Demand (LOD) among the contenders.

Dreams of growth were accompanied by less rosy scenarios for some players. Deal flow management legal tech start-up dealWIP, an alum of Mishcon de Reya’s MDR Lab, closed after running out of money and failing to garner enough resources to support the business. In this respect, Jonathan Patterson, managing director of DWF Ventures, points to signs of saturation. “You need to be really clear about the segment of the market in which you sit: whom do you serve and whom do you compete against?” he says. “Too many start-ups have been focusing on areas such as document automation or contract management. If you pitch a product that is easy to replicate, you will struggle.”

In this highly competitive environment, start-ups should start to set their eyes away from private practice and on to in-house, which was described by many innovation professionals as an under-served area of the market. Many heads of legal are in a search for tech platforms to reduce internal costs and drive productivity and efficiency, with general counsel saying they are looking to extend their panels to include providers.

Long-term arrangements

If firms want to thrive in this ever-changing business environment, in the next few years they will need to have a serious think about their current model and whether it is flexible enough to allow diversification of services. “If you want longer-term relations with your clients, you need to start building capabilities, structures or models

that allow expansion into other business services. Big, sophisticated clients are interested in more than just legal expertise,” DWF Ventures’ Patterson says. But that does not mean everyone needs to aim for five-year, gigantic managed services contracts. Building on firms’ specific histories, best-performing practices and natural extensions might be key to carve out their own niches and drive previously inaccessible revenues. They need to see where client demand is going – and what they can afford.

At the same time, firms should start focusing more on their real long-term assets: people. It would be disingenuous to think lawyers will be the only revenue source of law firms in five years’ time. Headcount at a number of firms now includes a mix of project managers, data scientists, innovation leads, software developers, legal operations experts – and who knows what new roles might still come in future. They won’t tolerate being minor planets orbiting outside the partnership galaxy. We’ve already seen how fluid the innovation market is, with a number of innovation heads ditching private practice to join the Big Four or providers. There, they find resources, opportunities to take business risks, and a longitudinal career path. “What motivates them is different than what motivates lawyers: they want to experiment and work in creative ways,” says Deloitte Legal’s Laura Bygrave, who fits the pattern, having recently joined from Taylor Wessing.

We’re in the early stages, as many market observers remark, and every development can still be seen as temporary and likely to shift entirely with the rise of the provider next door or the next pricey acquisition. But, to bring it back to Sun Tzu, while the battles come and go, a bigger war is set to start. It’s about time for firms to decide how they are going to fight it. ●

UNDERSTANDING THE LIMITS OF TECHNOLOGY ASSISTED REVIEW (TAR)

It promises to increase efficiency and reduce costs by electronically classifying paperwork, yet certain documents will not be responsive – and human review is still required

There have been plenty of recent articles expounding the cost savings and efficiencies of Technology Assisted review (TAR). A computer algorithm “learns” from expert reviewer(s) to classify a document’s likelihood to be relevant (or not), thereby allowing a massive number of them to be easily reduced to a more manageable set.

In the right circumstances, such technologies can assist and even be superior to the “prior art” (i.e. linear review and/or search term-based review). However, such articles often fail to mention the limitations of this technology and the additional decision-making burden it can place on the legal team conducting the review.

Text-based decisions

Most, if not all, of the algorithms which underpin the current TAR offerings make their decisions based on text, e.g. the Support Vector Machine (SVM) algorithm. By definition, documents with limited or no text cannot be classified and are typically removed from the TAR document set. This results in the immediate exclusion of most spreadsheets, audio, video and pictures (along with any “smoking gun” emails with very little text).

Data size and volume

All TAR technologies rely on building a model of the document set and using that model, in combination with reviewers’ decisions, on relevant and not-relevant documents to identify commonalities. The model extrapolates review decisions and predicts the likelihood of an un-reviewed document being relevant. With the trend of cases growing in size and volume of data, having enough documents to allow the model to work would not usually be an issue. However, a small project comprising a couple of mailboxes may not have enough documents for the technology to work effectively. Conversely, depending on the application used, there likely will be a document size limit for TAR projects.

Common language issue

As the model is built to identify correlating terms between documents, success is contingent on the documents being in a common language, or set of languages. For example, if 95% of your documents are in English and 5% in French, then your TAR algorithm will likely perform well across the English documents, while struggling with the French ones, which may be “drowned out”. In such cases, you may need to

segregate the document population by language and treat them separately.

Practical impact

Depending on your collection and processing strategies (and the data itself), you may find that up to 30 to 40% of documents cannot readily be addressed by TAR, so this might require an appropriate and separate workflow.

Secondly, there is an element of risk. Prior to TAR, the accepted approach to document review was to run a set of search terms against them and review everything responsive to those terms. Very rarely was any consideration given to unresponsive documents.

TAR, however, actively encourages the consideration of documents that the algorithm deems “not relevant”. It produces a relevancy prediction score for each document between one and 100 (where the likelihood of relevance increases towards 100). You determine your cut-off rank (e.g. 65) and review everything above this, then carry out a statistical sample and review of the remaining documents. Be aware that a seemingly low percentage of potentially relevant documents could translate to worryingly high numbers in reality.

Consider a real TAR project that contained 5.7 million English language documents:

- A statistical sample of the predicted “not relevant” documents was reviewed (95% confidence level with a margin of error +/- 2.5%); in practice, this is always approximately 1,500 documents. A total of 2.67% per cent were identified as “relevant” in the sample set.
- Extrapolating this percentage, the number of likely relevant documents not identified by the TAR project (and therefore not reviewed) was 112,300 – can you defensibly avoid addressing these?

TAR has clear cost saving and efficiency benefits, but the abovementioned considerations must first be weighed up. For non-text data, mixed language data and small data populations, other workflows should be developed to allow investigators the full benefit of the relevant, potentially responsive data population.



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Pictured above: Managing Partner at Matheson, Michael Jackson, and Head of Matheson's London Office, Sharon Daly

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Weathering the storm



Ana de Liz and Audrey Blount

Despite Brexit, European law firms remain confident about London retaining its status as a prime global financial centre, and they cite a rise in restructuring-related work, regulatory advice and data protection issues

There is a general consensus that London will remain the biggest financial hub in Europe for the foreseeable future; therefore European firms with a City office are showing no signs of retreating, despite Brexit.

Indeed, the repercussions of the 2016 referendum continue to provide considerable and complex work. *The Lawyer* caught up with some of the lawyers from firms across mainland Europe working in London, to see

what work their City offices has been involved with since the UK voted to leave the main European bloc.

Opportunities to be had

Having formed their firm in 2006 and been the Turkish arm of DLA Piper from 2010 to 2014, Cüneyt Yüksel and Murat Karkin are no strangers to changes in the legal market, and have also had to deal with political and economic turmoil in their home country.

While they still have an office in Istanbul and a team in Ankara, the political and legal situation in Turkey prompted the co-managing partners of Karkin & Yüksel to relocate to London in 2017, building an office able to serve contentious issues and corporate transactions, as well as human rights law. Brexit has not slowed them down. In fact, they say there is a growing client list that has not been affected by the UK's decision to leave the EU. ►



“However, as Turkey is part of the customs union, only time will tell whether UK investors will lose their appetite in Turkey as an investment opportunity or not. It will be interesting to see whether the UK remains attractive to Turkish investors post-Brexit,” Karkin says.

Iberian firm Garrigues’ London managing partner Ignacio Corbera has also seen an uptick in certain transactions. “In some sectors, such as real estate and tech M&A, such uncertainty has triggered a positive effect in other parts of Europe, such as Spain and Portugal, and our London office and the whole firm has benefited from it,” he says.

Equally, the uncertainty surrounding the UK at the moment has diverted some investments from the US or Asia to continental Europe. In turn, this has boosted the firm’s activity in London as an outpost to “identify such opportunities and to channel them to our Spanish and Portuguese offices”.

For European firms that have set up outposts around referral work from US or UK firms in the City, there is no way around the Brexit uncertainty, however. That is the case with Switzerland’s Froriep, and its London head Dunja Koch does not



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If the workload decreases from the English firms, and if there is a recession, we would be affected”

Dunja Koch,
Froriep



hide from the fact. “If the City is quiet, we are quiet,” she says. “Brexit does not have a direct impact on us, because Switzerland is not in the EU; however it is indirectly impacted. If the workload decreases from the English firms, and if there is a recession, we would be affected,” she adds.

Finance central

The value of London to continental European firms goes beyond Brexit, and most in London are confident that the City will remain Europe’s finance hub. “Irrespective of Brexit, London is expected to remain the European financial centre, and only global one in Europe, for the foreseeable future,” says Niek Biegman, head of the Dutch firm De Brauw Blackstone Westbroek’s UK office.

As such, very few firms intend to change their model in London. This includes re-qualifying their lawyers as English-law practitioners, or becoming competitors to the firms established here. That is the approach that Irish firm William Fry is taking, for example: “Our strategy is to build relationships with banks, intermediaries, and to create referral networks with English and international firms,” says Ivor Banim, head of the firm’s London office. ▶





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Firms in Luxembourg have been busy advising on Brexit-related projects



Benelux takes its chance

Firms that hail from the Benelux area have seen an uptick in work in one way or another. Camille Bourke, head of the London office of Luxembourg firm Arendt & Medernach, says that for the past four to five years, advising clients on Brexit-related issues has been at the core of its activity in London.

Because of the firm's strong focus on asset management and investment funds, this office has been working to assist clients based in the UK on making Luxembourg their future EU hub.

Bourke adds that Arendt has also seen a resurgence in activity related to litigation and in work concerned with white-collar crime, forensic investigations and asset tracing, and that London has been involved in supporting these transactions as well.

Dutch firm NautaDutilh has seen an influx of companies, particularly in the insurance sector, setting up in their home jurisdiction. The London office has frequently been called in to advise on such aspects, and the firm added an insurance counsel, Miryam Lassalle, to its London desk. Nevertheless, the firm is focused on maintaining its M&A and finance capabilities to carry out Dutch-related transactions in London.

"We never believed in the set-up of having someone in London networking and sending work back to the Netherlands. We have quite a sizable office and that allows us to do both finance and M&A transactions ►

“

Such uncertainty has triggered a positive effect in other parts of Europe and our London office and the whole firm has benefited from it”

Ignacio Corbera, Garrigues





London remains strategically important for international firms



to a certain extent, since that's important to us," says Marc Orval, who heads the London office with Willianne van Zandwijk.

Restructuring and regulatory

"Brexit has affected some clients and we have advised on some Brexit-related matters, but in the main they are prepared. Our financial sponsor clients adapted their strategies quite some time ago, as Brexit is just one of the challenges the asset management industry faces," explains Thomas Schultz, head of the German firm Noerr's London office.

One of the main signs that the market has reached its peak, however, is that most lawyers contacted for this report have said that they are expecting an increase in restructuring-related work next year. This follows a trend that has seen the collapse of many local and international companies and well-known retailers in the past two years.

"I expect more and more work in distressed finance and restructuring. Brexit is one of many factors that might cause an increase in work in these areas," says De Brauw's Niek Biegman, adding that those two areas will be the focus of the firm's

London office in the coming years.

Schultz adds: "We expect a rise in restructurings and there are a variety of funds out there who specialise in this. For example, Isabel Giancristofano is our resident expert and she is involved in the Thomas Cook restructuring." Thomas Cook's subsidiary in Germany, Condor, has been granted a €380m (£325m) loan by the German government to keep the airline in operation.

Most offices of European firms in the City have also seen an increase in the demand for regulatory advice, particularly in the financial regulatory space, but also in data protection and IP spaces.

Marco Zaccagnini, one of the two partners in charge of Gianni Origoni Grippo Cappelli & Partners' London outpost, says that the Italian firm has been advising major banks in relation to Brexit, providing interesting projects for the office. "The main issue is deciding where they would do their work after Brexit, and what can be left in London without triggering licensing requirements and passporting issues," he adds.

Additionally, a resurgence in the demand for firms to have regulatory expertise in mainland Europe has grown. As ►



Brexit is just one of the challenges the asset management industry faces"

Thomas Schultz, Noerr



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Kristien Carbonez from Liedekerke explains, about 15 years ago, many UK and US firms ended up closing down their offices in Belgium. Now they are all reopening in Brussels, coming into the market in the regulatory and European competition spaces. “Only time will tell whether they will expand and take on Belgian lawyer teams again,” says Carbonez.

Here to stay

Most European firms in London expect to remain committed to the City, especially since they do not see its status as a financial centre changing any time soon and will continue to use it as an origination point for mandates, as well as an office that works on deals side-by-side with offices in the mainland continent. Froriep and Liedekerke say they have renewed their leases for their outposts in the capital, for example.

In any case, the European firms have other things on their minds than Britain's problems. “Brexit is a big issue, but aside from that, one of the big struggles for law firms on the continent is how to adapt to

technological change, and how to use AI to provide a service that is cost-efficient to clients. We have also opened here [in London] to learn best practices,” says Carbonez.

London, as one of the biggest centres for legal services in the world, can be not only a place of work for European firms, but also a place where innovation starts. As such, European firms are sticking around, despite Brexit. They weathered the last storm at the time of the credit crisis and they are confident they can do it again. 

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One of the big struggles for law firms on the continent is how to adapt to technological change, and how to use AI to provide a service that is cost-efficient to clients”

*Kristien Carbonez,
Liedekerke*





European firms' London headcount statistics

Total headcount change (2018/19)	Firm	2016			2017			2018			2019		
		Total number of partners in London	Total number of staff in London	Total number of fee-earners (inc. partners) in London	Total number of partners in London	Total number of staff in London	Total number of fee-earners (inc. partners) in London	Total number of partners in London	Total number of staff in London	Total number of fee-earners (inc. partners) in London	Total number of partners in London		
▲	Gide Loyrette Nouel	6	44	35	6	36	27	6	42	33	6		
▲	Wikborg Rein	8	28	21	7	30	22	7	39	28	9		
▼	Gianni Origoni Grippo Cappelli & Partners	1	16	10	2	18	14	4	17	12	3		
■	Van Doorne*	8	15	12	8	17	14	11	17	16	12		
▼	BonelliErede Pappalardo	3	29	20	2	29	19	2	25	19	2		
▲	Cuatrecasas Gonçalves Pereira	2	9	6	2	12	10	2	15	12	2		
▼	Logos	3	13	9	5	13	9	4	9	7	2		
▼	William Fry	3	8	7	3	10	9	3	9	7	3		
▼	Arthur Cox	N/A	7	5	2	10	9	2	9	6	2		
▲	Hengeler Mueller	3	9	9	2	10	8	2	14	8	2		
▲	NautaDutilh	2	10	8	2	10	8	2	11	8	2		
	Chiomenti	2	9	7	2	10	8	2	10	8	3		
▲	Loyens & Loeff	2	10	6	2	11	8	2	14	10	2		
■	A&L Goodbody	2	9	7	1	9	7	1	9	7	1		
▲	NCTM	4	10	8	4	7	6	4	8	8	4		
▲	Uría Menéndez	1	8	6	1	8	6	2	10	8	2		
■	Legance*	1	8	6	1	8	5	1	8	5	2		
■	Stibbe	1	7	5	1	6	5	1	6	5	1		
■	Noerr	2	10	4	3	12	5	2	12	6	2		
■	Egorov Puginsky Afanasiev & Partners*	2	6	4	1	7	5	2	7	5	3		
■	Matheson*	2	8	7	1	5	4	1	5	4	1		
■	Froriep	1	7	5	1	7	4	1	7	5	1		
▲	De Brauw Blackstone Westbroek	1	6	4	1	6	4	1	7	4	1		
▲	Garrigues	2	5	4	2	5	4	2	6	5	2		
▼	Thommessen	1	6	4	1	4	4	1	3	3	1		
■	Luther	2	6	3	2	6	3	2	6	3	2		
▼	Kromann Reumert*	1	4	3	1	5	3	1	4	3	1		
▲	Arendt & Medernach	1	5	3	1	5	3	1	7	5	1		
▼	Gattai, Minoli, Agostinelli & Partners*	N/A	4	3	1	4	3	1	2	1	1		
▲	Pérez-Llorca	1	3	2	1	4	3	1	5	4	1		
■	Maisto e Associati*	1	4	2	1	4	3	1	4	3	1		
■	Liedekerke Wolters Waelbroeck Kirkpatrick	1	2	1	1	2	1	1	2	1	1		
NE	Karkin & Yuksel	N/A	N/A	N/A	N/A	N/A	N/A	N/A	12	8	2		

*Estimated Key: ▲ Up ▼ Down ■ Unchanged NE New entrant

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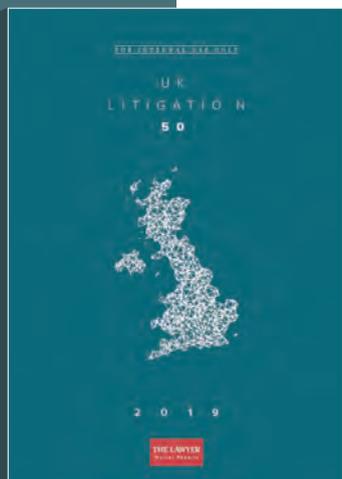
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European firms in London: spotlight on headcount

In the midst of Brexit uncertainty, one of the main adjustments firms from Europe can make to their London office is, quite simply, headcount. Dunja Koch of Swiss firm Froriep is confident that its own UK office has the “magic number” of lawyers. “It’s small enough that, when it’s quiet, they are not idle, but if it’s busy, we can get assistance from Zurich or Geneva,” she says.

According to data collected this year by *The Lawyer*, 78 per cent of surveyed European firms have the same number of partners in London as last year. Icelandic firm Logos has reduced its partner count by half, dropping to two partners, and Italian Gianni Origoni Grippo Cappelli & Partners also downsized to a headcount of three partners in its City office. Legance and Van Doorne are among firms that have added one partner in their London branch. Norwegian firm Wikborg Rein is the only firm to bring in two new partners this year, making their partner headcount nine.

Even though the data on partners remains, by and large, unchanged, there has been a shift in the number of overall fee-earners, which has seen some alterations. Some 19 per cent of firms have seen a decrease in fee-earners; 38 per cent have seen an increase, and 44 per cent have seen no change. Wikborg Rein and Gide Loyrette Nouel have experienced a significant increase by introducing six new fee-earners into their London office each. Other firms, such as Cuatrecasas Gonçalves Pereira, NCTM, or Noerr have also added fee-earners to their office, while Arthur Cox, Thommessen, and William Fry, have experienced a reduction in their numbers.

Since 2016, general staff numbers remain relatively consistent. However, there are changes worth noting. Spanish firm Uría Menéndez,

for example, has almost doubled in size since 2016 across staff and fee-earner numbers, also adding one partner to its office. Juan Carlos Machuca, the managing partner of the London office, expresses optimism: “This year has been our record year in terms of revenue, and we have not seen any Brexit-related effect in our results.”

Machuca believes Brexit will not hurt the firm’s business as “London will still continue being a financial centre in the world economy, and a number of our clients will stay and continue operating from here”, leaving room for further growth.

One firm that has seen significant growth in the number of fee-earners is Wikborg Rein. According to managing partner Chris Grieveson, the firm has “brought in more lawyers to service our growing caseload, as business has been growing very solidly over time and has been for several years now”. Recently the office has added employees to focus on renewable energy. Grieveson believes that “not being a massive firm is quite good in the sense that we have the resources to deal with large cases, but can still be flexible to clients’ needs. We add people organically as business demands it, and I believe that there will be growth in the near future.”

Álvaro Ramírez de Haro, Pérez-Llorca’s London resident partner, also sees the importance in finding the right number of professionals for his firm’s City office: “It is very important to strike a balance between the number of lawyers and the workload they have, in order to maintain a good working environment and relationships between professionals. At the moment we have an adequate number of employees, and we intend to grow over the coming years.”



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Swimming against a tide of corruption



Gabriella Kane

Investigating organised crime remains a major challenge in the Balkans, yet better collaboration and cooperation between cross-border authorities are strengthening legal frameworks. The Lawyer spoke to those working on these changes

Q What was the highest-profile corporate investigation into corruption-related allegations in your jurisdiction in the past year? Have there been any noteworthy convictions and, if so, what charges and sanctions were imposed?

Gabriel Sidere, CMS Romania: The most recent high-profile corporate investigation relates to corruption in the IT sector. The National Anticorruption Directorate (DNA) alleges that the general manager of the local branch of a leading global IT company received a €870,000 (£745,000) bribe from the representatives of partner IT companies, in exchange for better product offers (mainly IT licenses). According to the DNA, the partner companies used these to win in public tenders.

A noteworthy conviction occurred in a recent case, when RCS-RDS, the leading provider of TV and internet services in Romania, was convicted of money laundering and was fined RON 1,250,000 and €3,100,000 and RON 655,124 was seized.

Goran Radošević, Karanovic & Partners: A number of investigations into corruption has been initiated in Serbia over the past year, but mostly in relation to lower-ranked individuals, such as officials at various levels of municipal/regional government units and in public enterprises/institutions. On the other hand, corporate probes involving higher-profile corruption are still rather scarce. Current ongoing ones were typically initiated a number of years ago – and likely the consequence of dominant political influence preventing any real scrutiny of officials currently in power.

That being said, the Serbian independent media regularly publishes articles on corruption allegations involving high-ranking individuals as well (including members of the national government, for example). These reports unveil the underlying relations between them and companies owned by related parties that profit as a result of such misconduct. One of the ►

On the panel



Gelu Maravela
Founding partner,
Maravela, Popescu &
Roman, Romania



Goran Radošević
Partner, Karanovic &
Partners, Serbia



Gabriel Sidere
Managing partner,
CMS Romania

most notable recent examples concerns the state-owned weapons manufacturer, Krušik.

The affair became public after a company employee disclosed documents revealing that Krušik was allegedly selling weapons and other military equipment to a private company connected with the Minister of Internal Affairs' father, for significantly lower prices compared to other buyers. These weapons were then exported to Saudi Arabia and ended up in the hands of Islamic extremists in Yemen. However, to this day, no official investigation has been undertaken by the authorities.

Gelu Maravela, Maravela, Popescu & Roman: There were several noteworthy investigations throughout 2019, but I believe the top two, in terms of high-profile company names, are ones involving Oracle România – where the DNA started a criminal investigation against the CEO of Oracle România Sorin Mindrutescu, for multiple counts of bribery – and the cross-border investigation of Microsoft. This included its activity in Romania, researching whether the company violated a US law barring overseas corruption.

In July 2019 it was decided that Microsoft will pay more than \$25m (£19m) to settle a bribery probe by the US Department of Justice and Securities and Exchange Commission into foreign corruption allegations. And there is the recently closed EADS file, by the DNA, where an investigation has been carried out on possible corruption offences committed at conclusion of the €750m border security contract.

Q *What are the main prosecutorial bodies responsible for corruption crimes in your jurisdiction? What are the trends, sectors and activities being targeted?*

Sidere: DNA, a specialised enforcement institution, is the main prosecutorial body responsible for corruption crimes in Romania. In recent years, the DNA has prioritised targeting high-level corruption cases and EU funds fraud. A notable record of success was achieved in conducting investigations into allegations of corruption at the highest levels of government, the judiciary and across the IT, energy, infrastructure, real estate and healthcare sectors.

Radošević: The main prosecutorial bodies responsible for corruption crimes in Serbia are the special anti-corruption departments of Higher Public Prosecutor's offices. The Serbian Anti-Corruption Agency also has certain competences in this regard, such as exploring potential violations and notifying the public prosecutor about any wrongdoings committed by public officials, so he can initiate the formal investigation and charge the perpetrators.

As to the prosecutorial trends, sectors and activities being targeted, according to the Anti-Corruption Agency's annual report for 2018, most complaints have been filed and criminal or misdemeanour proceedings have been initiated, due to violations of the obligations of public officials regarding conflict of interest and disclosure of property. In relation to higher profile corruption cases, the prosecution typically targets privatisation

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Communication and cooperation between national anti-corruption authorities is a standard practice in Serbia”

Gabriel Sidere,
CMS Romania



and public procurement procedures, while the industries under heaviest scrutiny are usually construction and infrastructure, healthcare and pharmaceuticals, energy and transport.

Q *Is cooperation and communication between local authorities common in your jurisdiction? What about liaising with other agencies in cross-border investigations? If so, when is this likely to occur, and what are the most common types of information shared?*

Sidere: Yes. The local authorities cooperate and exchange information between themselves, as well as with other agencies in cross-border investigations. Usually, this type of international cooperation occurs in cases of complex money-laundering schemes, corruption and/or cybercrimes and it involves exchange of information mainly related to (i) locating assets belonging to suspects, and (ii) identifying suspects' bank accounts abroad.

For example, in a high-profile case involving corruption related to illegal restitution of assets with claimed damages exceeding \$100m, the DNA successfully located and seized two villas from Saint Tropez, France, belonging to a suspect from the file.

Radošević: Communication and cooperation between the national anti-corruption authorities is a standard practice in Serbia, and is usually taking place without any real obstacles. On the other hand, although cooperation and communication with foreign authorities exists as well, in practice, it is typically burdened with time-consuming procedural hindrances and other formalities. This is why any cross-border corruption investigation (typically involving multinational companies) takes a lot of time to process. However, this also depends on the specific jurisdiction in question – Serbian authorities have better cooperation regarding some cases than with others. This is often due to having special bilateral agreements in place.

The assistance most commonly requested through international cooperation mechanisms include tracing the financial flows through foreign bank accounts and locating other illicitly acquired assets (especially when other jurisdictions are identified as potential recipients of the crime's proceeds), as well as conducting electronic surveillance activities.

Maravela: Yes, local authorities sharing the same line of attributions and responsibilities are communicating and cooperation exists, in order to reach the common anti-corruption goals. The authorities share all relevant information with each other in cases of cross-border investigations, extradition matters, warrant arrest, etc.

Q *In the case of multinational companies, do investigations in your jurisdiction commonly involve US or UK legal teams addressing the Foreign Corrupt Practices Act (FCPA) and UK Border Agency implications? What are your tips on improving collaboration among cross-border legal teams?*

Sidere: High-profile investigations into allegations of corruption involving multinational companies ▶



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should be treated with the utmost importance and addressed from all perspectives, including the FCPA and UK Border Agency implications.

One way to improve the collaboration among cross-border legal teams is to schedule regular meetings and touch points, in order to share task-related information. It is important that these are carried out regularly, rather than on an as-needed basis, because members of the legal teams may not be aware that the knowledge they hold is needed by another colleague from a different jurisdiction.

Radošević: Local investigations do not typically involve US or UK legal teams to address those implications, but cooperation between the authorities certainly does exist in terms of exchanging information through official channels. This is most often the case when US or UK authorities request information from Serbian ones, concerning any bribery or accounting violations committed by local subsidiaries of US or UK companies being investigated abroad.

In addition, both prior to and during these investigations conducted by competent authorities, the US law firms advising the companies being investigated for FCPA violations regularly engage Serbian law firms to assist in analysing the local law implications, and work together with them to analyse any documentation and conduct interviews with individuals concerned.

On the other hand, sometimes the official anti-corruption investigations in Serbia are inspired by convictions, plea bargains or publicly available allegations that are made in the US or UK, which implicate the violations committed by foreign companies' subsidiaries operating locally.

Our high-level tip on improving cross-border collaboration would be to formalise the channels of cooperation by concluding new bilateral agreements (or amending the existing ones), on mutual assistance in criminal matters, which would also include more direct lines of communication and information exchange between specific authorities. Such actions would thus facilitate more time-efficient and less procedural-burdened collaboration between parties.

Q *How frequently are judicial assistance requests used in your jurisdiction? For example, are rogatory commissions and requests to locate witnesses/defendants, video depositions frequently used? If so, in what circumstances are these deployed?*

Sidere: The judicial assistance requests are used especially in complex cases of tax evasion, money laundering, as well as in cross-border organised crime. The most common type of judicial assistance request used in our jurisdiction is the request to interview witnesses abroad through a rogatory commission.

The video deposition on the other hand, although introduced in the Romanian legislation more than 15 years ago, is rarely used in practice. However, in the past year, we saw that the competent authorities in our

“

Our high-level tip on improving cross-level border collaboration would be to formalise the channels of cooperation”

Goran Radošević,
Karanovic & Partners

jurisdiction are at least starting to consider this option during criminal trials.

Radošević: In terms of sheer numbers, it can be said that these requests are quite common in Serbia – the total number of judicial assistance requests submitted for criminal matters in the country is estimated to be around 500 to 600 per year (based on unofficial information we received from the representatives of the competent ministry).

These requests are most commonly used for hearing of the defendants and other individuals (such as injured parties and witnesses), search and seizure of objects and documents etc. Basically, whenever there is a need for a foreign authority's assistance in conducting a criminal procedure (which is quite often in cases involving multinational companies).

Maravela: Judicial assistance requests are used quite often, especially in circumstances that involve witnesses that can not and/or will not travel and thus, a request for a rogatory commission is formulated.

Q *What concerns related to protection of privilege crop up in your jurisdiction?*

Sidere: Certain difficulties may arise in relation to protection of privilege when interacting with individuals within legal entities. The law states that confidential communication between a lawyer and the client is privileged if it relates to the seeking and receiving of any legal advice.

For legal entities, the definition of a “client” is limited to persons who legally represent the entity (based on the legal entity's charter), or are empowered by the entity to seek and obtain advice on behalf of the legal entity. Thus, if communication is shared with third parties or parties who are not considered “clients”, that communication may no longer be considered confidential and loses its privilege. The same applies in respect of interactions with in-house legal counsel who are not admitted to the bar, as the communications with the latter are not protected by legal privilege.

Radošević: One of the common concerns related to the protection of privilege in Serbia is that the “fruit of the poisonous tree” theory is not always adequately implemented in practice.

Specifically, even though the prosecutors and courts cannot formally use the information contained in evidence obtained in breach of privilege (which is considered unlawful and therefore removed from the case files) in further investigation and decision making, in practice this information is sometimes being used to steer the investigation in a specific direction and “locate” the same information by using a formally different evidence gathering method. This is then used in the process as if it was legitimately obtained from the beginning.

This “thin line” is not always recognised by Serbian authorities, and therefore further efforts need to be made in order to properly educate the stakeholders and ensure better compliance with this rule. ●

ROMANIA: HOW ASSOCIATIONS CAN AVOID A BREACH OF ANTITRUST RULES

The Romanian Competition Council (RCC) has intensified its efforts to sanction anticompetitive practices, but its compliance guide offers clarity

Trade associations and their members have been subjected to intense scrutiny by the Romanian Competition Council (RCC) for some years now. Several practices, either initiated or facilitated by associations, have been heavily fined. In some cases, only the association was, while in other circumstances, both the association (as the facilitator) and its members were penalised.

As the RCC's standard of proof has varied from one case to another, this has resulted in inconsistency and unpredictability, ultimately generating concerns among companies and associations.

In this context, several associations have voiced the need for more clarity on compliance standards to avoid a potential breach of antitrust rules.

Compliance guide

The RCC recently published a dedicated compliance guide. It puts forward clear dos (such as clear and transparent membership criteria; governance rules applicable to meetings of trade associations; ongoing compliance programme) and don'ts (such as price fixing, market sharing, collective boycott, limitation of production or trade), based on practical examples and case law of competition authorities.

As most of the RCC's recent investigations relate to exchanges of information via trade associations, the compliance guide includes a dedicated chapter on this topic. One key takeaway is that the RCC vouches information exchanges via a "black box" (a third party, independent from the association, based on a confidentiality and non-disclosure agreement). The question now is whether this is realistic for smaller associations facing budget-related constraints and how the RCC will view exchanges of information that comply with all other antitrust requirements, but are channelled through an employee of the association.

The compliance guide also sheds some light on how the RCC views public communications. Recent practice has shown that press releases, alongside other pieces of evidence, may be relied on to substantiate a potential antitrust breach.

Standard for assessing compliance programmes

Another key takeaway relates to the new standard put forward by the RCC for assessing the effectiveness of compliance programmes. We believe this standard will apply both to associations and companies seeking to

prove the implementation of a compliance programme throughout an investigation.

Accordingly, companies and associations should undertake the following step-by-step approach:

- 1. Risk matrix:** Self-assessment of potential risk areas should be dealt with through the compliance programme;
- 2. Devising a fit and proper compliance programme:** It will rely on the risk matrix's results and to be effective, it requires the endorsement of top management;
- 3. Implementation and training:** This step requires commitment from each association member (or relevant employee within a company) and regular training sessions to understand the risks and how to act;
- 4. Progress review:** It requires constant monitoring and review of the existing compliance programme (at least on an annual basis).

Tariffs

Some of the largest percentage-based fines were applied to associations – approximately 10% of turnover (e.g. RCC decision 47/2010 or 76/2018 concerning a decision of the association to fix minimum tariffs). Visit www.consiliulconcurentei.ro/uploads/docs/items/bucket15/id15473/ghid-proiect_final_consultare_publica.pdf



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