

RIGHT IN IT – where in-house lawyers should be

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Foreword

The title of this guide is capable of several interpretations. The most positive is the stimulating recognition that you operate at the nerve centre or heart of an organisation and contribute to its development and preservation. The most negative is the dispiriting realisation that you are beset by relentless demands from colleagues who are not appreciative of your endeavours and unconvinced by your contribution. It is quite possible to experience both in the same job within a short space of time!

This guide is primarily addressed to in-house lawyers working in small to medium sized legal departments. Its purpose is to stimulate thinking and provide prompts for actions, which have proved to be effective. It is not prescriptive. Never ever do anything you don't think makes sense. When confronted with a particular problem, do tap into the experience of others and consider a range of solutions.

Attending the workshops we run on the section subjects will help you to evaluate possible actions and sample useful materials, as well as provide you with a valuable opportunity to network.

Going in-house can be a great career move. It can also be disconcerting. Lawyers who move in-house are often euphoric at least to acquaintances in law firms, about how much more they enjoy it than private practice. How sustainable the euphoria is will depend not only on their behaviour, but also what their legal departments are striving to do and how well they do it.

You should strive to be 'right in it' in the positive sense and at the same time working hard not to be 'right in it' in the negative sense.

Note: Please contact Mark Prebble mp@lawyers-in-business.co.uk if you are interested in Sections 5 to 8 and the appendices

Section 1 Adapting to an in-house role

A Being selective about what you do

One of the hardest aspects of being in-house is being helpful and responsive but not necessarily accepting all the work with which you are presented – not something you will have been trained to do in private practice. Unless a legal department is selective about what it tackles, it will rapidly be overloaded. Incoming issues may need to be deflected back to business colleagues or outsourced. If external advisers need to be used, you may have a lot of grief explaining why you shouldn't do it in-house, unless:

- the department's role in managing legal risk and the delivery of legal services is well thought through and articulated and
- you work hard at prioritising your activities and managing expectations well.

B Influencing rather than advising

A key difference about being in-house is that in many instances you are persuading business colleagues to follow or refrain from a course of action. You are not just advising. You cannot afford to let someone pursue a course of action, which has serious legal flaws. The negative impact on the organisation will not only affect your reputation but may adversely affect your livelihood. At the same time you must be careful not to usurp the role of the decision maker.

C Grappling with multiple accountabilities and governance issues

We take the view that working in-house means serving 3 'clients' simultaneously:

1. The organisation which employs you
2. The person to whom the head of legal reports (who may or may not be a regular user of the function's services) as they sponsor the continued existence of the function
3. The individual who has entrusted you with assisting them

The duties of professionalism you owe to all three need to be in balance. If in a well-intentioned spirit of responsiveness you aid and abet someone in the third category to the detriment of those in the first and second, you will find yourself in difficulty. Failing to explain to someone in the third category why you also need to look after the expectations of your employer and sponsor could be a serious oversight.

Rather than addressing governance in this guide, I refer you to 'Reconciling the Irreconcilable?' www.cigroup.org.uk

D Retaining yet broadening your legal expertise

In private practice you will normally have specialist knowledge and experience. Whilst it is not always the case, you may find as an in-house lawyer that you are under pressure to have a lesser, but still reliable, knowledge of a number of legal subjects. Seeing your specialism evaporate can be very disconcerting, unless you recognise that you are more marketable as a result of being able to deliver a broader contribution. In an ideal world you will be encouraged to retain your specialism and assist colleagues to attain the minimum level of awareness they need to be competent generalists.

However commercial you become, you should never forget that your knowledge of the legal dimension is why you are there.

E Being more self-sufficient

At the start of your in-house career you may well feel as if you have been deprived of a lot of support you took for granted in private practice

- a sizeable pool of colleagues to talk to for a second opinion, for specialist advice or just therapy
- high quality support staff for extended hours
- ready access to professional information and tools.

Developing your capability to manage with less support is a challenge, which we address elsewhere in this guide.

F Recognising that career progression in your organisation may have constraints

You will be trading the carrot of high remuneration for corporate pay scales and benefits. Although passage between the two worlds is now two-way, they are different worlds. You can indulge in endless hours of skirmishing on this subject, but at the end of the day if you feel that you are going to resent being paid less than what you think you are worth, then either don't take the job or move on.

Career prospects may well be an underlying anxiety, which are lessened in a department which places importance on personal development. In the past there was a myth that you could never return to private practice, but that has been exploded. Being in-house makes you vulnerable to business reorganisations and downturns, but private practice carries no promise of security.

A reality check of upsides and downsides

Firstly what do you stand to gain compared with private practice? Top of the list are:

- the opportunity to make significant contributions to business success
- a greater sense of fulfilment from continued involvement in business activities
- scope for building close and rewarding relationships with business colleagues at various levels in the organisation.

However on the other side of these coins lurk:

- the risk of implication in business failure
- a sense of having a problem dumped on you by business colleagues who evaporate
- no apparent escape from business colleagues who e-mail, phone and then turn up at your desk.

You may be relieved at the prospect of saying goodbye to fatiguing billing targets, time recording, hassles with clients over bills, working long hours in the hope of meteoric promotion or just survival. However moving in-house does not guarantee a better work / life balance. You may well find yourself inundated with more work than you can handle and an expectation that you can deal with any legal issue.

At this point it is worth emphasising that I enjoyed my career as an employed in-house lawyer so much that I want to help others do the same!

Section 2 Getting on the same wavelength as business colleagues

A Two-way process

You have to tune in to the pressures they are under, how you can get their attention, what appeals to them and how you can contribute.

You have to encourage them to realise how important it is to factor in the legal dimension to what they are trying to do and to use legal services including your own effectively.

B The gulf between business and law

Many business people harbour some very basic misconceptions about legal risk, especially in relation to contracts. They can regard the law (and by association the in-house lawyer) as an alien force from another planet seemingly determined to make their life more complicated or even worse jeopardise their bonus entitlement. Our challenge is to make sure that they have a good level of legal awareness to be able to do their jobs with confidence and seek your support at the right time. At the senior and junior level their interface with lawyers – external or in-house – can be fundamentally flawed as a result of a poor understanding of the issues.

In her book *Winning Legally*, Constance Bagley sums up the problem.

“Understanding the legal dimensions of business is essential to successful management in today’s global marketplace. As managers rise in the corporate hierarchy, they increasingly face legal issues they are ill-equipped to handle. Most managers do not have a legal background, and less seasoned managers often do not understand how law affects the risk/reward ratio of the firm. They do not know the right answers or even the right questions to ask. Nor do many managers know how to select and work with a good legal adviser.”

Business people want to develop or preserve their business – they are not really interested in which legal topics are relevant. Lawyers learn the law by studying legal topics. Your job is to make sure that they get the appropriate distillation of the legal dimension at the right time.

C Understanding the pressures they are under

It is vital to gain an early recognition of the pressures on your business colleagues, since they will affect how they deal with you. Some of the generic pressures:

- revenue, profit and cost targets
- business development in unfamiliar areas - e.g. alliances
- bigger and more complex projects
- more demanding customers
- competitive forces
- more vigilance by those affected
- more regulation
- increased corporate governance
- rapid response times
- 24/7 availability
- competitive job market

Understanding and helping them deal with those pressures will reduce the atrocities they are likely to commit in the heat of the moment, by exacerbating legal risk or placing unreasonable demands on you.

D The minimum expected of us

Ideally your business colleagues will be involving you because of the benefits they perceive, rather than reluctantly complying with corporate procedures at the eleventh hour in the hope that you will 'rest your case.' Surveys among business people have revealed these benefits in using an in-house lawyer:

- dealing with someone who:
 - knows the business
 - knows the company structure and history
 - knows the industry
 - knows the relevant managers
 - is familiar with relevant legal issues

- dealing with someone who:
 - is commercially pragmatic and clear when advising
 - has continuing involvement/continuity
 - may be able to shepherd/co-sponsor a project at the corporate center and is aware of corporate approval processes

- using a service which is:
 - more convenient to consult than outside advisers
 - more cost effective than outside advisers.

Rather less satisfactorily there are those who view the in-house lawyer as someone to whom the parcel can be passed, who can provide absolution or cover their back, who can be influenced (bullied) to endorse a position or approach or who can help with a personal problem.

E Meeting and exceeding expectations

1. Never-ending induction

Developing your commercial awareness and relationships with your business colleagues is a never-ending process. Above all see the world through business eyes – where pulling off the coup, closing the deal, resolving the issue, stemming the losses are what it is all about.

2. True communication

In today's business world true dialogue can be a rarity, yet it is the best way of establishing and maintaining a relationship.

Time thinking about how to convince someone to heed your recommendations may seem like a luxury. However if you don't choose the best method and the most compelling points, you are likely to commence a skirmish which will take more of your time and nervous energy down the track.

3. Personable professionalism

Being approachable and good at your job is something of a balancing act. You need to resist the temptation to do that bit extra only for the business colleagues you like and provide a begrudging service for those you dislike. Do not mislead colleagues into thinking that friendliness means you will give the nod to anything they propose. At the same time being well liked and respected is the best backdrop against which to pass unpalatable messages if you have a serious concern.

4. Resilient persuasion

However much care, attention and coaching you lavish on a particular client, they may well take your breath away one day by doing something demoralising. This does not mean that spending time on showing them how they can help themselves and make better use of your services is futile.

Explore how your persuasion can be backed up by management guidance on how the legal function should be used.

Appendix A **Integration and Commercial Awareness** contains prompts on how to tackle this subject.

Appendix B **What you need to know** identifies systematically the information you may need to possess in order to make a real contribution.

Section 3 Drawing on external support

A External advisers

Although you may not be directly involved in the selection of external advisers and you may need to get approval to use them, external advisers are vital allies.

Business people may believe (or give the semblance of believing to put you on the back foot) that a lawyer can deal with whatever issue they may raise. Why can't you deal with it?

Conversely, even if there is a corporate requirement to use the in-house department rather than using external advisers, some business colleagues may regard the latter as more attractive for:

- obtaining more objective or more credible advice
- ensuring more confidential treatment of a sensitive situation
- having specialist, industry or local law expertise
- being better known to them than you are
- having been involved with the company longer than you
- having the benefit of PI cover
- having more resource or providing a speedier response.

Again less satisfactorily, they may feel it easier to give an external lawyer a partial picture and take or leave their advice, especially if it does not endorse what they want to do.

This means that you need to build some consensus about the types of work which will be handled by external advisers and when they are likely to be consulted. Someone in the legal department needs to play some part in the selection of external firms. Every in-house lawyer needs to develop a good relationship with the external lawyers who are used. This is especially important if the external lawyers are dealing directly with business colleagues on certain issues.

It is instructive to identify the attributes, which distinguish a good client and a good adviser. These are the ones which are most commonly advanced.

Good client attributes

- Clear description of needs
- Sensible time frame
- Good information and input
- Appreciation of effort entailed (before and after)
- Feedback and prompt payment

With the exception of prompt payment – hopefully your salary is not in jeopardy – these are largely what we would like our 'clients' to exhibit.

Good external adviser attributes

In relation to a piece of work

- Description of approach and timing
- Indication of envisaged effort, likely cost and possible effort / cost escalators
- Prompt alerting to problems arising during work
- Validation of work delivered ("have we provided what you were after?")
- Clears bill before invoicing and provides feedback on how client might alter approach

In relation to the overall service

- Be an ally
- Gain familiarity – invest some time
- Offer add-on support (help desk for quick queries, referral to sources), depending on strength of relationship
- Keep in-house dept informed of direct instructions from business
- Price according to type of work / activity and respective benefit

Again with a couple of exceptions, these are pointers, which are relevant to how we interact with our business colleagues.

Appendix C **Working Well with External Advisers** lists recommendations on how to do this.

B Additional resources

You may need:

1. Someone to cover for a gap in resources caused by resignation, sickness or leave
2. Someone to help with a specific project or an accumulation of additional work
3. A secondee who needs to gain familiarity with your organisation and its activities so that they can be the prime point of contact in the firm for assisting with work of the sort they will be doing on secondment
4. Someone who will sharpen the legal analysis or contribute fresh ideas to how matters are handled

While the decision on mobilising additional resources may be taken above you, you can make some suggestions. The constant refrain of 'we need more resources' is not that helpful in the cost conscious environment in which most departments operate.

Possible candidates:

- A secondee from a law firm
- A freelance in-house lawyer
- A lawyer on a temporary contract

If the needs in 1 and 2 above are likely to be prolonged, then hiring a freelance or someone on a temporary contract may well make more sense, provided you can supervise them. If remote working is required, a secondee (albeit with limited recourse against the firm) will be a more reassuring solution. However the longer it lasts the more difficult it will be to secure favourable rates. Depending on the level of seniority needed, a couple of part timers may be worth exploring, as they can be more productive than a full time temporary lawyer, subject to good dovetailing. This requires a bit more management effort but it can be a better solution.

Item 3 is the most compelling case for secondment, especially as it does not necessarily call for a 5 day a week commitment.

In the case of 4, a secondment as such is not needed if a suitable arrangement for regular interaction can be agreed.

C Subscription services

Be selective. Don't fall into the safety in numbers trap imagining that the more periodicals or newsletters you have the more likely you are to spot something of relevance.

Being able to get CPD online – doing assignments to test your assimilation of briefings – is an advantage.

Focused e-mail alerts can save you having to sift through irrelevant information.

We recommend PLC Law Department as a core resource.

D Web sites

Maintain and accredit a list of useful sites – government departments, law firms, business information services, legal resources.

They may be very valuable as a first port of call for those seeking an initial orientation which not be feasible for you to provide.

E Networking

Selective networking should be a part of the day job, not just a 'nice to do'. Sharing issues and experiences with other in-house lawyers in your geographical area or in the same sector of activity or in a similar situation (size of department or position of seniority) can be really valuable. While the therapy of 'it's nice to know you have the same preoccupations or difficulties' is helpful, networking needs to deliver some other benefits.

Join a professional association and take an interest in what is being organised.

Section 4 Progressing without promotion

Many legal departments have flat reporting structures, which cut out intermediate levels of management. This can pose a problem in that it eliminates the obvious scope for promotion. At a certain point a senior in-house lawyer may decide that the only way to advance is to move to a new organisation, but this should ideally be stimulated by the lure, and the capability to rise to the challenge of a new job. In order to keep disgruntlement at bay, the senior in-houser and their head of department need to explore ways in which personal development is equipping them to land a plum job. This may sound perverse, but if a legal department becomes known as a stable of high performers it will find it easier to recruit.

Developing your competencies

Your success in this area will be influenced by the attitude of the organisation – does the HR function promote competencies and to what extent are they appropriate for the legal function. It is hazardous to advance generic competencies, but our top 5 (which may be called something different in your context) are:

- Customer focus
- Confidence and conviction
- Impact and influence
- Organisational awareness
- Conceptual thinking

Appendix D **Competency profile** sets out a sample profile for an experienced legal adviser together with some notes on how to develop those competencies.

Being able to lead and contribute to teams

The legal profession is regarded as one where individuals tend to be competitive and collegial teamwork is not a natural activity. In the in-house environment it is vital to perform not only as a team member, but as a team leader. Even if you have no management responsibility in relation to colleagues, the ability to lead initiatives or project manage situations and transactions, sometimes in a shadow capacity, is career enhancing. It is rare that you will have the privilege of picking a team, so it is desirable to find ways to help an imperfect team perform.

Working alongside less experienced legal colleagues to assist particular clients

Some recommendations:

- Clarity as to the clients' prime point of contact and what 'account management' responsibility you or another colleague has – it is not indispensable for the more senior person to be account manager
- Visibility and updating of matters being handled – a work in progress file on a shared drive is a good start
- Sharing of /ready access to business intelligence – resist the temptation to keep the useful snippets for yourself
- Coordinated review and feedback sessions with clients – promoting the department's performance not just individual heroics
- Encouragement of collegial attitudes – something which can fall by the wayside when very busy or preoccupied

Appendix E **Work programme** contains notes on using an Excel spreadsheet as a 'homespun' solution for tracking work in progress as well as some information on other ready-made applications.

Distilling and sharing know how

Some recommendations

- Consensus on what qualifies for referral to a colleague for specialist input – everyone needs a good understanding of commonly encountered issues
- Distillation of accredited answers to frequently (and infrequently) asked questions – not only does it save time, it requires collegial buy in
- Discussion of party line on awkward issues, tense situations and troublesome behaviour – much more reassuring to be able to say ‘we have concluded...’
- Development of quality / added value prompts – best practice guides, with supporting models

Sharing support staff

It is rare for an in-house lawyer to have exclusive use of a member of support staff. Sharing any resource requires some consensus how it will be used – first come, first served, unless otherwise agreed is as good a starting point as any – and what norms apply in relation to how tasks are delegated and carried out.

It is quite common for someone who is more considerate towards or appreciative of the efforts of the support staff member to get a preferential service. This can inspire others to follow suit or can give rise to resentment. Some consensus on what triggers tangible appreciation or obvious criticism is desirable.

Without getting bureaucratic it is worth developing an operating guide for support staff which sets out respective expectations and acts as something of an induction briefing for a new recruit.

When it comes to appraising performance, we recommend that one lawyer – maybe on a rotating basis – acts as the lead appraiser. If a colleague is particularly critical about performance it may well be appropriate for their comments to be attributed or them to be involved in the appraisal meeting.

The more senior a lawyer becomes the he or she has a tendency to expect more support. A better but less obvious approach is advocating strong IT proficiency and time management by example.

Being a role model

As you become more accomplished, you should be able to demonstrate your comfort at:

- being closer to decision taking and business process
- having more accountability both to business units and corporate centre for their part in business success and failure
- influencing legally sound outcomes
- coaching business managers in uncharted waters, without patronising
- running sessions to raise legal awareness
- being involved in contract risk assessment and management
- dealing with collision between established legal principles and commercial needs, especially in fast moving areas
- making creative solutions and contributions
- having direct contact with external customers and other parties, and
- providing high levels of responsiveness and accessibility, without being taken hostage.

You will also set the lead in the alignment of your activities with business priorities, a good grasp of your organisation’s opportunities and threats and in depth knowledge of relevant legal issues.

Helping with smooth running

There is no avoiding some processes and housekeeping to make sure the department functions smoothly. Whilst some may be owned by the head of department or entrusted to support staff, there may be improvements to propose and implement. This is a good test of your diplomacy and people skills. If you get it wrong you may sour relations with your boss and your colleagues. If you get it right, it is good experience for the day you may be leading your own department. These are some of the areas which may be relevant to explore with your head of department.

- Work programme
- Best practice standards
- Diary management / absences
- File management
- Access to and use of reference materials
- Standards of document production
- Purchase of equipment and consumables
- Access to IT support
- Hiring external lawyers
- Dealing with information suppliers
- Attending training and conferences
- Travelling - Bookings / Expenses

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