



# The General Counsel Excellence Report

2017

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**THE  
GLOBAL LEGAL POST**

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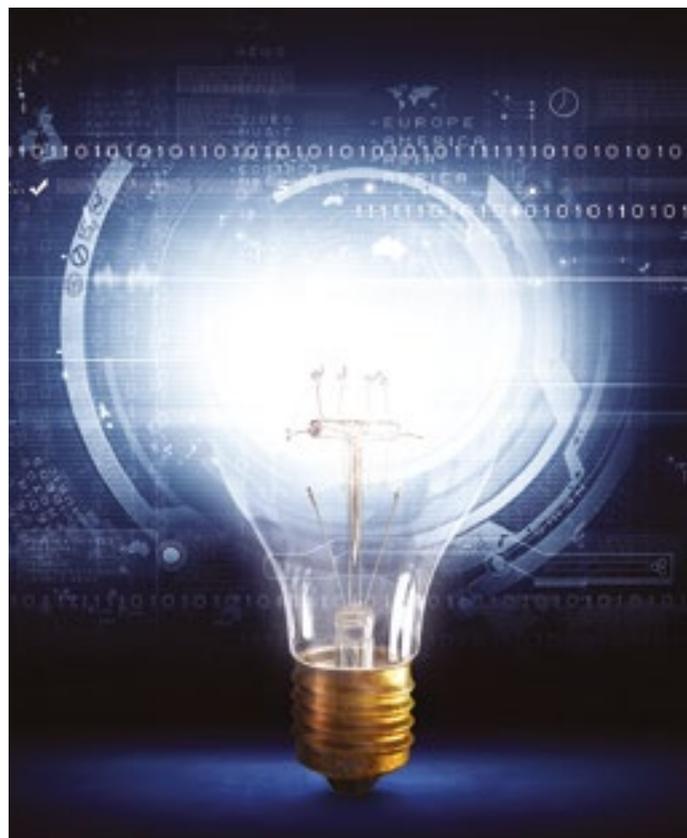
# THE RISE OF THE SUPER GC

One senior general counsel likes to tell the story of his first day as an in-house lawyer. He asked about the provision of external legal advice and was handed the internal telephone directory of the BigLaw firm the company used for all legal matters. Clearly much has changed since then around the provision of legal services as competition gets ever fiercer between law firms vying for business against a wide range of new non-lawyer entrants supplying legal services.

Adding to the mix is technology which is finally making its mark on the legal marketplace. The theme running through the research this year reveals the move towards innovation. Both the research and interviews conducted with general counsel reveal that not only is the market innovating as never before, but law departments have effectively led much of the change, particularly using technology to improve the quality and service delivery of legal services. Law firms are under constant pressure to up their game and improve their processes, efficiencies and skillsets if they are to continue representing the world's top corporates and financial institutions. This has led to new firms springing up offering a more modern take on service delivery, analysing their purpose and how they can best serve as advisors. Many others, however, are still in a state of confusion - failing to capitalise on their strengths and deliver what the clients actually want.

There is a lot of media coverage on artificial intelligence and the fast-growing legaltech market which can deliver efficiencies, processes and tasks to streamline legal services. However, as yet, most concede that the legal market is still catching up with the rest of the world. Many new products are still in their early stages but hold great promise for the future. Indeed the knowledge held by law firms is a fertile tool for artificial intelligence and a number of legaltech companies and law firms are finally exploiting this.

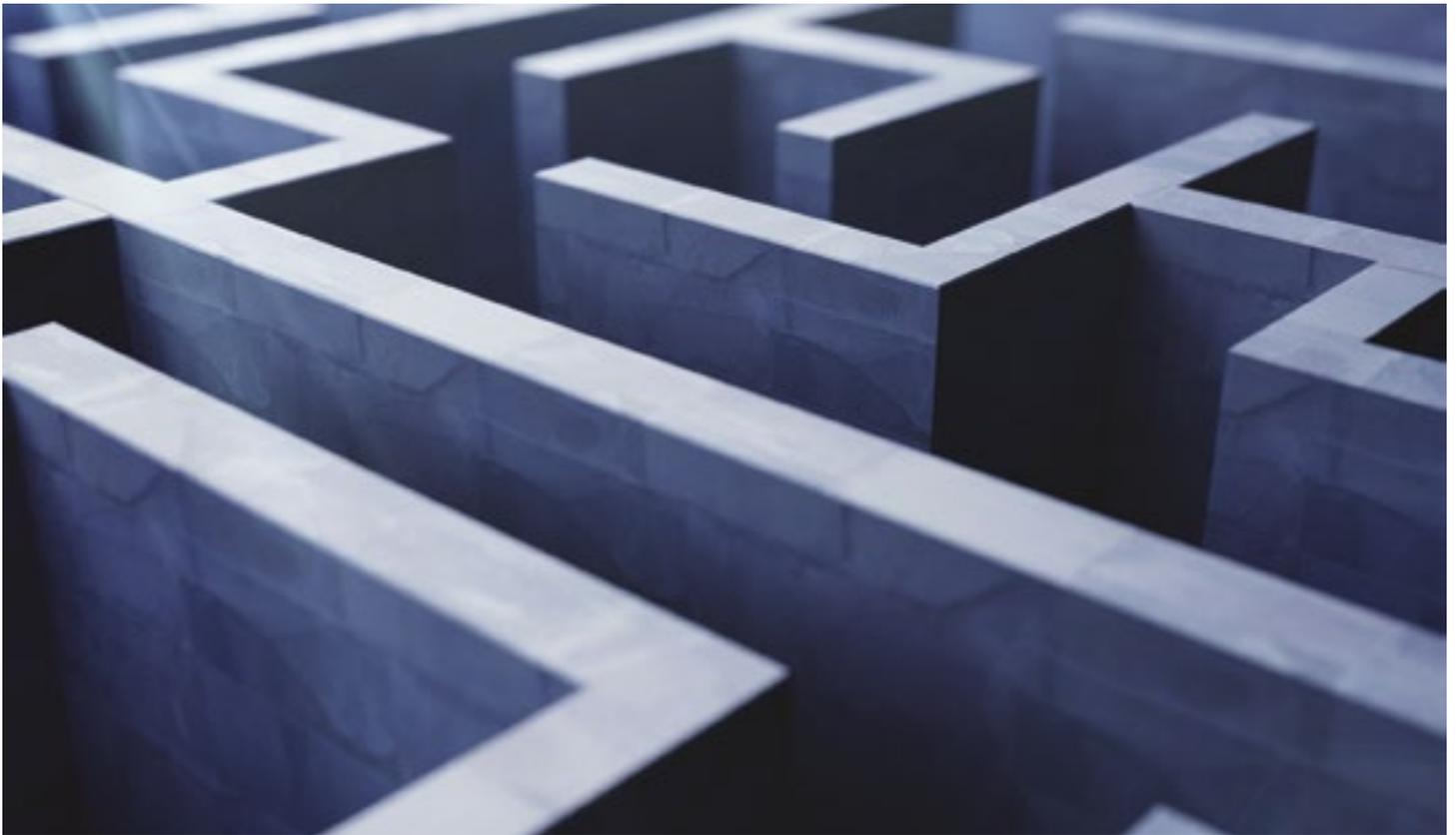
One of the themes in the 2015 GC Excellence Report involved the growing role of the general counsel and their ambition to join corporate boards. However, less have joined boards than predicted - possibly due to the increasingly regulated environment which companies operate in and the difficulty of being independent and a member of the board. An increasing trend is for general counsel to seek to join boards of other companies in line with their desire to gain business expertise.



The role of the general counsel has continued to grow and the SuperGC is now a fixture at many companies with managing the legal department just one of a range of duties. The research reflects this in the growing number of business titles encapsulating the role of general counsel. A key question for the SuperGC will be how to manage the many.

Another change in this year's report is the increasing importance of reputation with individual lawyers and their teams taking precedence over their firms. This change calls for firms to reassess how they deal with the cult of the individual, now in the little black book of many general counsel, with the prices of stars likely to escalate. Traditional law firms are still valued but there are many lessons to learn from the report including simple marketing steps of communicating with clients, listening and ensuring that they are up to speed in understanding the client's business. Networks have an important role to play for many law departments with the research pinpointing their relevance as a source of trusted information when companies select law firms. Indeed 43% said they would use information from law firm networks over the directories (28.5%). US companies are particularly interested in networks with almost half of them rating networks as the next best and trusted way of selecting advisors after a direct referral.

Finally, it is no longer price which is at the centre of the debate between legal departments and their external advisors. Whilst still key, this is one of the main changes in the research - indicating that law firms may finally be listening to clients.



## EXECUTIVE SUMMARY

The General Counsel Excellence Report 2017 covers a lot of ground from the expanding nature of the role and its current status inside the corporate hierarchy to the important qualities counsel are looking for in law firms, the extent of their outsourced operations and their top of the agenda concerns for the near future.

### THE ROLE

This year, 44.7% of respondents described their role as “General Counsel” compared with 45.2% in 2015. Outside of the traditional job descriptions, a little over 20% of respondents used slightly different titles like Head of Legal, Group Head of Legal, Head of Legal & Regulatory Affairs or, in one case, General Counsel, Director of M&A, Strategy and Risk. It is clear from the growth of new titles, with the additional elements of Strategy, Risk and Regulation that the exact role of the general counsel is becoming an increasingly difficult one to define.

Not only are general counsel roles and responsibilities changing, they are also expected to do more with less. In 2015, 64.8% of the respondents had a legal team of less than 25. In 2017, this number had increased to 78.3%.

Certainly, the picture from the outside based on demographics would indicate the changing nature of the general counsel role – the nuances of job title, the decreasing departmental numbers etc. When asked to choose a phrase which best describes their role within the organisation, general counsel thought it most important that they were a stakeholder in business decisions rather than just managing the legal department – just over 60% gave this answer the most important or next most important score

compared with 44.8% who voted for managing the legal department. Being the conscience of the business was also a popular answer and this idea of the legal officer as moral guardian of the corporate entity is a theme which runs through the survey and the interviews.

An indication that the management of the legal department is set to become more professional and to adopt a more business-like structure is the finding that 44.4% of the respondents have revealed this year that they employ a law department manager/legal operations manager or departmental COO. An additional 3.6% of respondents said they were thinking of hiring one. Clearly the case has been made for a further layer of management to bring a more operational focus.

General counsel certainly see themselves as stakeholders in the business but their presence at board level has not increased from two years earlier – up from 10.6% to 11.9%. It would still seem to be a struggle inside the corporate structure for adequate representation. But general counsel are still motivated by board membership – only 5.9% do not aspire to it.

### LAW FIRMS KEEPING UP?

The biggest change since the last General Counsel Excellence Report in terms of what a law firm should be doing to keep pace with general counsel is improving their use of technology to control costs. In 2015 only 17.9% of in-house respondents thought it was important, but in 2017 this number has risen to 36.6%.

There was also a recognition that law firms should be providing a lot more than technical legal advice. For example, respondents believed that law firms should also be looking at helping to deliver valuable management information (up from 17.9% to 21.6%) and offer a broader business advisory service (up from 14.2% to 23.9%). Law firms should also have a better commercial awareness of a client’s business.

## EXECUTIVE SUMMARY

### LAW FIRM SALES STRATEGY

When general counsel were asked to look at the way law firms were selling legal services to see if anything substantial had changed or was changing, they concluded that the firms were working harder on communications and attempts to understand the needs of the client, but that they were still falling short on fee reductions leveraged through outsourcing and there was no increase in the provision of free added value services like secondments or training.

Over half (53%) of respondents thought that firms were now offering better deals on fees which, given the recessionary winds blowing through the corporate world, could not be seen as an overwhelming endorsement. Over 55% of respondents thought that law firms were spending more time getting to know their needs which means that 45% either don't think they are doing a good job or, even worse, they don't know.

### LAW FIRM BRANDS

In general terms, although cost is obviously a major factor, the reputation of the law firm and that of the individual lawyer are much more likely to sway the decision to buy. In 2015, 45.6% of respondents thought that price was important when deciding which law firm to use and 48.1% thought that the reputation of the law firm was important. Two years later in 2017, only 39.5% agreed that price was important but 60.8 wanted the assurance of a law firm reputation before making a buying decision. As a consequence, the importance given to the individual lawyer's reputation has grown in importance from 69.2% in 2015 to 74.6% in 2017 – the most important factor in the list.

### SOME OR LITTLE EFFORT

Law firms are making more effort to reduce costs for their clients – but still not to the satisfaction of their clients. In 2015, 44.3% of respondents believed that law firms were making either significant effort or at least some effort to reduce costs. In 2017 this number had increased to 53.3%. But, of these, firms perceived to be making "significant effort" fell from 7.6% to 6.6%. [chart 24]

Given the popularity of fixed fees as a measure of certainty for managing matters in-house, it is surprising that firms are not offering them always as a means of payment for legal services. The research reveals that fixed fees were only offered always in 12.7% of times compared to 21.2 for hourly rates. But at the other end of the scale, fixed fees were only never offered in 2% of times. Perhaps law firms are still waiting to be prompted before offering.

### PANELS

When asked which method they used for the management of external law firms, only 17.5% of respondents in 2017 chose a panel arrangement. One in three (33%) opted for a less formal panel whilst 47.6% chose longstanding relationships. In 2015 26% chose a formal panel and 24% a less formal panel arrangement. Relationships would appear to be shaping up as less formal and more fluid. Old style panel reviews can be cumbersome and very expensive.

Generally, the panel is a base for selection but when asked if they always use an established process for selecting a law firm only 16% said yes for every



matter. One in three (63.2%) said it depends on the matter and just over 20% said it is left in the hands of the individual in-house counsel.

### ON THE AGENDA

What are the issues that are top of the agenda for general counsel in 2017 and beyond? And how has this changed over the last two years? In answer to a question about what kept him awake at night when he was chairman of a FTSE 100 company, Sir David Varney was keen to say that as long as his general counsel was awake then he could sleep. Respondents to the research pinpointed a number of issues which stressed them most.

The most concerning is regulation and compliance issues which worry nearly 70 per cent of general counsel, up from 59.6% two years ago. The biggest percentage increase is for data security and cyber crime issues which only troubled 30.8% of respondents in 2015 but now has more than doubled to 61.5%. Risk management has also increased, growing from 23.1% to 30.4%. Reputational management has increased as a concern from 20.2% to 31.9%. With a host of scandals impacting companies in recent times - from data breaches to the automobile emissions scandals - there has never been greater awareness of the importance of reputational issues. One of the key issues for general counsel is how they create value for the company - with 43.7% citing this as high on their agenda, a rise from 34.6% previously. This is a relatively new development, the urge to be seen as a revenue producer rather than just as a cost centre.

# PHILP BRAMWELL: PREPARING FOR A HIGH-TECH FUTURE

Philip Bramwell, general counsel of BAE Systems, gives his views on the law department of the future and how technology and millennials are reshaping the legal marketplace.



Philip Bramwell

*Philip Bramwell is group general counsel of BAE Systems. He has spent more than 20 years as an international corporate lawyer, specialising in mergers and acquisitions in the pharmaceuticals, IT and telecommunications industries. He was appointed group general*

*counsel in 2007. His previous roles include: general counsel and Secretary of O2, Chief Counsel, Mergers and Acquisitions for BT and European general counsel of Atlanta based BellSouth Corporation.*

## **What is the current relationship between private practice and in-house?**

The rise and rise of in-house departments has absorbed a lot of lawyers. In-house legal departments rely on abundant supply of very well trained solicitors. We make no direct contribution to their training costs. There must, however, be a finite limit to the amount of lawyers that industry and other sectors can absorb.

We are critically reliant upon the continuing availability of first rate lawyers in private practice. There is a tendency among some industrial companies with a large volume of repetitive work to drive a race to the bottom on fees, making it a very competitive market place. Especially when you add in the accountancy firms taking another tilt at the legal profession. In parts it's a very cut throat business and law firm consolidation is proceeding at a rapid rate. We do, I hope, understand the role that corporate legal departments must play in sustaining a thriving cadre of top law firms.

## **How has the in-house legal career adapted to the modern workplace?**

The challenge now in the 21st century should not revolve entirely around gender issues in the workplace but rather upon creating changing 'work style' options throughout a career and a more orderly way to handle the beginning and end of our careers. The 'lemmings at the edge of a cliff' approach to retirement

is not helpful to those retiring or to those attempting to take over their roles. In Scandinavia, some companies have a facility for people approaching retirement to drop down to a 2 or 3 day work week, the concept of an "off-ramp", enabling retirement in a more measured and orderly manner. With the extra time available prospective retirees can become involved in teaching and other local community service. An "on-ramp", enabling those still studying to gain industrial experience in parallel with education would, I believe, be equally worth exploring.

The employment proposition for millennials is very different from that on offer to previous generations who were drawn to continuing employment and committed to a lengthy career in the same profession. Some millennials are seeking only to commit for intermittent periods and work somewhere for a few years before moving on. More power to them.

If people are able to talk honestly and openly about the life events that affect their career options, such as care of children and relatives, partner's careers, desire for part-time or flexible working then I believe we would have the basis for faster progress

Why, for example, do we still default to a 5 day week some 90 years after Henry Ford and others agreed that they wouldn't work a 6 day week? The periodicity of work is something that we need to think about. We have not taken full advantage of technology which allows us to place-shift and time-shift.

## **How much disruption will technology cause in the legal profession?**

I believe that reports of the imminent death of the legal profession are overstated. Current technology cannot cope with the more esoteric parts of legal advice which are as much about context as they are about mining data. Yes, due diligence work and generating boilerplate for form contracts with minimal changes, work that no one will miss, can be done by AI programmes.

The legal profession is not, however, a medieval guild guarding a fixed amount

of knowledge. An experienced legally-trained mind is capable of addressing an infinitely variable set of facts and ordering them by relevance to the application of a body of rules. That is an immensely difficult thing to replicate at machine level. We are still in pretty good shape as legal advisors.

## **Will we need lawyers in the future?**

Just when you think society might be thinking it has enough lawyers, we are faced with new and novel problems like "fake news" delivered through channels with little or no content control or editorial oversight. Lawyers can add great value to resolving the adverse social consequences of this problem, just as they made a very telling contribution around the issues of protecting copyright material. The public have accepted that artistic content should be paid for.

It may well be that some of the old areas of legal practice are disappearing but whole new areas are emerging around information technology and cyber security, for example. I would advise any young lawyer to look seriously at these practice areas.

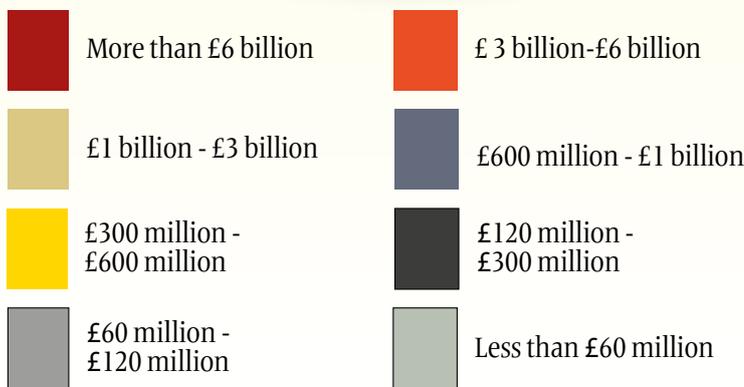
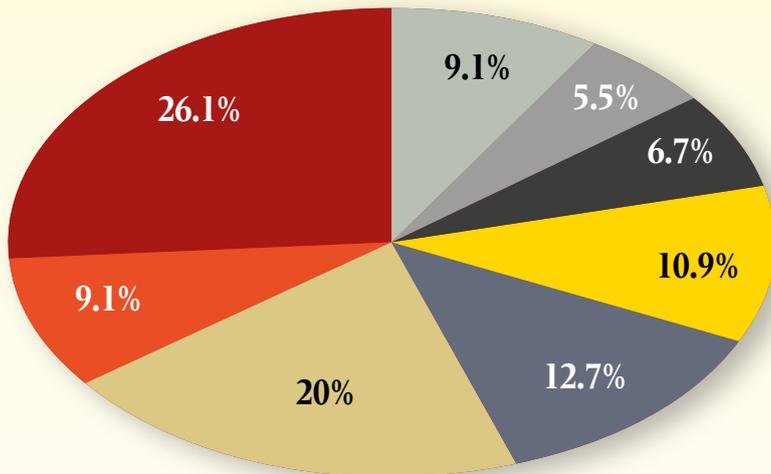
## **Will legal departments take responsibility for legal training?**

BAE has trained its own solicitors in the past starting as commercial graduates. We could go back to those days although it would push up our cost base considerably. But very few of our lawyers were trained by us. It will always be more convenient and more effective for us to recruit top lawyers from the magic circle.

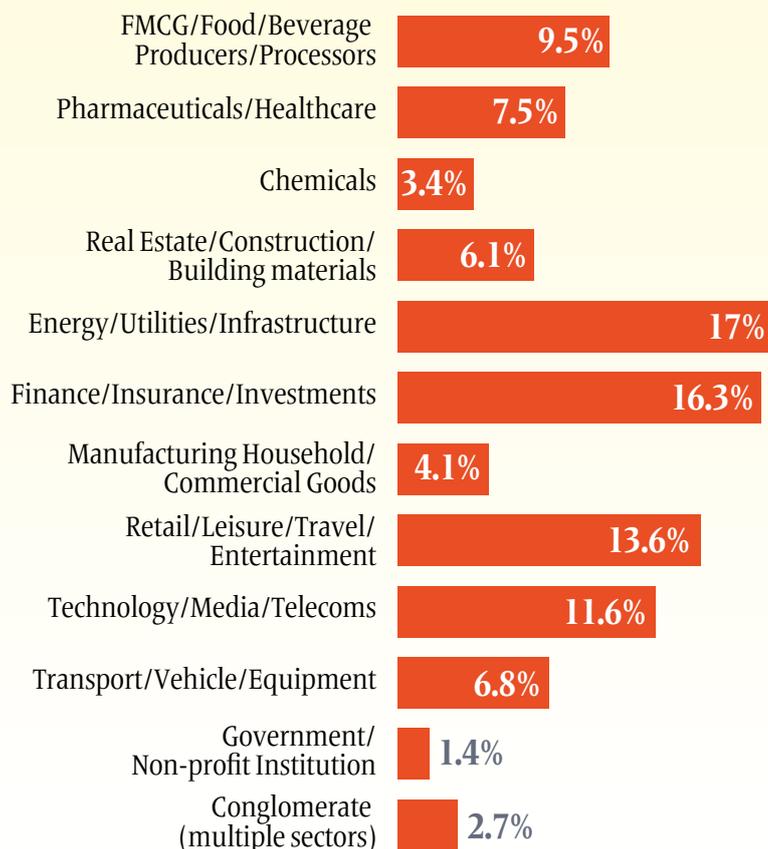
A broad base of commercial experience in industry is incredibly valuable to an in-house lawyer but there is still no substitute for a period of time spent in private practice where you hone your skills and develop as a practitioner. The absolute commitment to professionalism is something instilled very early in the career of a private practitioner. Our understanding of the employment proposition for an in-house lawyer has, I believe, become much more sophisticated over the last two decades. We are able now to articulate a long term career development plan for in-house counsel.

Heavy responsibility can descend early on in-house lawyers and that is very exciting. But beyond those first few years, there is an opportunity to sustain a long term career in industry. One must recognise, of course, that if you are going to get to the higher tiers in a global multinational enterprise you will probably need to spend some time outside your home jurisdiction. An understanding of finance and some board level management skills must also be picked up along the way, perhaps at divisional level.

1. Please indicate your company's annual turnover



2. In which sector does your business predominantly operate?



# THE GENERAL COUNSEL ROLE

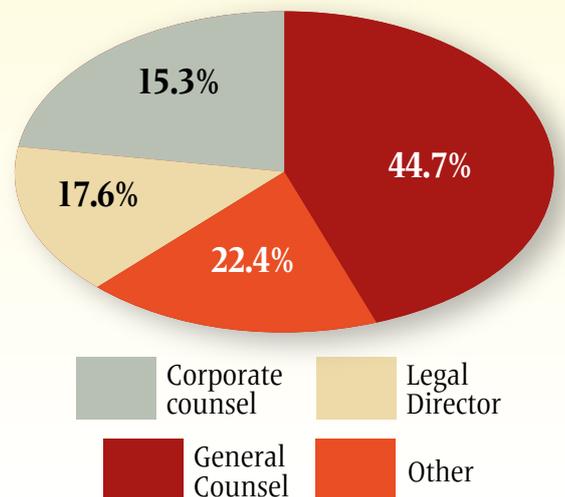
How do general counsel see their role inside the management board structure of their companies?

## DEMOGRAPHICS

This year's research has been drawn from a wide range of international corporates with a large financial footprint. Over one in four were drawn from companies with over £6 billion turnover. Finance and energy companies were the biggest sectors represented, accounting for 33% of the respondents. Leisure and retail companies were next with 13.6% of respondents in this sector and 11.6% in technology, media and telecoms. Whilst the number of respondents from financial services has dropped from 24% in 2015 to 16%, this was broadly reflected in the locations of respondents - with 17.6 per cent of US companies responding in this category and 18 per cent of European companies. One in three US companies had revenues of over £6 billion compared with 26.5% of European respondents. One in five African respondents were from companies of over £6 billion whilst the majority of the other African companies had turnovers of under £60 million. [See chart 1]

In previous years, the types of businesses which were involved in the survey tended to be heavily slanted towards the financial services sector. In 2015, 24.1% of the respondent companies were from that sector. This year the types of

3. Which of the following best describes your role?



# RESEARCH ANALYSIS

respondent company is far more varied with 17% Energy and Utilities, 16.3% Financial Services, 13.6% Retail and Leisure, 11.6% TMT and 9.5% FMCG and Food. [See chart 2]

## THE ROLE

This year, 44.7% of respondents described their role as “general counsel” compared with 45.2% in 2015. Outside of the traditional job descriptions, a little over 20% of respondents used slightly different titles like Head of Legal, Group Head of Legal, Head of Legal & Regulatory Affairs or, in one case, General Counsel, Director of M&A, Strategy and Risk. It is clear from the growth of new titles, with the additional elements of Strategy, Risk and Regulation, that the exact role of the general counsel is becoming an increasingly difficult one to define. [See chart 3]

Not only are general counsel roles and responsibilities changing, they are also expected to do more with less. In 2015, 64.8% of the respondents had a legal team of less than 25. In 2017, this number had increased to 78.3%. If there had not already been a very significant focus on efficiency and cost control in the last few years, this is a sure sign that the economy drives for law departments, and as a consequence for law firms looking to engage with them, are not about to come to a halt any time soon. [See chart 4]

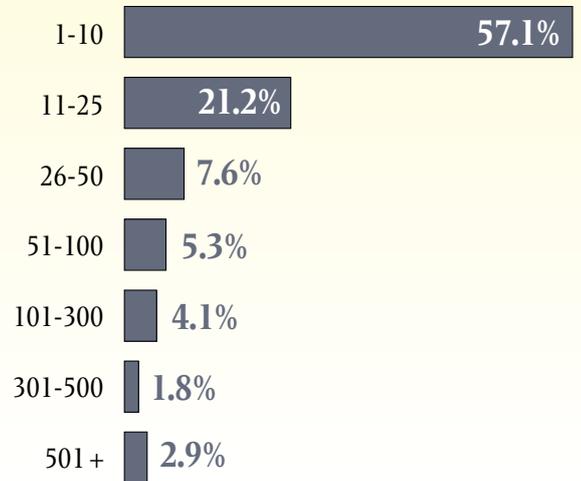
## MANAGEMENT

As general counsel adopt wider roles in the company, a growing

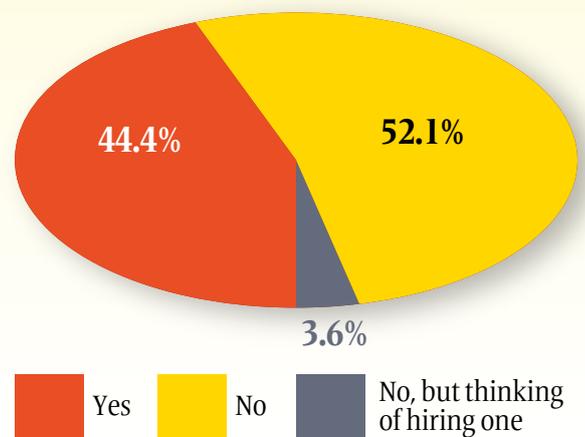
number have brought a chief of staff on board to assist in managing the department. The research reveals that nearly half the companies responding either had such a law department manager, legal operations manager or law administrator to professionalise management or were thinking of recruiting such an individual. US companies are by far most likely to go down this route but it is now a growing trend in Europe and the UK. An additional 3.6% of respondents said they were thinking of hiring one. This is the first year we have asked this question and the feedback from the interviews this year is that general counsel with a COO figure have found it immensely useful from a process and structure point of view. [See chart 5]

Certainly, the picture from the outside based on demographics would indicate the changing nature of the general counsel role – the nuances of job title, the decreasing departmental numbers etc. When asked to choose a phrase which best describes their role within the organisation, general counsel thought it most important that they were a stakeholder in business decisions rather than just managing the legal department – just over 60% gave this answer the most important or next most important score compared with 44.8% who voted for managing the legal department. General counsel also aspired to be the conscience of the business - a theme which runs throughout the report and interviews by general counsel - and reflects the growing importance of reputation and ethics for companies today. [See chart 6]

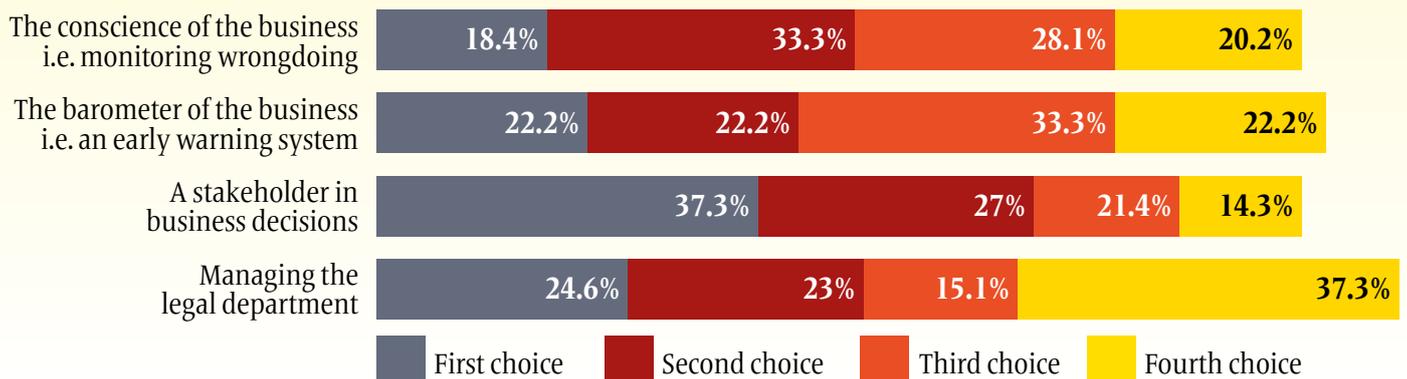
### 4. What is the size of your legal team?



### 5. Do you have a law department manager/legal operations manager/Law administrator?



### 6. Which of the following best describes your job in the company?



## RESEARCH ANALYSIS

### BOARD MEMBERSHIP

The board responsibility and positioning of the senior or chief legal officer inside the organisation is an issue which has been visited a number of times over the years. Senior lawyers like Philip Bramwell at BAE Systems have always insisted that board membership and visibility of the senior legal figure are very important. In 2015, 10.6% of respondents sat on the main board of their companies. In 2017, this figure improved slightly to 11.9%, but it is still true to say that the position of the chief legal officer or general counsel as a full board member is a less frequent occurrence than for the finance director or chief financial officer. The majority sit as an observer (26.7%) report via another member (34.1% or

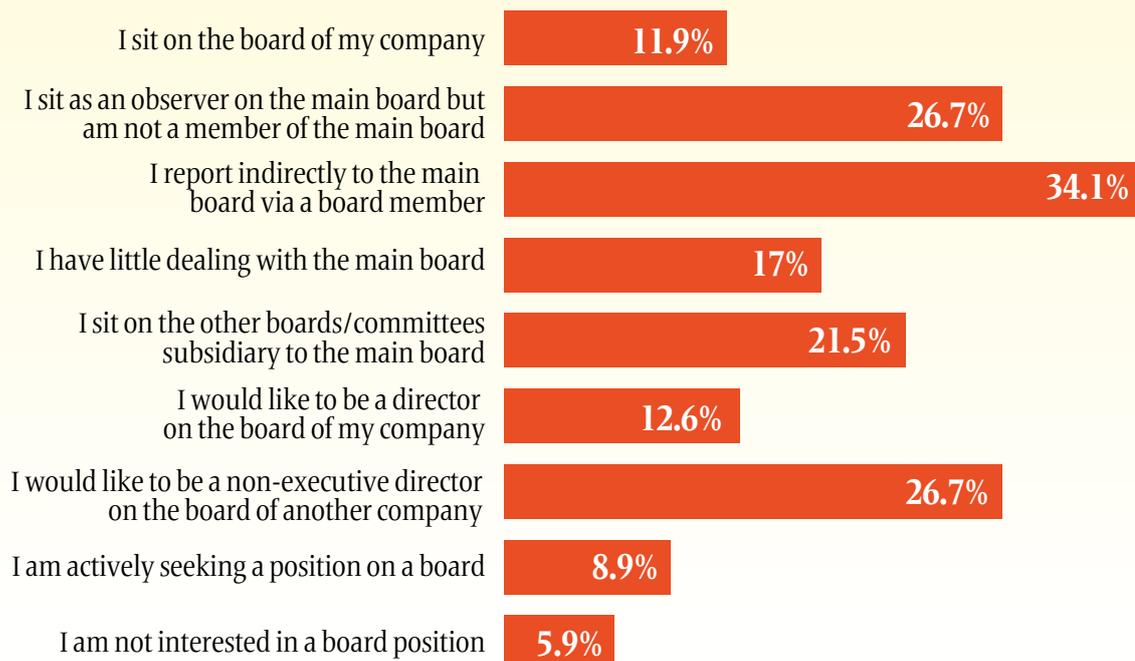
sit on other subsidiary boards or executive committees (21.5%). [See chart 7]

There is evidence of an increasing interest in a non-executive directorships at other companies. The percentage of respondents who are interested in following this path has gone up quite substantially from 18.3% in 2015 to 26.7% in 2017. Perhaps general counsel see this as a way to get general business experience to help in their roles - whilst not being subject to the conflicts which may arise in their own company.

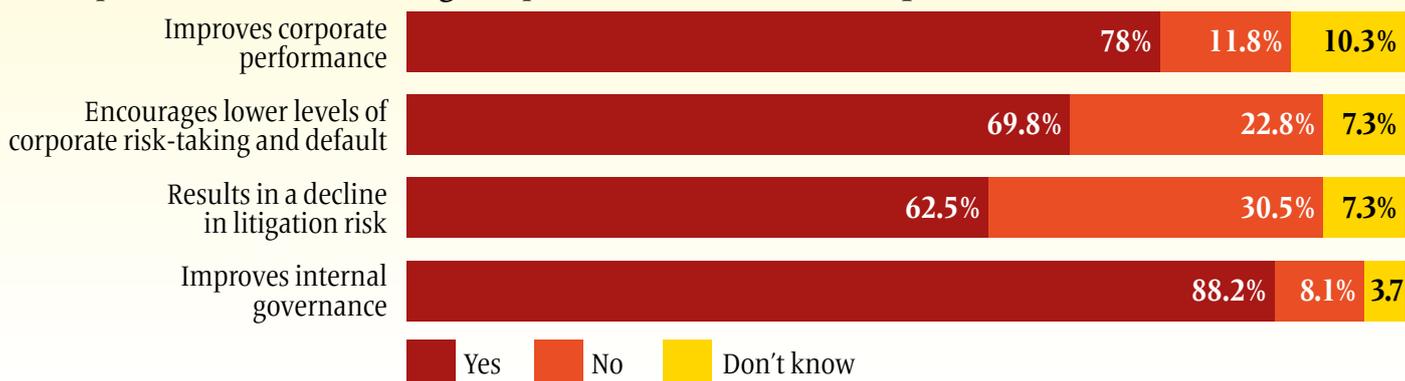
Of course, having belief in the relevance and strength of your contributions at the highest level inside the corporate structure should mean that there is a measurable difference in the quality of board discussion and output.

Certainly the expectations are that the presence of lawyers on the board will lead to an improvement in internal governance – 88.2% believed that this should be the case. A lesser percentage, 78%, thought that it should improve corporate performance. Nearly 70% thought the presence of a lawyer would encourage lower levels of risk-taking. Most interesting was the finding that only 62.5% thought that having a lawyer around would reduce litigation risk. Just over 30% thought that the risk of litigation would increase if one of them was on the board. Perhaps this reflects the view that there would be a short-term increase but a longer term decrease as the general counsel became more embedded in the structure and processes. [See chart 8].

### 7. Which of the following best applies to you?



### 8. Do you believe that having lawyers on the board of companies



# REGULATION IN ALL THINGS

Justine Campbell discusses her views on dealing with regulators, the growth of legal operations and why law firms must get to grips with client engagement



Justine Campbell

*Justine Campbell, who was recently promoted to the post of deputy group general counsel of Centrica, started as a competition lawyer at Freshfields and has worked in*

*two highly regulated industries, moving from Telecoms (at O2 and Vodafone) to Energy. Arriving at British Gas/Centrica in 2013 she threw herself into the Competition and Markets Authority investigation into the energy market which "was a baptism of fire but a really good way of understanding how this industry works."*

## WHAT TRENDS DO YOU SEE IN REGULATION?

Regulation of energy and telecoms is both different and the same. It's similar in terms of the frameworks, which are both aimed at promoting free market competition but also protecting consumers and ensuring that the market is functioning properly. But energy does not benefit from EU harmonisation

so the UK regulator has multiple objectives, some conflicting, and it remains more politicised than communications.

While fixed telecoms remains heavily regulated, my main experience of regulation is mobile, and that has historically needed only minor regulatory intervention as the industry grew from innovation and not monopoly privatisation. The amount of regulation is much higher in the energy sector and the level of political intervention has been more extensive. It is understandable that energy attracts attention - you cannot live without electricity or gas. It is up there next to food in terms of people's life necessities.

The current trend across all the UK regulators is towards protecting consumers, but they need to balance appropriate protection with investment incentives and the long term functioning of a competitive market. One challenge is that, in a properly functioning competitive market, there will inevitably be both winners and losers and that doesn't easily match

public sentiment which sometimes expects blanket protection – i.e. saving consumers from themselves.

## WHAT IS YOUR COMPANY'S APPROACH TO DEALING WITH REGULATORS?

At Centrica, we support the CMA finding that the UK energy market is highly competitive, and we want it to become even more competitive, so that consumers have even more choice and better service. We are actively trying to build a strong relationship with our key regulators and make it professional and constructive, without losing sight of our principles. We have developed an approach based on 4 pillars and have agreed these with Ofgem, to help define the way we interact:

1. We will be positive and constructive in our regulatory engagement;
2. We will use accurate facts and data to inform decisions;
3. We will use principles rather

The amount of regulation is much higher in the energy sector and the level of political intervention has been more extensive

## GC INSIGHT

than prescriptive rules; and  
 4. We accept that disagreements may occur - these will be managed professionally, including recourse to legal action where appropriate.

### HOW IMPORTANT IS IT FOR GENERAL COUNSEL TO HAVE A BROADER UNDERSTANDING OF THE BUSINESS?

I think regulatory affairs is extremely important and I consider myself very lucky to have, during my career, run broad departments encompassing areas beyond pure legal work, such as public affairs, fraud, risk and compliance. In a highly regulated business, the regulations can directly affect our commercial agenda, sometimes defining how we can go to market, how we can speak to the consumer and how many products we can offer. It's quite closely intertwined with how we run the business. The regulatory teams really understand how we make (and lose) money.

### HOW DOES TECHNOLOGY HELP THE LEGAL DEPARTMENT?

Technology has its place in a broad legal function, particularly for management, compliance and training activities. Legal departments are going to have to get a lot more tech savvy. We have created a role in our function for a Global Head of Operations to lead various aspects of our functional management, including our budgets, planning

activities and process improvement. My view is that in-house departments in the future will be made up of mix of lawyers, operations people and technology experts - lawyers are not necessarily skilled at non legal management and we should bring in experts instead.

### HOW DOES YOUR ORGANISATION MANAGE COMPLIANCE?

Compliance is, in general, moving away from box ticking and towards principles. What you have to do is embed a culture of doing the right thing which requires influencing skills and a cultural transformation - giving people the ability to think for themselves.

Compliance is a terrible term. "Doing what's right" is the term we have been using across our consumer businesses.

### HOW IMPORTANT IS DIVERSITY?

More women go in-house because of the lack of flexibility in the law firm model. It offers more opportunity and flexible working is key to that.

The legal function at Centrica is very diverse, lots of women in senior roles and lots of people working less than a full week. We believe in hiring the best people,

We believe in hiring the best people, and that doesn't automatically mean in a standard full time office job. As well as pure diversity, inclusiveness is very important. Do we have an inclusive culture that people can feel comfortable being themselves in, whatever their gender, race, sexual orientation etc?

and that doesn't automatically mean in a standard full time office job. As well as pure diversity, inclusiveness is very important. Do we have an inclusive culture that people can feel comfortable being themselves in, whatever their gender, race, sexual orientation etc?

We are getting there although the traditional engineering workforce remains very male dominated so we are trying to encourage more female apprentices and graduates.

I am involved in mentoring through MOSAIC, a cross company mentoring scheme for in house lawyers, set up by Claire Debney. It's a very cost effective way of supporting the development of in house lawyers, accessing really experienced people who give you really good practical advice. And as a mentor you learn so much.

My most important job is to recruit and retain and develop really good people because our function is fundamentally about people.

### WHAT TIPS CAN YOU GIVE TO LAW FIRMS?

Law firms are getting better at the relationship side of things. Some are better than others. They invest the time to get to know you, not just as part of a transaction, and then drop you a line with things that you might be interested in. But some still have a bit to learn about client engagement .... One law firm some years ago brought to a meeting 5 middle-aged men who had no direct knowledge of my part of the business. I was the only woman in the room and they had no-one who understood the business I supported. I was not impressed.

In a highly regulated business, the regulations can directly affect our commercial agenda, sometimes defining how we can go to market, how we can speak to the consumer and how many products we can offer.

# GETTING THE BEST LEGAL ADVICE

Finding the right advisor can be an arduous process with drastic consequences if the general counsel errs.

The role and status of general counsel is changing, but what are law firms doing to keep pace with these changes? Are they keeping pace or are they just lagging behind? The legal services market, and the providers taking part in it, would appear to be changing rapidly. New low cost firms are appearing, the accountancy firms are starting to get involved again in legal services, law firms are setting up low cost legal services centres and agencies like Axiom are providing contract lawyer services

at the top and the bottom end – senior in-house counsel and low cost paralegal services.

General counsel are being offered the opportunity to have legal problems “triaged” by an external agency which then decides where the work will be sent – to be dealt with by their low cost legal centre, to be dealt with by the in-house team or to be dealt with by a panel firm of solicitors.

Some law departments are removing law firms from

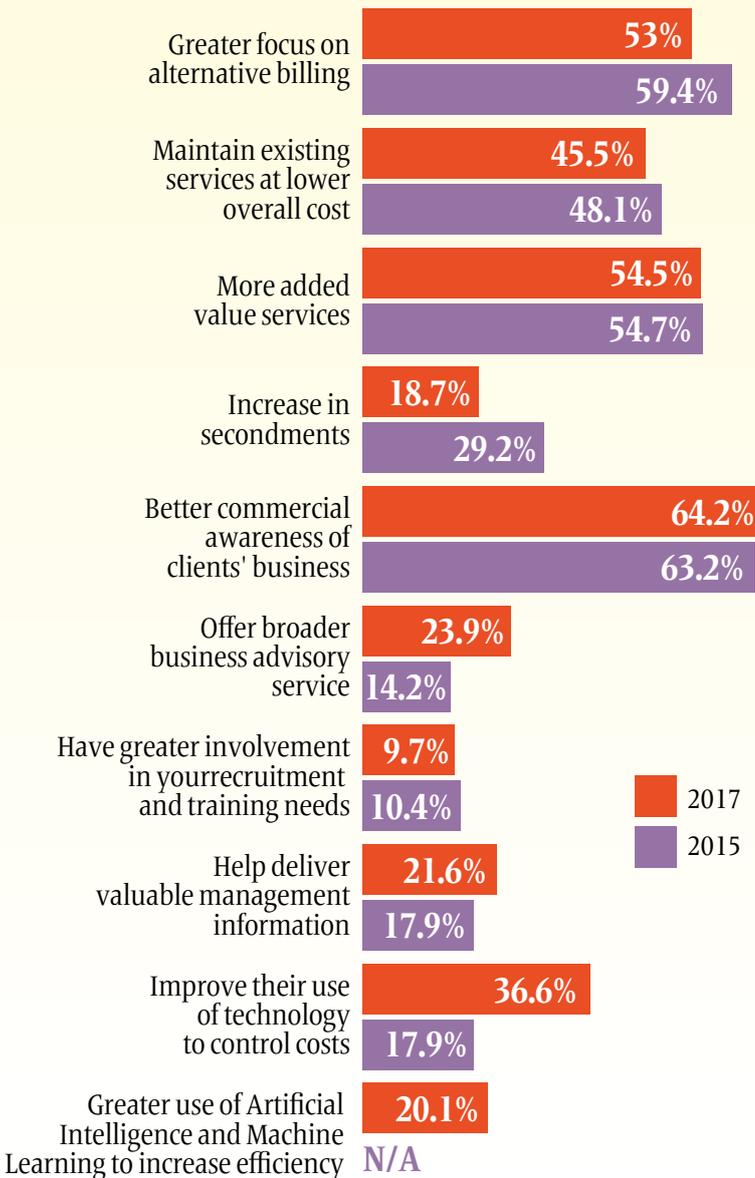
General counsel are being offered the opportunity to have legal problems “triaged” by an external agency which then decides where the work will be sent

the work allocation decision making process altogether. A BigLaw firm may think that it has the complete offering – as one general counsel put it in an interview – by merely offering a low cost legal centre of its own, but today’s in-house lawyer wants more. Why let a law firm decide how to spend your money when you could get someone else further down the line decide for you? It’s about the power to make the decision. Or is there still a lot



RESEARCH ANALYSIS

9. What should law firms be doing to keep pace with the changing role of general counsel?



to be said for the expertise and knowledge embedded in a long-term relationship with a trusted legal advisor who will make the right work allocation decision for you?

**COST CONTROL**

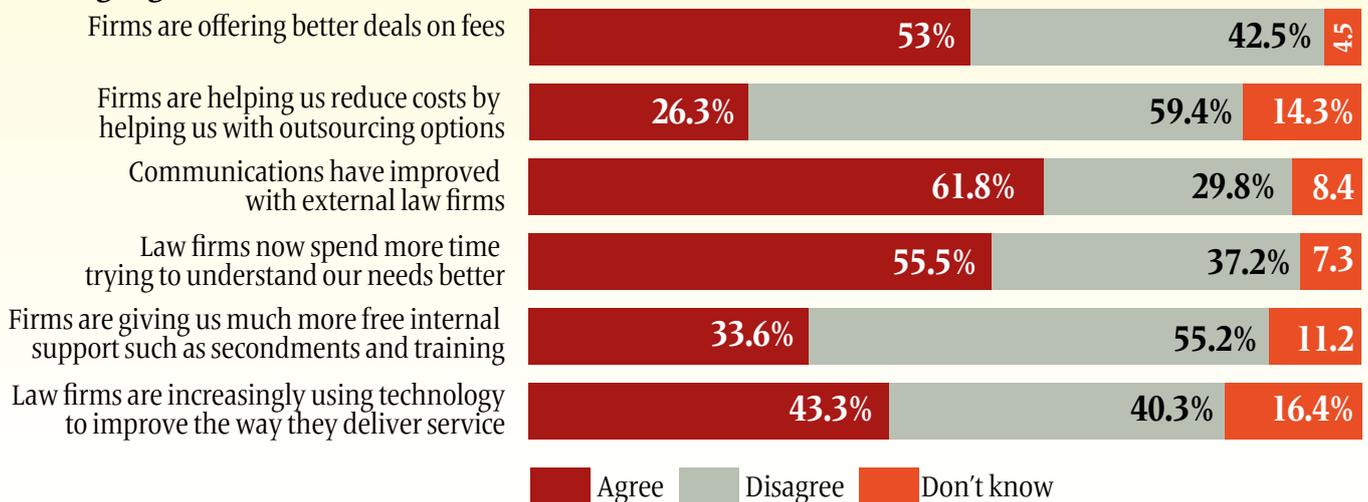
The biggest change since the last General Counsel Excellence Report in terms of what a law firm should be doing to keep pace with general counsel is improving their use of technology to control costs. In 2015 only 17.9% of in-house respondents thought it was important, but in 2017 this number has risen to 36.6%.

There was also an expectation that law firms should be providing a lot more than technical legal advice. For example, respondents believed that law firms should also be looking at helping to deliver valuable management information (up from 17.9% to 21.6%) and to offer a broader business advisory service (up from 14.2% to 23.9%). Law firms should also have a better commercial awareness of a client's business with two in three still complaining that this is lacking in their dealings with external law firms.

Some of the findings around costs are much less dramatic in terms of movement, but all the more interesting because of that. Should law firms have a greater focus on alternative billing? Yes, but not as much as before. 59.4% in 2015 thought it was

The biggest change since the last General Counsel Excellence survey in terms of what a law firm should be doing to keep pace with general counsel is improving their use of technology to control costs

10. In what ways do you see any fundamental shifts in the way law firms are selling legal services?



## RESEARCH ANALYSIS

really important but only 53% agreed in 2017. Should law firms maintain existing services at a lower overall cost? In 2015, 48.1% thought this was a good idea but only 45.5% agreed in 2017. Perhaps the position here is that law firms have started to take on board their clients' views on cost control and the provision of a greater variety of billing structures and the client has moved on to look directly at technology to offer economies and for more commercially savvy advice to replace more traditional value added services like secondments.

[See chart 9]

### LAW FIRM SALES STRATEGY

When general counsel were asked to look at the way law firms were selling legal services to see if anything substantial had changed

or was changing, they concluded that the firms were working harder on communications and attempts to understand the needs of the client, but that they were still falling short on fee reductions leveraged through outsourcing and there was no increase in the provision of free added value services like secondments or training.

Over half (53%) of respondents thought that firms were now offering better deals on fees which, given the recessionary winds blowing through the corporate world, could

not be seen as an overwhelming endorsement. Over 55% of respondents thought that law firms were spending more time getting to know their needs which means that 45% either don't think they are doing a good job or, even worse, they don't know. Neither of those two last findings reflect well on the efforts, or the effective communication of those efforts, to be perceived as effecting radical change in client business development. [See chart 10]

### RESEARCH, RESEARCH

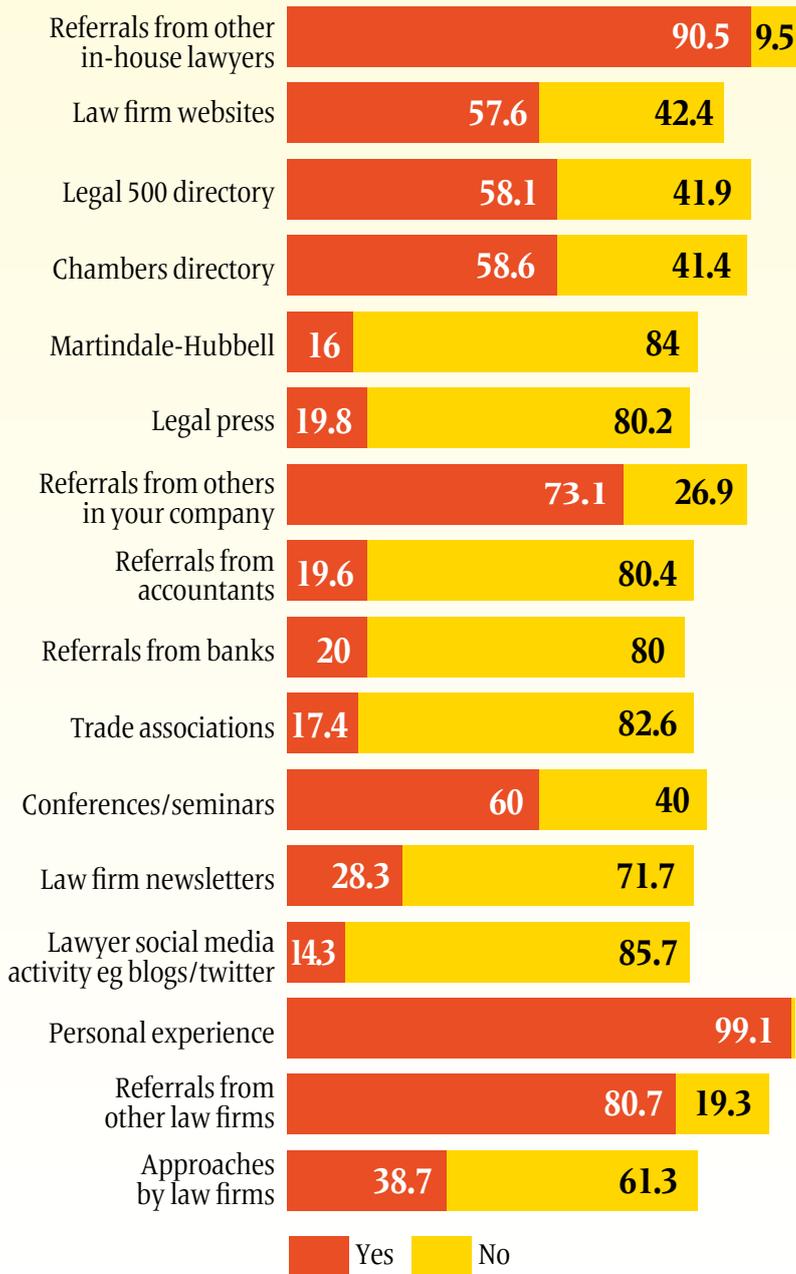
The most important sources of information about law firms when general counsel are doing their research are essentially personal experience, referrals (from other in-house lawyers, from law firms and from others inside the company). These are followed by information garnered in directories

...and the client has moved on to look directly at technology to offer economies and for more commercially savvy advice to replace more traditional value added service like secondments



RESEARCH ANALYSIS

**11. When researching law firms, which of the following do you use? (%)**



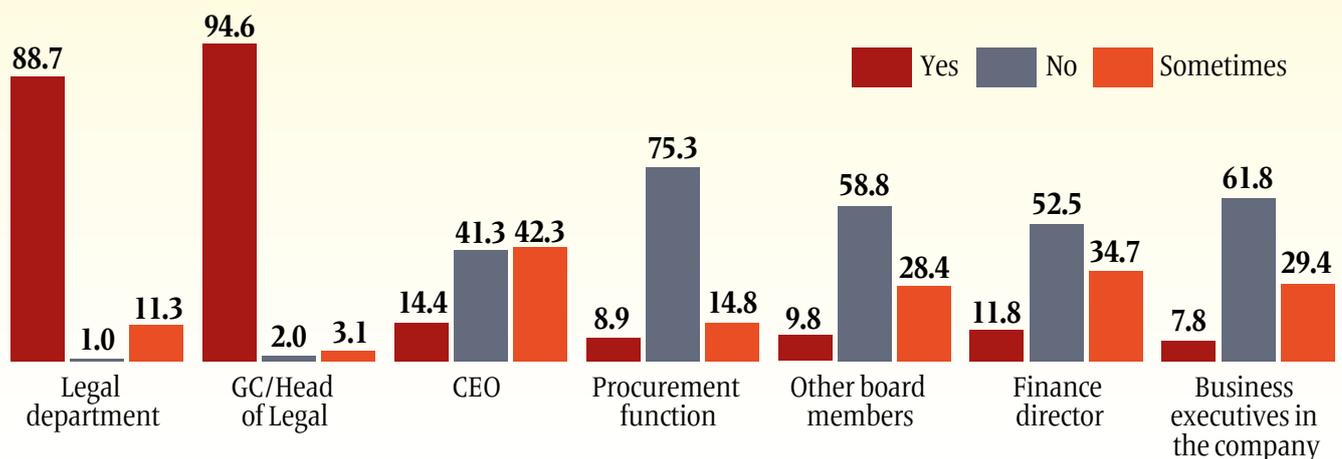
Personal experience of law firms is the most important source of information on potential law firms, 99.1% of respondents use it and the next most important is the personal experience of your in-house colleagues

such as Legal 500 and Chambers and Partners.  
 Personal experience of law firms is the most important source of information on potential law firms, say 99.1% of respondents. This is followed by the personal experience of in-house colleagues (90.5%). The directories are seen as key by just under 60% with slightly more preferring the use of conferences or seminars run, sponsored or participated in by law firms. [See chart 11]

**WHO'S LOOKING?**

It is not a surprise that the overwhelming majority of general counsel respondents (94.6%) have an input in the decision making process for appointing law firms. Neither is it a surprise that the legal department itself has a very strong say (88.7%). The figure that attracts the eye is that the procurement function only has an input 8.9% of the time – 75.3% of general counsel thought that they did not have an input. This is surprising given the rise of procurement departments in the cost control era of the last few years.  
 CEOs are only involved directly 14.4% of the time although they are involved 'sometimes' 42.3% of the time. Likewise for the Finance Director who is directly involved only 11.8% but involved sometimes 34.7% of the time. In 2015 the finance director had an input 36.8% of the time and the CEO was much more involved – 45% of the time. [See chart 12]

**12. Who has an input in appointing law firms? (%)**



# INNOVATION IS KEY



Harry Trueheart

Harry Trueheart, Chairman and CEO of TerraLex and Chairman Emeritus of Nixon Peabody LLP, considers the themes of the latest survey and the role technology is playing in changing the game.

**There is a theme running through the survey and interviews that general counsel are much more innovative, much more on the front foot in terms of looking for ways to improve the service and lower the cost of legal services. Is this something that you have a view on?**

We are very much aware of the pressures general counsel are facing to deliver more and better service to their internal clients at less cost. We follow closely the new ideas they are trying out to achieve that. The general counsel Excellence surveys and our experience demonstrate that no one type of solution works for every legal department. Certainly technology is playing a role both in managing work and managing outside counsel. One factor driving technological innovation is the rise of professional legal operations managers, such as is represented by organisations such as CLOC (Chief Legal Officers Consortium), which has as one of its five goals, "Optimising legal service delivery models." Technology can certainly play a role in improving efficiency, for example in routine work such as some types of contract drafting. Of course, big corporations with a large volume of work and ample resources have been employing technology solutions for some time and there is a flourishing market of outside vendors as well. As a result, outside law firms, including a number of our TerraLex member firms, have developed their own technologies to meet the needs of their clients.

Innovation though is about more than just technology. An example is the emergence in some legal departments of Lean Six Sigma processes, usually a result of the corporation's commitment to efficiency in other areas of its business operations. In addition, general counsel are experimenting with various ways to retain outside counsel, to disaggregate work and spread it among various types of law firms and support service providers. They also continue to explore alternative fee arrangements. The survey shows that there are many different solutions for many different legal departments.

Time and again, our member firms have demonstrated that they are adaptable to the approaches preferred by their clients. We have

project management approaches to align our member teams with client preferences and the project management professionals in our member firms regularly collaborate to provide efficient solutions. Member firms are selected because of their experience in representing sophisticated business clients, so they are familiar with using technologies that clients prefer. They also have extensive experience with innovative fee arrangements, both in teams of member firms as well as individually.

**There is a lot of media coverage about client and law firm interest in the use of Artificial Intelligence and the efficiencies that it could bring to the table. Some senior general counsel in this survey, however, believe that major changes to the way the legal services market operates are coming down the line, but are not here yet, and there is a limit to how useful this technology can be. What is your view?**

The term "Artificial Intelligence" as it is being used in the legal profession does not have a clear meaning and common usage. I have seen it applied to applications which have been in use for some time, including for example in document review. Current commentators would consider these applications relatively primitive in comparison to the self-learning capabilities and higher level skills envisioned for the AI of the future. There are groups of corporations and law firms, separately and in combination, working with independent developers, and there are major companies serving the legal market and major tech companies which are exploring AI opportunities in the legal realm. A number of our member firms are actively involved in tracking developments and looking for opportunities to apply AI. In fact, AI is the focus of an upcoming forum for TerraLex member firm managing partners.

In my view, it will still be some time before higher-level AI solutions to legal needs are broadly available. There are varying needs, by subject matter or by geography. There are of course, legal systems and volumes of laws, court rulings, regulations, prior precedents, etc. around the world. There is as yet no fully proven higher-level AI solution

available in the marketplace. It will take time for these to develop and time for them to spread to the wide variety of potential needs that are currently filled by lawyers. As with other technologies that have come into common use in the legal profession, it seems likely that because of lawyers' inherent need for reliability, their appropriately cautious approaches to change, and because of the many nuances that exist in the many legal needs faced by clients, AI will spread more slowly in law than might happen in other professions or industries. All that being said, it will come, it will be gradually disruptive to traditional working models and therefore to traditional economic models. It will have impacts across the profession to both legal departments and law firm lawyers and staff, and how they work separately and together. However, unless people stop doing deals, getting into disputes, or creating new businesses with new legal needs, and unless governments stop creating new laws and regulations, there will always be roles for lawyers.

**The worry factors for general counsel are still the same as they were in 2015, but the importance of regulation, compliance and**



**choice for general counsel to manage the law firm relationship seems to come under pressure. Are law firms seeing companies looking for a more fluid type of relationship which gives them more options?**

Yes. The criticisms of panel approaches expressed in your survey are not uncommon. We see in-house lawyers working around their own panel programs to find the right lawyer and law firms in the right places to meet their needs. We also see first-hand, as TerraLex teams respond to RFPs, how complicated some of the processes have become in ways that do not seem important to how the final selections are made. For example, TerraLex representatives recently met with the general counsel of a global organisation that is experiencing challenges with adhering to their global panel strategy due to approved law firms being conflicted out of certain matters. Our members are working with the client to craft a new approach. We have learned from our members and their clients that while panels are supposed to make it easier and less expensive to use outside law firms, they often foster complacency on pricing and process. This is a very real concern for many in-house lawyers.

**Is there a trend towards the establishment of a single firm or legal service provider to perform, or triage and then distribute to the appropriate provider, all legal tasks for the company? In this model, there is no need to incur the costs of running an expensive panel and decide on the channeling of work to the most appropriate provider, it is all done for you.**

We have not seen a trend here. One of the defining roles of in-house counsel has been to decide which is the right “horse for the course.” As the survey indicates, in-house counsel use a variety of means to do that. One of those ways, particularly in unfamiliar markets, is looking to law firm network member firms and teams of those firms as an alternative. This is one of the key values our members and their clients see in TerraLex. When asked by their clients for referrals our members have access to pre-screened and monitored business law firms around the world with demonstrated experience in serving international clients and with which our members have personal contacts and shared experience. At the same time, they are free to recommend any other firm they think best. At the heart of what TerraLex members can offer as well is multi-jurisdictional virtual teams to manage all or some of their client’s matters. These teams can be a mix of TerraLex members and other firms known to the client. The TerraLex members have agreed on a common set of service standards and have available project management and other tools

developed for the network. Often, they are more effective in meeting the client’s preferences than a single firm in terms of things such as pricing models, project management, and depth of local expertise and connections.

**There has been no real increase in the full board representation of the general counsel role in the UK or Europe. Is this important or is it an unnecessary additional role for general counsel performing at the highest level?**

We have heard feedback from multiple points of view on the topic. Some say that it is in some ways unnecessary and perhaps even inappropriate for the general counsel to have an official seat on the Board as it could impact their impartiality (or perception of impartiality) if faced with resolving a legal issue involving Board decisions. This is a predominant view for public companies in some jurisdictions. Even in more closely held companies with multiple shareholders and overlaps among officers, directors and shareholders, ethical rules often require that the general counsel only represent the corporation, creating a conflict in roles where the company is in dispute with any of its officers or directors. Even if not a member of the Board, the general counsel obviously should have a voice at the Board level. Board service is a valuable experience for a general counsel and serving on the boards of other companies or institutions is another way to get that experience. However, in those roles it is business experience and judgment, not legal experience and advice, which a general counsel should offer.

**Price is clearly still a very important part of the equation when looking to appoint a law firm but reputation is the most important – the reputation of the law firms and that of the individual lawyer. Does this mean that general counsel are happier with law firm pricing?**

How happy are any of us at the pricing of most things? General counsel and law firms should never stop looking for better, faster, and cheaper ways to work together. It is the combination of all three that matter and vary in the particular circumstance. Cheap and wrong on matters is not a good choice nor is high cost for inconsequential work. What we see in TerraLex is a search for high value, which is of course relative to the matter. We also see clients making more thoughtful and sophisticated judgments about that. For example, TerraLex member teams are called upon to do nine and ten figure multi-country merger and acquisition deals because clients have confidence that the work will be done right and at a more reasonable cost than if done by a high-priced provider. In selecting our member firms TerraLex looks for high value rather than highest priced firms.

**data protection/cybercrime are more of a focus in 2017 as well as risk management, reputational management and creating value for the company. Does this tally with your own experience?**

I agree these are all pressing current issues. Risk management and reputational management particularly are taking the role of lawyers, particularly general counsel and their senior outside advisors, full circle back to the trusted advisor role. The nature of the threats and issues change but the general concerns about managing compliance, risk and reputation do not. The role of the general counsel in these areas continues to increase. The growing implementation of formal Enterprise Risk Management, for example in corporations creates new and important roles for general counsel and their outside advisors.

TerraLex members are also responding to these needs. Taking your more specific examples of data security, cyber-crime and compliance, a team of lawyers from TerraLex’s European member firms are making multiple presentations on the EU GDPR to US clients this fall.

**In the survey this year the emphasis on formal panels of law firms being the primary**

# LAW FIRM BRANDS AND BUYER BEHAVIOUR

The price must be right but it is not the key factor when selecting the right law firm, say general counsel. Instead, reputation is all, particularly the reputation of the individual lawyer and team.

What makes general counsel buy a particular brand of law firm and what are the factors that would make them change their minds? In general terms, although cost is obviously a major factor, the reputation of the law firm and that of the individual lawyer are much more likely to sway the decision to buy. In 2015, 45.6% of

respondents thought that price was important when deciding which law firm to use and 48.1% thought that the reputation of the law firm was important. Two years later in 2017, only 39.5% agreed that price was important but 60.8% wanted the

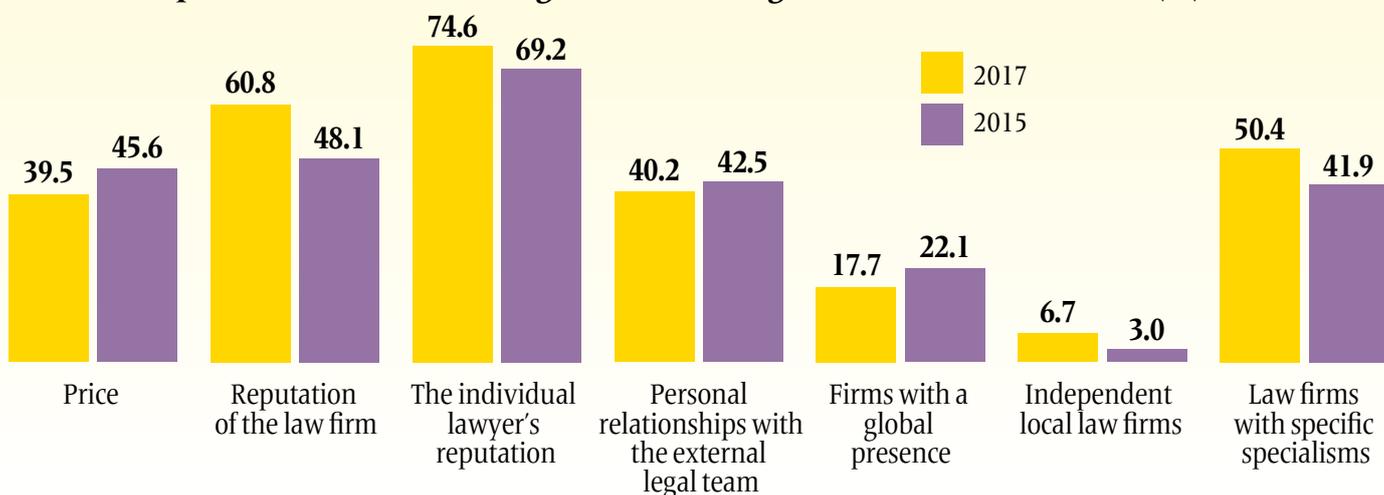
The conventional law firm business model is knackered...and most law firm partners are very resistant to the idea that they do commodity work.

*General Counsel, Natural Resources sector*

assurance of a law firm reputation before making a buying decision. As a consequence, the importance given to the individual lawyer's reputation has grown in importance from 69.2% in 2015 to 74.6% in 2017 – the most important factor in the list.



**13. How important are the following when deciding which law firms to use? (%)**



**14. In your opinion what are the most important factors when looking for a law firm? (%)**

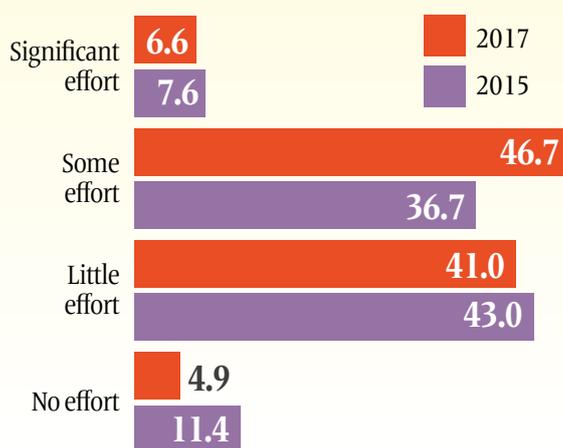
Choices	1st	2nd	3rd	4th	5th	6th	7th	8th	9th
The law firm brand	7.1	5.9	9.5	11.9	8.3	16.7	19.1	15.5	5.9
Top rated individuals/teams in the firm	41.3	14.1	12.0	12.0	4.4	7.6	4.4	1.1	3.3
Size and reach	1.1	5.6	17.8	7.8	17.8	15.6	23.3	6.7	4.4
Firms focusing on our sector	22.1	24.2	8.4	15.8	11.9	9.5	6.3	2.1	0
Cost/fees	4.3	20.4	25.8	24.7	11.8	5.4	5.4	2.2	0
Business expertise	24.2	15.8	15.8	13.7	12.6	7.4	5.3	4.2	1
Reputation	19.6	19.6	17.5	11.3	14.4	9.3	8.2	0	0
Media profile	1.2	0	1.2	3.5	1.2	9.3	8.1	30.2	45.3
Law firm network affiliation	1.1	6.4	7.5	3.2	9.6	7.4	10.6	25.5	28.7

**REPUTATION IS ALL**

Is it important that law firms have a global presence? Less so in 2017 than in 2015. In 2015, 22.1% of respondents thought that a global presence was important but this has declined to just 17.7% this year. As a corollary of this focus on the local, the importance of independent local law firms has doubled in importance from 3.0% to 6.7%. General counsel are also more prone to be swayed by specialist law firms with this factor growing in importance from 41.9% in 2015 to 50.4% in 2017. [See chart 13]

The importance of sector specific business knowledge is confirmed in another question asking respondents to rank factors in order of importance. Top of the list is the

**15. In your experience, how much effort are law firms making to reduce legal costs for clients? (%)**

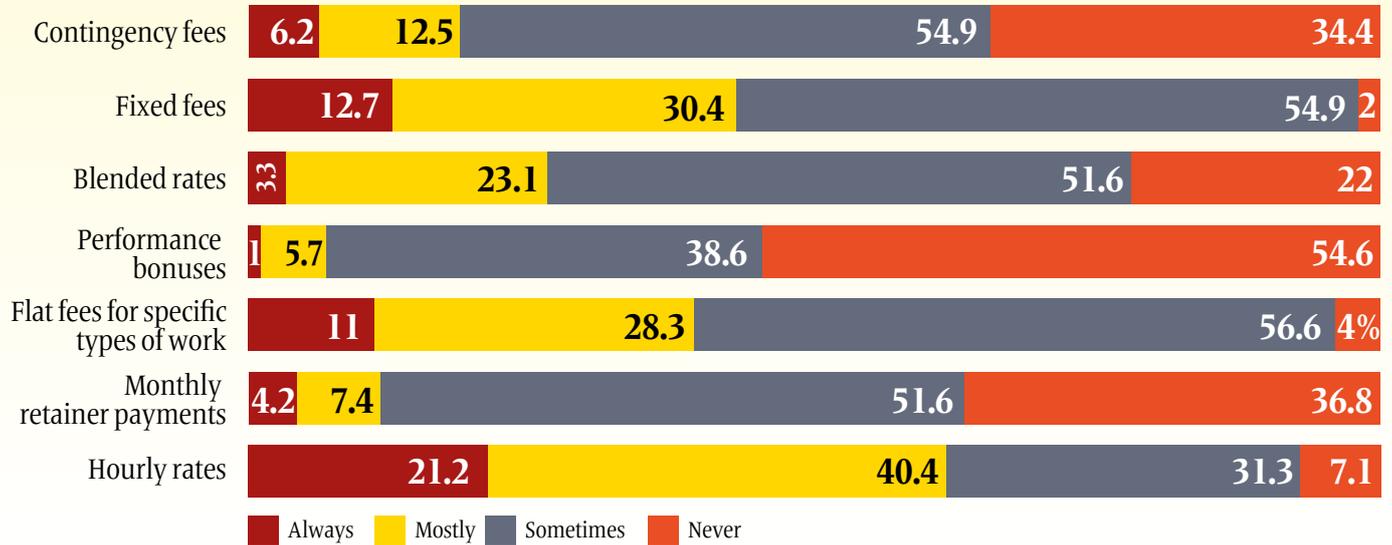


presence of leading individuals and teams in the firm, which received 41.3% of first choices. The price must be right but it is not the key factor when selecting the right law firm, say general counsel. Instead, reputation is all, particularly the reputation of the individual lawyer and team. Only 7.1% chose the law firm brand as important, but of course the notion of brand contains all of these separate elements. Cost and fees become steadily more important in 2nd most important and third most important factors with 20.4% and 25.8% eclipsing the initial 4.3%. [See chart 14]

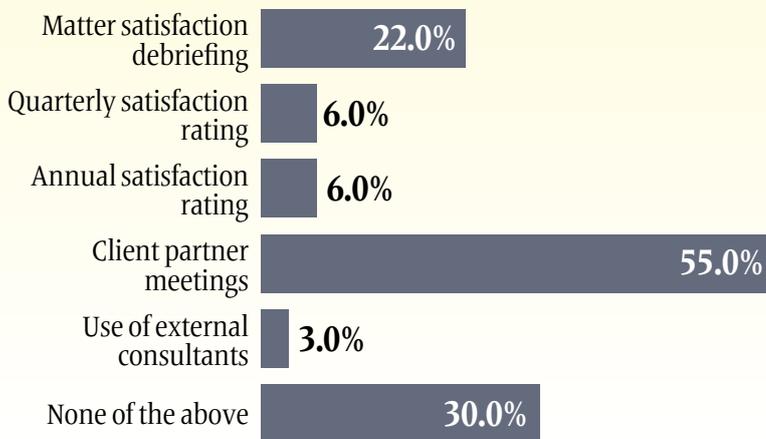
**SOME OR LITTLE EFFORT**

Law firms are making more effort to reduce costs for their clients – but not that much effort. In 2015,

**16. Which of the following are offered by your external law firms? (%)**



**17. What types of regular communication do your law firms use to measure satisfaction levels?**



44.3% of respondents believed that law firms were making either significant effort or at least some effort to reduce costs. In 2017 this number had increased to 53.3%. But, of these, firms perceived to be making “significant effort” fell from 7.6% to 6.6%. [See chart 15]

Given the popularity of fixed fees as a measure of certainty for managing matters in-house, it is surprising that firms are not offering them always as a means of payment for legal services. In our survey, fixed fees were only offered always in 12.7% of times compared to 21.2% for hourly rates. But at the other end of the scale, fixed fees were only never

offered in 2% of times. Perhaps law firms are still waiting to be prompted before offering. Of the options that are never offered, the biggest performer is performance bonuses which are not offered in 54.6% of cases. Contingency fees were also not being pushed very hard with general counsel never being offered them 34.4% of times. [See chart 16]

**COMMUNICATION**

Law firms have made great strides in the art of client communication. Or at least that is what their communication departments will tell you. There is

certainly more structure in place with 22% of respondents getting matter satisfaction debriefings and 55% getting client partner meetings. Smaller numbers get monthly or annual satisfaction meetings but 30% receive none of these kinds of regular communications or briefings. [See chart 17]

When asked the key question how happy they are with the level of communication 74% of general counsel thought they were usually happy. However, that left 22.1% seldom happy and 3.8% never happy. These are still worrying numbers for law firms dedicated to listening carefully to client needs. [See chart 18]

**EMERGING MARKETS**

About three quarters of respondents are still doing business in the emerging markets – the 2017 figure is 72.7%,

Law firms are making more effort to reduce costs for their clients – but not that much effort... firms perceived to be making “significant effort” fell from 7.6% to 6.6%

RESEARCH ANALYSIS

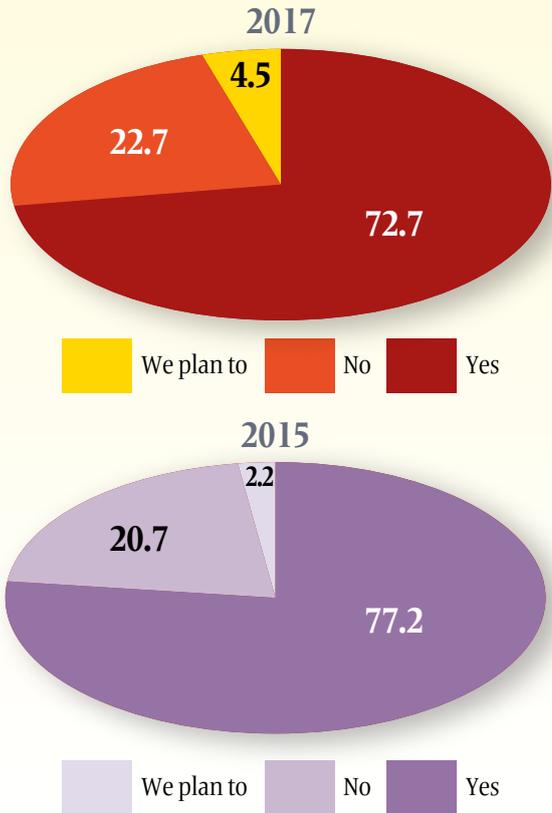
down a little from the 77.2% figure in 2015. Those planning to do business in more risky destinations has gone up from 2.2% to 4.5%. How are those deals being staffed? In 2015, companies are allocating less lawyers from the legal department (down from 15.4% in 2015 to 10.4% in 2017) and using local firms (up from

23.1% to 29.0%). [See charts 19 and 20].

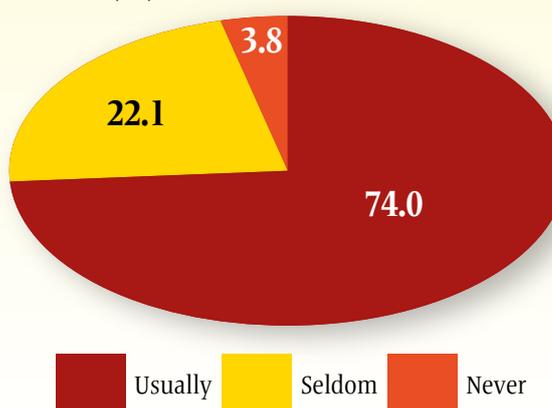
General counsel are increasingly turning to the directories and a local firm's recommendation as sources of information on foreign law firms. Use of directories has increased from 29.7% to 33% and a local recommendation from 70.3% to

76.3%. Law firm networks are used by 48.5% to find a foreign law firm reflecting their key role in the legal ecosystem. They rate above directories and the internet in their importance for general counsel when doing business abroad. US companies in particular value networks. [See chart 21]

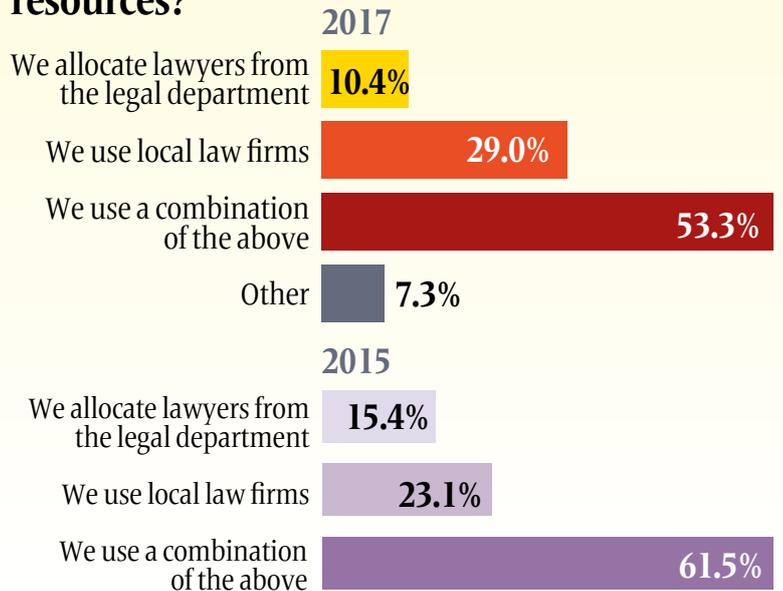
**18. Is your company doing business in the emerging markets? (%)**



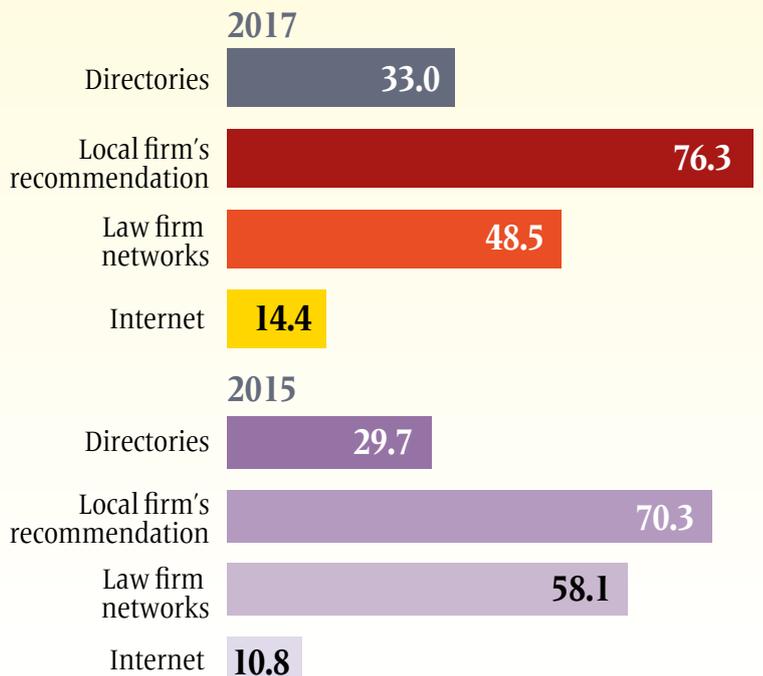
**19. Are you happy with the level of communication from your law firms? (%)**



**20. When dealing with emerging markets, how does your company allocate legal resources?**



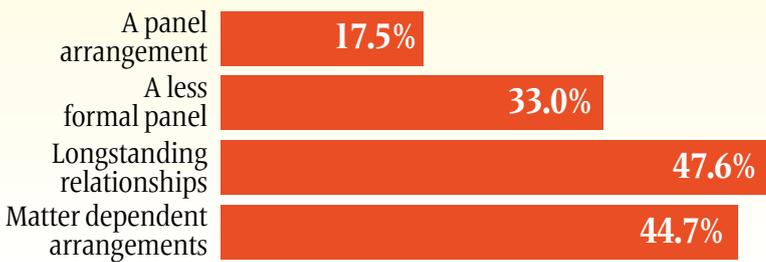
**21. Which sources of information do you use when selecting a foreign law firm? (%)**



# PANELS, OUTSOURCING AND TECHNOLOGY

From panels to outsourcers, the legal marketplace is in a state of transformation with technology at the centre of much of the changes.

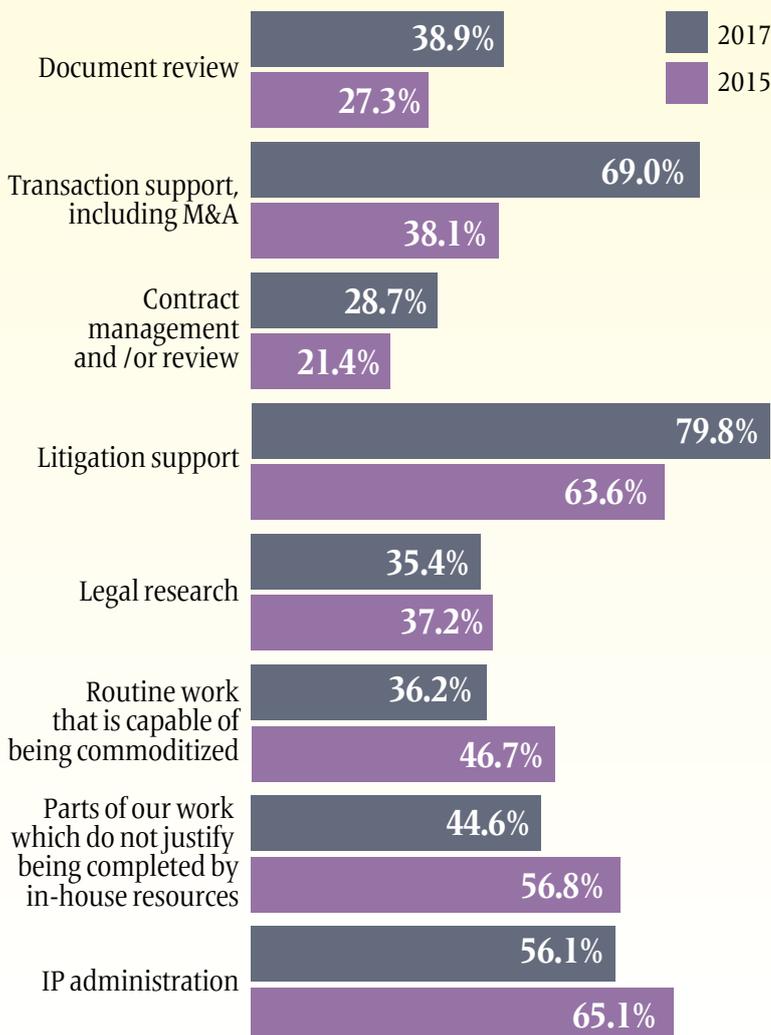
## 22. Which of the following do you use when managing external law firms?



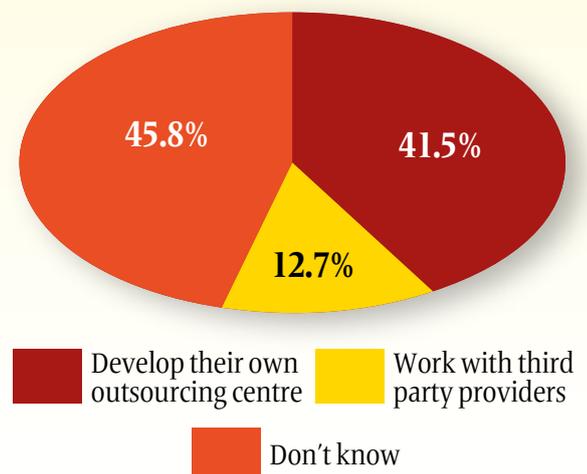
Law firms can be a bit obsessive about panel reviews. A new general counsel arrives at a client and immediately conducts a review of their law firm suppliers. The incumbent firms are worried about protecting their relationship and earning capacity, the other firms see the review as an opportunity to display their wares and prise some work out of the client. But how do clients look at panels? Are they really that important or just an admin veneer of process over a starker, more ad hoc reality?

When asked which method they used for the management of external law firms, only 17.5% of respondents in 2017 chose a panel arrangement. 33% chose a less formal panel but 47.6% chose longstanding relationships and a similar percentage chose matter dependent arrangements. In 2015 26% chose a formal panel and 24% a less formal panel arrangement. Relationships would appear to be shaping up as less formal and more fluid. Old style panel reviews can be cumbersome and very expensive.

## 23. If your department is outsourcing work, please indicate which of the following is being outsourced?



## 24. Would you prefer your external law firms to develop their own legal outsourcing captive delivery centres as opposed to working with third party providers?



## RESEARCH ANALYSIS

Generally, the panel is a base for selection but when asked if they always use an established process for selecting a law firm only 16% said yes for every matter. 63.2% said it depends on the matter whilst 63.2% said it depended on the matter and just over 20% said it is left in the hands of the individual in-house counsel. [See chart 22]

Of course, a growing body of legal work is being outsourced by the legal department – sometimes to law firms which supervise it but also to other legal services

providers directly. Much more document review and transaction support work is being outsourced. In 2015, just 38% of respondents were outsourcing transaction support work but this has increased rapidly to 69% in 2017. Litigation support is another big increase from 63.6% to 79.8%. Smaller amounts of legal research, routine work and intellectual property admin is being outsourced but that is a decline from a reasonably high percentage to start with. [See chart 23]

Who would general counsel

select as their outsourcers? The research shows that 41.5% would prefer to develop their own outsourcing centre, an increase on 34.2% in 2015. Many firms across the world have opted to do this already with offshore centres set up across the US, Europe, India, South Africa and the Philippines to name a few outsourcing destinations. A healthy 12.5% would prefer to work with third party providers, although this is a decrease on 2015 when 15.8% declared themselves confident to use third party providers. [See chart 24]



# THE 2030 GENERAL COUNSEL

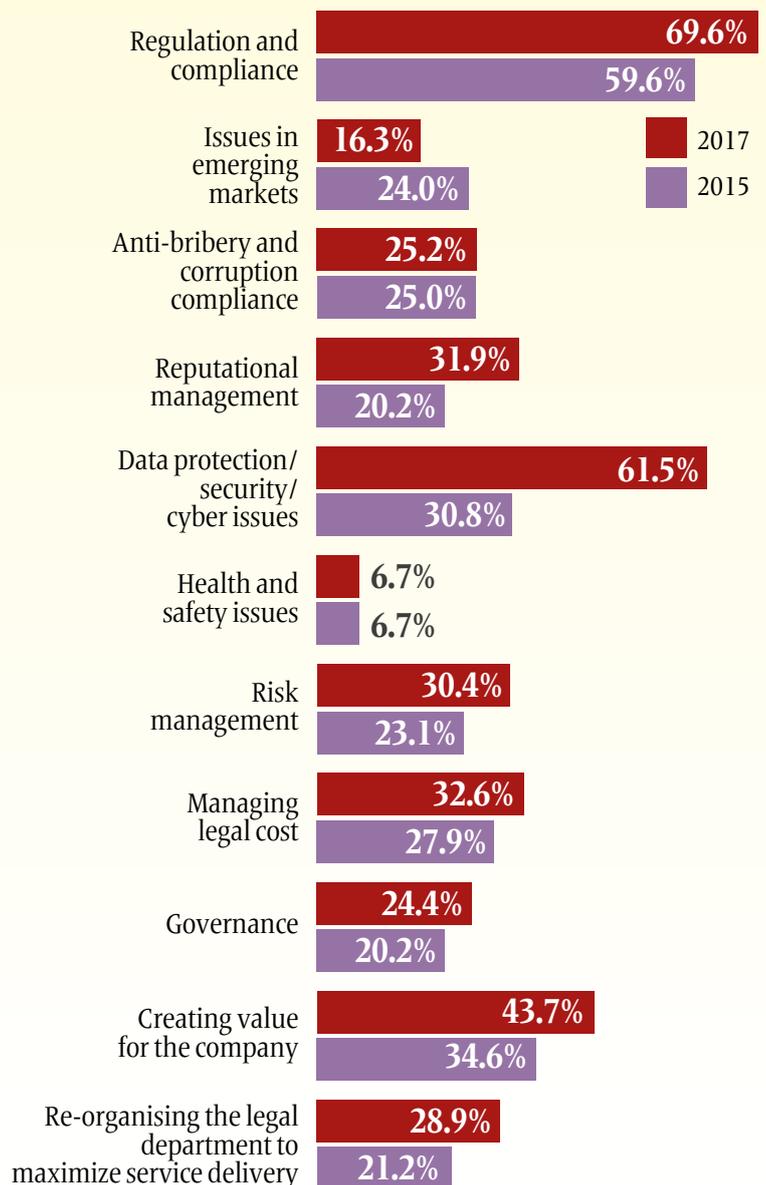
How will the legal department of 2030 look?

What issues are top of the agenda for general counsel in 2017 and beyond? And how has this changed over the last two years? With greater regulatory and compliance requirements than ever, the general counsel has to ensure the company is prepared for every eventuality. From a list of current concerns, the majority of issues have become more troubling over the last two years.

The most concerning is regulation and compliance which has risen from 59.6% to 69.6% over that 2 year period. The biggest percentage increase is for data security and cyber crime issues which only troubled 30.8% of respondents in 2015 but now that figure has more than doubled to 61.5%. Risk management has also increased, growing from 23.1% to 30.4%. Reputation management is a hot topic for general counsel with one in three concerned - rising from 20.2% in 2015 to 31.9% in 2017. Companies in the consumer goods sector are particularly concerned as the high costs of reputational damage - from data breaches to emissions scandals - can not only dent consumer confidence in their products but has been shown to have longterm consequences for stock prices. Creating value for the company has shot up as a concern for 43.7% (34.6% in 2015). This is a relatively new development as general counsel relish their new roles as contributors to the company business. The most interesting concern is that of creating value for the company which has shot up from 34.6% to 43.7%. This is a relatively new thing, the urge to be seen as a revenue producer rather than just as a cost centre.

Lower on the list are issues such as health and safety (6.7%) get rid of issues around emerging markets (16.3%). Meanwhile anxieties over anti-bribery and corruption seem to have stabilised - at 25.2% in 2017, similar to the research results two years ago. [See chart 25]

## 25. Which of the following are you most concerned about over the next 18 months?



## THE INSIDE TRACK

The relationship between legal departments and their external advisors still reveals gaps in understanding between buyer and supplier.

Steven Blundell of Redstone Consultants conducted a series of indepth anonymous interviews with a number of general counsel to get to grips with some of the issues.

## INNOVATION IS CLIENT LED

Two questions need to be addressed to understand why innovation to date has been mainly client led. The first is why would a law firm want to promote innovation, followed by why legal departments actually want their law firms to be innovative.

With regards to the first question, it seems that it should be up to the clients to promote innovation. There is a recognition that law firms are able to come up with innovative models should they apply themselves to do so, but as one of our interviewees note, "if there is no demand for them then why should they...? There is an element of risk for the law firm, why would you take on that risk if the old system gives that sense of familiarity?"

Innovation isn't necessarily a good

thing. A lot of what these companies ask of their law firms doesn't tend to involve creativity, but rather a meticulous and at times repetitive process. Therefore, in this regard, having creative lawyers can be a disruption and a hindrance. An interviewee describes the youthful generation of lawyers as the "sort of people who get bored very easily. They are innovators, who do a particular project once, and then they want to do something different." This clearly doesn't match the previous notion that we do not want our lawyers to be innovative, especially in the case of certain practices which usually involves asking lawyers to repeat processes regularly and make efficiencies through this repetition.

### GC VERBATIM

"There has been a lot of talk, but almost nothing has changed"

"We have been talking to executives in the technology area and think there is another 3-5 years until they manage any more meaningful steps forward, and only then, firms and business models may change"

"What's coming down the line is sure to be very different. It's going to involve kit on desks, there is going to be voice recognition, there is going to be a lot more in your face high quality video presences, and there is going to be a lot more virtual. When that works, the GC doesn't care where people are sitting, and he doesn't care what the time-zone is. At the moment you pay a significant premium for quality assurance. You delegate to a Freshfields or a Linklaters the job of making sure people are good, but you really pay for that"

"AI is basically a clever algorithm that can read a letter and say that is referable to the situation. It does the work that to date has been done by trainees at a vast expense. The thing that people really want is the next level up, the one that can produce the slide of showstoppers, and we believe that they are close to that"

"I think that clients need to drive this. If the clients are happy to pay on an hourly rate, are happy to have a fixed fee with a list of assumptions as long as your arm, then the world is not going to move on"

# PANELS ARE NOT AS POPULAR AS LAW FIRMS WOULD BELIEVE

Speaking to our interviewees has planted a seed in our minds; panels are not all that popular as we tend to believe.

An alternative option, growing in attractiveness, seems to be the “sole supplier approach”, i.e. working externally with one law firm and one law firm only, in which external legal advice is provided in a “very focused way”. Working with just one firm has huge advantages, as you can work in “partnership” and the relationship can be far more strategic, in the sense that the chosen firm will know your organisation inside-out, and can provide the most relevant and effective advice. It seems that it is not only a strategic decision, but also would also have advantages when it came to costs, as you gain “more certainty on costs” but in-house are also able to more easily plan their budget, gaining more control on how they will use it, rather than it being “ad-hoc” and less predictable.

The process of playing panelled law firms against each other was also questioned on two main fronts – trust and cost transparency.

Beating law firms into lowering the costs further and further is not indicative of a relationship of trust, in which “you should be comfortable that they would charge you the right amount for the right kind of work”.

Comments regarding the accuracy of the price quoted by law firms in the panel process, and firms tending to run-over on costs, were common in our discussions and provided a significant source of annoyance for our GCs, providing strong support for the one-firm approach where the decision regarding cost is limited somewhat.

Private practice are described as “pricing themselves into a job”, with bids involving stipulations that are “so loose that they will always be able to open it up again”. In fact, one of our interviewees suggests that despite this process being aimed at lowering legal fees, you will end up paying more. Not only will these assumptions inevitably be opened up, but “you end up having no certainty on budget, and playing them off against each other has just cost you a lot of time and effort at the

beginning”. Having a sole supplier with a “fixed price menu” is understood to be a more pragmatic view by some of our interviewees.

With regards to whether panels are not as popular as the law firms believe, there was an argument that in fact, law firms are no longer so tunnel-visioned today and are beginning to recognise the benefits of a sole supplier arrangement. Within the sole supplier arrangement, not only is the law firm getting the clear majority of work, but they also inherently receive an indication of “what is coming down the track”, as well as the relationship allowing an exchange of information and know-how that you wouldn’t necessarily have with clients that have got you as part of their panel.

However, the net benefit of having a panel or a sole supplier is largely dependent upon the type of firm and the type of legal work that arises for them. A key reason cited for giving up on the panel concept was that the firm didn’t have the kind of matter to “feed the machine all the time”. In fact, there was an acceptance that it worked well in specific areas such as “high volume transactional areas like M&A”, as we would expect. It seems it is all about volume, and this changes depending where you are, and has nothing to do with the sector, or the business, just a question of size, and project stream.

“We gave up the panel concept a couple of years ago because we figured that on the one hand we didn’t have the kind of matter to feed that machine all the time. Because on the one hand, the globalisation of the business means that matters can emanate from almost any place”

“We use our external suppliers in a very focused way. It’s a sole supplier relationship. We entered into it 4 years

## GC VERBATIM

ago, with an international firm specialising in energy, infrastructure, financial services and real estate; the driver for the change was around cost reduction, and efficiencies”

“We have taken the pragmatic view of having a fixed price menu, if then things change scope wise, it becomes a different matter,

you can’t compare apples and pears, but if you have an apple, you want to pay for an apple. We have a menu that we have worked with Firm X to develop. That’s got fixed prices for individual services”.

“We have an electronic system which gives me great data on which on which business units are spending, how much is spent on each project, how we can track it monthly against the budget”



## INFLUENCE OF TECHNOLOGY

Reading any legal publication in 2017 you will be hard-pushed to miss an article probing the use of technology in legal services and the impact innovation will have on the law firms of today. Our interviewees were all too aware of this force, noting that things will indeed be very different once certain innovations come into play. Clearly, there is great interest around how technological advances are helping the work of GCs now and in the future, but there is also scepticism there too.

One of our interviewees describes how they had recently gone through an entire documentation review process which had been machine done via a “clever algorithm”, which very quickly and cheaply allows firms to identify the key issue at hand; a process that is certainly not immediate for the junior lawyers who tend to take up this kind of job. However, it seems that this isn’t enough for GCs. What is key – and what they really want – is the next level up; technology that can “produce the slide of showstoppers”. It seems what they are after the solution rather than the problem, and how close law firms and artificial intelligence are to this check-point is still up for discussion.

One concern we noticed during our discussions is the issue of just how quickly the technology is advancing. There has been an observable lag effect between the rate at which the technology available to law firms has developed and the effectiveness in which law firms have used it, citing that although “technology has developed a great deal...lawyers do not use it to its best effect” – using technology is still seen as a “bit of a niche area”, whereas in fact there is huge scope for more of the “grunt work” to be “technologised”.

What this seems to be suggesting is that there is a clear disparity between what technology is available to law firms in theory, and how effective this advancement is in practice. Therefore, there is a growing sentiment that although technology may change the industry at some point, GCs do not believe it will be immediate. Despite the fact that technological advances have been made, the real question is when will it be coming their way in a “bigger fashion”? Having talked to executives in the technology area, one of the GCs thinks there is “another 3-5 years until they manage any more meaningful steps forward, and only then, firms and business models may change.”

### GC VERBATIM

“We think that for technology to do the risk assessment for you, which in my mind is a bit of a gut reaction of weighing up the options, and how do we manage things internally, we think it is probably doable in some point in the future, but to do that you need to put so much information into your tool, that the minute you have something out of the ordinary, it’s going to flounder”

“Technology has developed a great deal, and we still think that lawyers do not use it to its best effect”

“Of course you can squeeze here and there, but also looking at the average legal fees over the years, there is only so much you can do. To me it is really technology that may change the industry at some point, but this is not going to be imminent.”

“In terms of the use of tech, we have our own inbuilt homework network. It varies, but at any time we have about 15 people across the world who function through a centralised network, who we parcel out repeat work to, commoditise work to, which saves quite a lot of money”

# THE GENERAL COUNSEL CHARTER

Jonathan Smith, general counsel at AWE, gives his views on what the best law firms need to do when dealing with legal departments.

“This guide is not a replacement for our retainer letter. It does not form part of our legal relationship. Instead it sets out guidance on what I think characterises good external counsel so that our working relationship can be as successful as possible”.

## TIME, COST, QUALITY

These three characteristics of a project, (originally time, cost, output – correct scope, correct quality) were identified by Dr Martin Barnes in 1969. There’s nothing unique about law in possessing these characteristics, it’s like any other activity. The principle is that any activity



by Jonathan Smith, AWE

embraces all three of these factors, but there will always be one factor which must be compromised in service of the others. So for example a high-quality piece of work conducted in a short timeframe comes with a price tag; lowering the price tag reduces the quality or lengthens the timeframe for delivery. Which two do I want? Don’t guess! Talk to me, to make sure you know which two are most important for this piece of advice. And in complex matters the answer may be different in different parts of the matter, or change as the matter progresses, so please check in regularly.

## TIME – DEADLINES AREN’T ASPIRATIONAL

If we agree a time for a piece of advice, there’s a reason I want it by that date – so that’s when I want it. If you miss the deadline, your advice may be too late to be relevant. I don’t want it held up because a partner is reviewing it or it needs a final turn when the deadline passes. And I don’t want it held up because you are busy with other aspects of the matter. These other aspects may be less time-critical to me and you should let me know they will prevent you hitting the deadline, so that I can tell you what is OK to move.

You may have had an associate do a first draft of a document or piece of advice ready for a partner to review. You should be confident in letting me see the draft so we can work on it together and hit the deadline. I won’t think less of you as a firm if the associate’s work isn’t as refined as if the partner had done it. Just tell me that’s the route you have taken. I’ll think more of you for having appreciated the need to put the time task first and to find a way to enable the deadline to be achieved collaboratively.

I am sure anything you send me will be good, well-considered and informed legal advice. But please remember I haven’t asked you to provide legal advice for my education. I’ve done so in order to help me solve or progress a business issue.

## COST – AND PRICING YOUR WORK

Don't pad the bill. There will be no second chances. And I don't want to be billed for work which I didn't ask for, or which is not necessary to fulfil the work I have asked you to carry out.

Our arrangement is only going to work if it makes economic sense for both of us. Whether you charge by the hour or on a fixed fee basis, it amounts to the same thing – we both have bills to pay, so our billing arrangements have to meet those requirements. Whatever our fee structure, there will be expectations set and as we progress through the matter, those expectations may get challenged. You may feel able to keep pleasant billing surprises until the end of the matter, but if the expectations you set for the cost of advice are going to be exceeded, I want to know early enough to give me a choice – whether to get that piece of advice (serve time and quality) and bust my budget, or to compromise my advice and keep to my budget.

For my part I won't nickel and dime you, and I will make sure you get paid properly.

## QUALITY – DON'T JUST THROW IT OVER THE WALL.

I am sure anything you send me will be good, well-considered and informed legal advice. But please remember I haven't asked you to provide legal advice for my education. I've done so in order to help me solve or progress a business issue. So take a moment to think about what I'm going to do with the advice when I've got it – and be ready to ask me if you are in any way unsure. That way if I've got a deadline coming, you won't purely focus on hitting any deadline we've agreed, you will also think about what you need from me and my colleagues ahead of that deadline so that you ask us in good time. And you will provide your advice in a way (its format

and content) that enables me to make the best use of your advice.

What you are experts in is providing legal advice – which is a different focus from mine, which is to secure the best outcome in a given situation, and to which your advice is an input not the output; it's a means not an end. The smaller we can make the gap between your legal advice goal and my use of it to further my goal the better we will work together.

## I KNOW YOU KNOW

I asked you to act in a given matter because I knew from the market, recommendations or my own knowledge or prior experience that you have an expertise in the area. So you don't have to spend lots of time telling me about the reasons

for your advice, just to persuade me that you know about the area. There will be cases when you need to make sure I know the legal background well enough to make informed choices in the light of your advice, and I accept that you may need

to set out the factual background on which you are advising in some cases, but you should never feel you have to recite the background just because you are concerned that the advice you are giving may be negligent and you need to paper your file for that instance. If you base your advice always on your failing to get it right, we're both in trouble.

## STAFFING THE CASE

I expect you to staff the case in the way that best meets my requirement, not your billing targets. I also know you've a business to run and part of operating that business means training people on the job. I'm very happy to have newer lawyers working on my cases, but they must be supervised appropriately (somewhere between being smothered and allowed to run wild).

On a related point, I don't need you to show me how committed

you are to my organisation by setting unnecessary deadlines for yourself. If I want a piece of work on my desk by 9 a.m. on Monday morning, I will ask you. Don't promise it for that day if I haven't asked you – especially as I know it won't be you, but a bunch of hard-pressed associates who will lose their weekend meeting the requirement.

## BUILDING RELATIONSHIPS WITH MY COLLEAGUES

I expect you to build strong relationships with my non-legal colleagues. That helps me when we have difficult advice to give, and it helps you secure the relationship with the organisation not just me. But your primary relationship with the organisation is held through me and I will not accept your going behind my back to have my colleagues change the way in which you and we work together.

## FIXING HOLES

You will be carrying out work for us some of which will be highly important and complex, and you may get things wrong. So might I. We need to have the relationship where we can be open and frank about these occasions and where we can be grown-up and constructive about putting it right. My view is that you learn the most about an organisation by seeing how it puts things right when they have gone wrong.

## LET'S BOTH MAKE EACH OTHER LOOK GOOD

We both do things which are difficult. Not everyone we work with will like what we do, just because of what we are doing. It helps me if you do well, because part of my role means deciding where to get external counsel involved, which counsel to engage and managing them once appointed. So if you get it right – including in the ways set out in this document – I am fulfilling my role, so it is in my interests for you to look good. And it's in your interests too; if I look good then it increases the trust and responsibility placed in me and that gives me the greater freedom to appoint you again.

“...so it is in my interests for you to look good. And it's in your interests too; if I look good then it increases the trust and responsibility placed in me and that gives me the greater freedom to appoint you again”.



TERRALEX<sup>®</sup>

# Globally Connected

When legal matters cross borders, strong local connections make all the difference. The TerraLex global network of law firms gives clients the local expertise to manage even the most complex multi-jurisdictional engagements.



ELITE LAW FIRM NETWORK



ELITE LAW FIRM NETWORK

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