

REPORT



N A B A R R O
CLARITY MATTERS

From in-house lawyer to business counsel

A survey and discussion paper by Nabarro LLP



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Foreword

Over the past year we have talked to many general counsel (“GCs”) and other senior in-house lawyers about their role and status, about the commercial value that in-house legal teams contribute to a company, and about how that value can be measured and expressed.

This report concludes the first part of the exercise. We hope the wider community of GCs will now discuss these findings and the possible next steps. We will be hosting a series of meetings around the UK to consider questions raised by the report. We would also be delighted to talk to you personally if you are interested in the topic.

Measuring value is often seen as a challenging process for an in-house legal team. There may be concerns about resourcing, the introduction of bureaucracy or inadequate returns. Our conversations with GCs and experts in the field suggest it need not be that way. Simple and practical approaches and systems can be introduced to clarify objectives, improve performance and measure value. Such tools should make it easier to run an in-house legal department, and may also make it simpler to identify areas in which GCs and other senior in-house lawyers can attain leadership.

There is no single formula for measuring value. Business strategies, operational structures and cultures vary enormously and measurement has to reflect this. But there are common themes and obvious starting points. The concluding part of our report is what we call the GC strategy map, a generic checklist for GCs aiming to create and measure value. We hope you will find it useful.

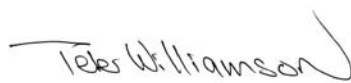


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Introduction

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Has the time come for GCs and senior in-house lawyers to consider a fundamental rethink of their status, function and role?

“I don’t think the business understands how we could demonstrate value. They very much understand that we are a cost, that we do provide return on investment and that our absence would mean things would be worse. I don’t think they understand how to measure our value. This is something that is very much a focus for me at the moment, because we do believe we can measure ourselves and show our value.”

Our survey of GCs and other senior in-house lawyers (to whom we will refer collectively as GCs from now on) found that in-house legal teams no longer have to justify their existence. That battle has been won. But many told us that they struggle to be seen as anything other than “business blockers”. Relatively few senior managers believe their in-house legal function delivers significant economic value to the business. Instead, lawyers are often felt to be there only to make sure the commercial team do not mess up – in other words, to avoid negative outcomes rather than to generate positive ones. Without action on the part of GCs, this is unlikely to change.

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

We believe progress depends on a clear demonstration of both value and a real contribution to the business on terms derived from the business itself. This report sets out some metrics to align a GC’s output with a business’s commercial strategy and looks at how that output can be measured by reference to commercial success.



Inevitably, there are some significant hurdles to progress. For example:

- **GCs themselves** – can GCs adapt and move out of their legal comfort zone?
- **GCs' employers** – can employers change their corporate perception of lawyers as risk-averse business blockers?
- **Job description** – is the role and function of a traditional GC too narrow? Can it be changed to allow for greater opportunity for progression?
- **Approach** – can GCs move away from an events-driven approach to performance and create a role that is proactive rather than reactive in approach?
- **Measurement** – can GCs help themselves by setting value-based performance measures to align themselves with their businesses?

If you are an in-house lawyer who wants to move up the value chain, we think you need to answer “yes” to each of those questions. Even if you are not, we feel much of this report may be relevant to you – GCs who don’t want to move to a more senior or commercial role may still need to demonstrate that the in-house legal department is value for money.

Many of the findings in this report will be familiar to GCs, coming as they do from our discussions with the in-house legal community. Some of the solutions we suggest may not be so familiar; we hope you will nevertheless find them interesting and potentially valuable.

You will have noted that the title of this report is *From in-house lawyer to business counsel*. We believe GCs who successfully align themselves to their businesses and demonstrate their value can truly become business counsel, as opposed to just lawyers who work in-house.

“It is quite difficult to persuade the business that it is a good thing for a lawyer to move into the commercial side. We are seen as being technical experts and it is therefore difficult to transition to a broader role.”

“I really see myself in a commercial role already. I spend most of my time negotiating the commercial terms of deals. I probably pull the Companies Act out of the cupboard about twice a year!”

Key findings

- Lawyers and CEOs differ in assessing the contribution that the in-house legal team makes to a company.
 - Nearly 40 per cent of lawyers felt the in-house team made a very strong contribution last year. Only 14 per cent of CEOs felt the same.
- Nearly one GC in seven felt it was not particularly important that the in-house legal team should add commercial value to the business. None of the CEOs we talked to agreed.
- Most lawyers and CEOs, 86 per cent and 85 per cent respectively, thought it was quite easy or very easy for in-house lawyers to contribute commercially.
- Only one-third of in-house legal teams currently operate in the top half of the “value pyramid” (see page 10). But nearly half of the GCs we talked to want to be in the top half by 2015, with over a quarter aiming for the top quarter of the pyramid.
- CEOs tend to be sceptical about whether GCs can reach the top of the pyramid.
- We believe performance and value measurement will be crucial for GCs seeking to move up the value pyramid, and will be increasingly important for others as well.
- Only one-third of GCs currently have a formal performance measurement system.
- Nearly all the in-house lawyers who do measure performance find their metrics either quite effective or very effective.
- Many GCs who are interested in the idea of performance measurement struggle to define the commercial value added by their teams, and find it difficult to create a measurement system suitable for an in-house legal function.

The GC role today



Our GC sample ranged from someone with a team of 250 to someone who was the only lawyer in a company. Yet the motives and rewards for GCs appear to be similar across the board. Most of those we talked to said they had moved in-house to gain greater commercial insight, to see the impact of their work or to have a more generalist role. Usually they were fulfilled in their jobs. A quarter even felt the in-house path had exceeded their expectations. Nearly all the rest said it had met their expectations. Only a small number (five per cent) felt the role had fallen short of their expectations.

Most of the GCs we talked to believe their job gives them the greatest commercial influence that a lawyer can have, although a few feel that the role is limited and their commercial decision-making ability is capped. Some want to move into a more overtly commercial role. Others feel that the system holds them back. Some are actually happy with the status quo.

“I definitely prefer in-house, mostly because you actually see the result of the advice you give.”

“I had a massive breakthrough the other day when someone said they kept forgetting that I was a lawyer. I took this as a massive compliment.”

“The thing that immediately struck me about moving in-house is that I actually got to do some decent work. New recruits today still say the same thing to me.”

“The way I look at it is that the business people go away and create a deal which is a bit like a bucket with a load of holes in it [...] where the lawyers add value is that they are very good at spotting all the holes and helping fill them in. I think that’s where an awful lot of value is added, but it’s very difficult to measure because it’s quite difficult to benchmark back to what the original deal was.”

WHAT DO GCs DO?

The GCs we spoke to said they do a great variety of things. The most common answers included:

- company secretarial work
- managing external counsel
- acting as a “cheap” alternative to external counsel
- drafting and negotiating commercial terms
- dealing with employment issues
- giving compliance advice and training
- identifying and avoiding risk
- structuring deals
- managing brands
- managing disputes

Some were involved in specific strategic activities, such as mergers and disposals, or were involved in industry-specific activities, such as structuring investment products.

But the question to which we sought an answer was: **what value is placed on the GC’s contribution?** The answers, as the chart below shows, were mixed.

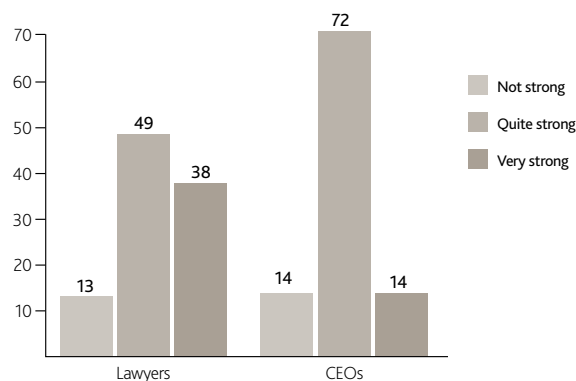
Most GCs and CEOs felt that the in-house legal function had made a contribution to the commercial value of their company over the past year. The lawyers had a more positive view of their contribution than CEOs. Nearly 40 per cent of the lawyers felt the in-house team had made a very strong contribution. Only 14 per cent of CEOs felt the same.

HOW IMPORTANT IS IT THAT GCs SHOULD ADD VALUE?

We also asked GCs how important it is to the senior management that their legal team adds economic value to the business. No one thought it was not important at all, but 14 per cent felt it was not particularly important. None of the CEOs we talked to shared that view, with all feeling that it was at least “quite important”.

Why might some in-house lawyers not think it important to add economic value? In the words of one of our interviewees: “I do not think it is our job to have a commercial impact. We are here to be legal advisers not business people tasked with making money. Our role is to advise and to mitigate risk.”

What has been the contribution of the in-house legal function to the commercial value of the company in the past year?



HOW EASY IS IT FOR GCs TO CONTRIBUTE COMMERCIALY?

Lawyers and CEOs had a uniform view of how easy it was for in-house lawyers to contribute commercially. Among the lawyers, 35 per cent thought it was very easy, 51 per cent thought it was quite easy and 14 per cent thought it was not very easy. Among the CEOs, 31 per cent thought it was very easy, 54 per cent thought it was quite easy and 15 per cent thought it was not easy. No one thought it was impossible.

WHAT ARE THE BARRIERS TO PROGRESS?

A number of respondents felt that traditional perceptions of lawyers were holding them back (with some adding that those traditional perceptions are sometimes justified).

One said that progress required “the willingness of the business people to accept commercial judgment from a legal function and the willingness of those within the legal function to move outside their comfort zone and express views on and make commercial judgments”.

Many others felt that the – possibly related – tendency of other teams in the company to involve them only near the end of a transaction made it much harder for them to contribute.

Perhaps the most telling observation was that “it is easier to add value in some industries and circumstances than others”. One GC observed that being in a company where regulatory concerns are a major issue makes it easier for a lawyer to make a commercial contribution. Another described a situation in a large company where the head of legal is head of business development and has been the key architect of the company’s recent big-ticket deals. One respondent has worked in his organisation for two decades and is clearly a trusted member of the senior management team. But the situation for most lawyers is different. As one said: “it is quite easy for the lawyers to contribute but I don’t think it is always easy for the business to see what the lawyers are contributing”.

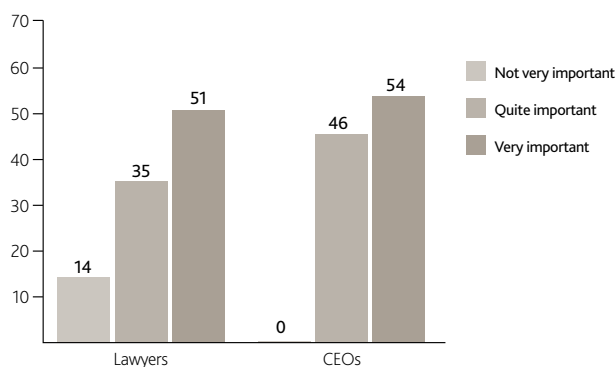
HOW WILL GCs MAKE AN IMPACT IN THE NEXT FEW YEARS?

GCs tended to think the main opportunities for the in-house legal function to make a major commercial impact over the next two or three years lay either in possible major strategic transactions (M&A, JVs, IPOs) or in dealing with the impact of regulation. The implication is that these GCs rely on external drivers to help them make a high profile commercial contribution.

Others felt opportunities would come from being more involved in commercial decisions, managing their panel firms better, preventing litigation or even just “carrying on what we’re doing now”.

“Traditionally it has been all too common for the in-house function to be seen as a blocker, the people who say no you can’t do that, and therefore the business has not consulted the lawyers unless absolutely necessary. It is essential to lift that perception and show that the legal function can add value and find the right solution, and is not simply going to say no you can’t do it, and will work as part of a team to find the right solution.”

How important is it to senior management that the legal function adds economic value?





Case study

Liz Kelly at Nationwide Building Society

The past three years have been momentous for financial services organisations. Liz Kelly, GC at Nationwide Building Society, the UK's largest building society, has found herself developing a framework for a "whole new legal landscape, where keeping pace with emerging rules and their unprecedented impact on the business is tough". Lobbying and responding to public consultations is another big challenge. This climate may make the in-house legal team increasingly important, yet the risk also increases of lawyers being seen as consummate box-tickers.

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Kelly is keen to dispel stereotypes of the highly technical, risk-averse lawyer. In her seven years at Nationwide she has helped to drive considerable change in her department. "We've moved away from the traditional legal department model with clocking in and out and the lawyers who knew their stuff but were giving non-committal, legalistic advice. Now, we have employed young and enthusiastic lawyers who will challenge and who are commercial and ambitious."

The team has even developed a motto, "Partnering Business Success", to emphasise their commitment to integrating with the business to achieve corporate objectives. "In the past," says Kelly, "the legal department might have been perceived as being a backwater. We have had to work hard to raise our profile."

Kelly is a great supporter of measurement and feedback. "I believe if you don't measure it doesn't get done." Team members who complete a project are encouraged to circulate e-feedback forms across the business seeking views on the quality of their service. Each team has a target of three responses per quarter. Kelly explains: "This was a change in mindset for some lawyers who had a natural aversion to seeking any kind of feedback. However, it is now being delivered because staff can see the benefits of really knowing where they and Group Legal stand." But, she warns, any measurement must be flexible enough to adapt to changes in the business.

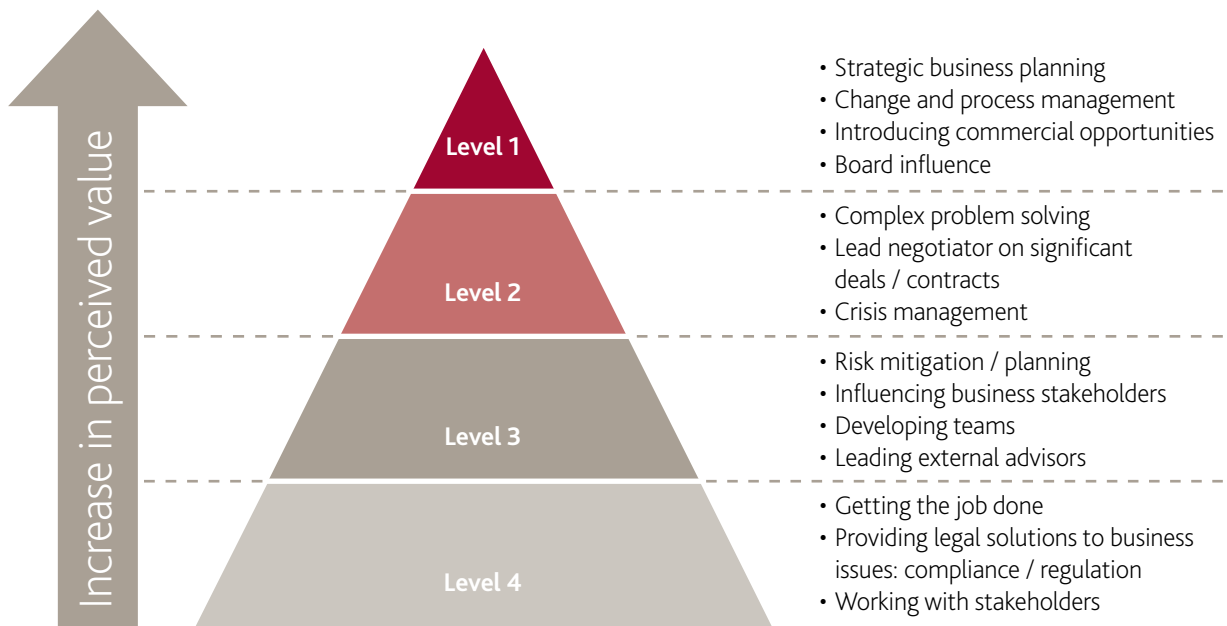
Informal feedback is regularly sought as well, and Kelly is experimenting with industry benchmarking, believing that "you can always learn from others even if it is just in one area". She adds that in-house lawyers don't have the private practice opportunity to work with different clients and share best practice. "We now ask our panel law firms if we can talk to their other clients, especially in other regulated industries. We did this recently and it was invaluable."

Kelly believes that lawyers who want to perform exceptionally need to hone their soft skills. She coaches junior team members to have the right approach from the outset, challenging them to prepare for the moment when they are stuck in a lift with the CEO and need to maximise that opportunity by talking about a situation where they have added value to the business. Being a lawyer is not enough – their technical competence is a given in senior level communications. They also need to understand workplace politics, how to get things done and how best to manage and motivate others. And for Kelly, it is important that they can deliver a persuasive, commercial and articulate opinion with impact. "If you can nurture this combination of skills then you're well on the way to becoming a credible business person with the ear of senior management, rather than being viewed as just a lawyer."

The GC value pyramid

We presented our interviewees with the concept of a value pyramid for the in-house legal function. This divides tasks into four levels, according to the value they provide for the business.

Level 1 involves tasks with the greatest strategic value to the business. The tasks in the bottom level (Level 4), while essential, are felt to be “bread and butter” work.



None of our interviewees disagreed fundamentally with the concept of the value pyramid, although some were unsure about what task fitted in what level. This uncertainty was mainly due to differences in the scope of the GC role between companies.

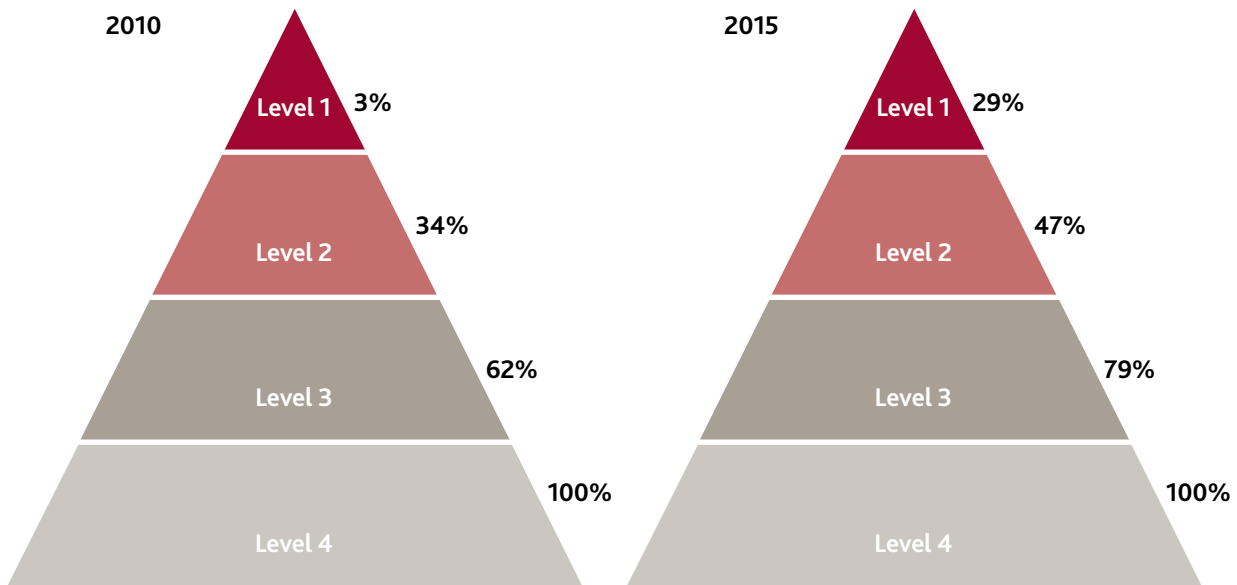
A few interviewees also felt that not all elements of the pyramid were relevant: “I can only comment on the third level as none of the other levels applies to us in the particular way our legal department works in this organisation.”

DO GCs WANT TO OPERATE IN THE TOP TIER?

Our interviewees have great ambitions for taking the legal function to the top of the value pyramid. But at the moment most of them have a long way to go. Only

three per cent felt they were operating in the top level. Just over one-third felt they had reached the second highest level. That leaves most GCs in the bottom half of the pyramid, with 38 per cent still operating exclusively in the bottom level.

We asked GCs whether in five years time they see themselves delivering greater value. As can be seen from the diagrams below, 29 per cent expect to be performing tasks at the top level by 2015 compared with three per cent currently.



Clearly this is an area in which more research is needed but, if our GC sample is an accurate indicator, we may see an increasingly clear division among GCs, with roughly half involved in complex high value work and half staying in more traditional roles. While it is difficult to say with certainty why those stay in that lower half, it may be due to the nature of the business in which they operate or it may be because of their personal desires.



“We were involved in an M&A deal recently where I saw an opportunity to get involved in a capital markets transaction. This generated value based on the probability of the M&A deal coming off. We ended up doing this and I think it probably made the company about \$20m.”

MAKING MONEY?

Most of our interviewees could not see areas where the legal function might make money for the business, an activity we included speculatively at the top level of the pyramid. Most felt the legal function was more about saving money than earning it. One said that “too much of a mandate to create value” could be seen to compromise the degree of independence necessary in an in-house legal team, a position shared by several others.

Some interviewees offered ways in which they did make money for their companies, although not all related to tasks we have identified as belonging to the top level of the pyramid:

- Exploiting intellectual property rights.
- Aggressively litigating to enforce rights.
- Billing for services provided to group companies.
- Identifying areas of the business that can profitably be restructured.
- Working with a property company’s potential tenants – especially smaller, start-up tenants.
- By recovering funds from clients delaying payment (one in-house team said it had made £5m for the business in a year from this), or identifying funds for recovery.



BARRIERS TO CREATING VALUE

Are our interviewees over-optimistic about reaching the top level of the value pyramid? There will certainly be obstacles to their progress. To take a few of the most obvious:

- Routine tasks at the bottom level of the pyramid will still need to be performed and these need to be resourced effectively and efficiently.
- Many lawyers are perceived to lack the behavioural characteristics of first-level commercial performance.
- Even if they have such leadership characteristics, they need to win the trust of various stakeholders. For lawyers aspiring to the top of the pyramid, board-level influence will be critical.
- Many of the CEOs we spoke to were sceptical about whether GCs could make it to the top of the pyramid. As one put it: “the tasks in the two top levels are nothing to do with being a lawyer, those are tasks for business people to perform. If you ask me if lawyers make good business managers, I would say no.”

“Our merger would be an example of where I was working at the top of the pyramid. I led the deal itself and looked at how the two businesses fitted together, both strategically and from a legal/regulatory perspective.”

“If we could outsource the bottom two levels it would leave more time to focus on the higher value levels of tasks.”



Case study

Iain Larkins, GC at Mercedes-Benz UK

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“Most GCs are deeply involved in the business of their employer. But legal functions have to work harder at maintaining that perception than other business functions. I am particularly conscious of the stereotype that lawyers are programmed to ‘campaign against profit’.

“The legal team at Mercedes-Benz understand the importance of being business enablers rather than just focusing on the risks. Our strap-line is ‘Maximising Opportunities and Minimising Risks’. We will sometimes advise the business to take more risk in a particular area. But all legal functions need to have the courage to stop a project in extreme situations.

“We are interested in the concept of performance measurement and setting KPIs [key performance indicators], but there is no mandatory measurement of the legal function’s performance beyond budget adherence, compliance and individual appraisals. I think this is pretty standard for the in-house profession. However, regardless of whether legal teams are currently under pressure to demonstrate value, I believe a day will come when this is needed. The more enlightened general counsel will not wait for their seniors to require legal department metrics.

“There are other reasons to have metrics in the legal function. I am confident that my team offers an excellent service, but we will not know what areas need our attention if we are not measuring. So we are implementing KPIs to measure our performance. One area that has already been implemented and has demonstrated its value is within our training programmes. We measure the percentage of people that have attended against a defined target and a percentage of satisfaction against target. Our measurements proved that, whilst satisfaction ratings have always been high, our attendance percentage was poor. By tracking this we have implemented a series of measures and within a year we have almost hit our target.

“We are also looking at surveying perceptions of all support functions in the business, whereby we would ask the remainder of the business ‘does this function enable you to do business?’ A relative scoring would be very helpful and would create healthy competition around service delivery. And we are interested in bringing in targets around the volume of commercial contracts dealt with, speed of turnaround and outcome. We aim eventually to create team and individual scorecards.

“It’s critical to consider the impact of introducing onerous KPIs on team members. Individuals could meet a performance target but still not do what you want them to do or it could miss some of the value they add. Unless a performance measurement programme is rolled out and implemented well, there could be resistance and damaged morale. Sophisticated change management is required to achieve buy in and compliance from the different personality types in a team. There will be some subjectivity in measuring performance, and it is helpful and possible – but not easy – to capture the nuances of how someone does their job.”

Perceptions matter

Stuart Morton & Anna Ponton

Oggers Berndtson (Board level international executive recruitment solutions)

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The holy grail of in-house practice has long been the demonstration of value. Being seen as a critical business partner is now the defining characteristic of success. However, this needs a complex matrix of skills – it is this that defines the real leaders of the in-house profession.

Communication Most legal departments already add significant value, but fewer GCs are active in publicising it. There is little point in climbing the value pyramid unless key people know you have made it to the top and how you have contributed along the way. This involves developing measures of success and evidence of impact on the bottom line. Most companies now have more mechanisms than ever to publish success: the intranet, internal newsletters, strategy away days etc. The most adept GCs also have a ready fund of anecdote to show that their value is real and that their teams are not cost centres or obstacles to be manoeuvred round.

Alignment to the business

The most effective GCs make huge strides to understand the goals, drivers and realities of the business they advise. They make strenuous efforts to spot the pressure points and identify where legal input can enhance the business proposition. This not only creates mutual understanding, but raises profile and the perception of value.

Commerciality A successful GC is never a “lawyer’s lawyer”, but provides practical, workable solutions delivered in an authoritative and timely manner appropriate to the commercial context. The strategic business partner who is alive to innovation is always sought after.

Judgment, integrity and discretion

Being a trusted adviser and a reliable sounding board are key attributes. The chairman, the CEO and the executive and non-executive directors all from time to time have slightly different needs. The GC must have an excellent antenna for disquiet and the discretion to handle sensitive situations with a deft touch. But being the conscience of the company is not sufficient. Agility in finding solutions and the readiness to act decisively are the defining characteristics of excellence.

Leadership and management ability

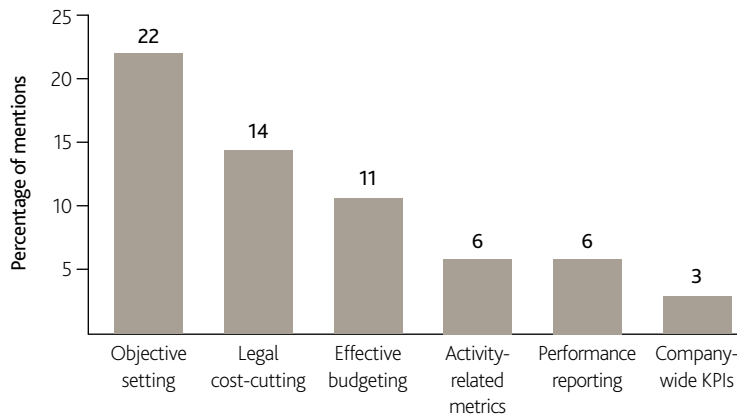
Being a respected leader requires charisma and presence, setting a clear direction, building cohesion and a sense of purpose. These skills are not always part of a lawyer’s make-up, but successful business people have usually risen to their positions because they do have these skills. They respect strong leaders and more readily accept them as key influencers and contributors to the strategic debate. Inspirational leaders also retain their staff, always a challenge in an in-house department with scant resource and little room for promotion opportunity.

Relationship management

GCs must manage relationships with law firms and secure added-value packages, as well as more advantageous rates. However, in these days of increased regulation, with the ever higher profile of legislative and reputational risk and corporate responsibility, the best GCs also have a positive involvement with other stakeholders – acting, for example, as ambassadors for the company’s stance on competition or environmental issues.

How do GCs currently measure performance?

To climb the value pyramid, GCs need to show more clearly how they add value. But to do this they have to be able to measure what they do, and lawyers as a whole have not rushed to embrace performance measurement. Only 32 per cent of the GCs we surveyed use formal performance measurements and fewer than half of these were directly involved in creating the measurements they use. **However, nearly everyone who had metrics in place thought they were either quite effective or very effective.**



The metrics which our sample use currently are fairly basic, and mostly of the “hard” variety. For example, nearly all the GCs using performance metrics have budgeting or cost-cutting, or both, as a measure. Others measure against purely personal objectives.

So which themes are in-house lawyers currently measuring performance around?

SPENDING

Effective budgeting is a standard way of controlling and measuring legal spend. As one interviewee said: “We have a budget and you have to make sure that you are within the budget, which isn’t particularly stressful.” But simply looking at the level of legal spend may be a misleading approach. As one GC noted, its fluctuations may be based on group activity rather than the performance of the legal team.

SAVING

Some GCs measure money “saved” by calculating what the work done in-house would have cost had an external firm been used. This is quite a passive criterion, and may give misleading results when seen in isolation, but again has the attraction of being easy to calculate.

“We have a company-wide appraisal and objective setting system, which we are part of, although because lots of our work is reactive this is sometimes difficult to handle. For example, we didn’t know in December 2008 that we would have a rights issue this year.”

“I have kept us out of court and I have controlled external legal costs. I have provided business-focused advice to the team. How can you define that on a scale of 1 to 10?”

“HR have, on a few occasions, tried to give me more measurable targets. But I’ve always kind of shied away from that. I find it almost impossible.”



“Unless a person you’re delivering a service to has some sort of knowledge of the law, or understands the difficulties with which you are grappling, they don’t know whether you’ve done a good, bad or indifferent job. You can lose a case, for instance, but have done a fantastic job.”

“Rather than KPIs, it tends to work through an ad-hoc or less formal basis; often it can be, how do people feel how it is going. However hard you try to make it different it can be based on what people’s latest experiences are rather than a more rigorous thing over a longer period of time.”

OPERATIONS

Activity is often seen as a useful measure of performance, being inherently quantifiable. Typical operational measures include the speed of work and, in some cases, volume (although some GCs felt the key measure was the absence of problems – in particular, the absence of litigation). It is noticeable that such measures apply almost exclusively to activity at the bottom (fourth) level of the value pyramid.

DISPUTES

“We are usually defending claims rather than making them. The success is measured in terms of how few we get, the relative settlement value versus the claim value, and the cost involved in the resolution.”

MISSION, VISION AND VALUES

Hardly any GCs we spoke to are measured on company-wide objectives. This is surprising, not least because about half our sample use measures developed outside the legal department (by a variety of corporate officers, ranging from the HR department through various senior managers to the CEO).

INFORMAL FEEDBACK

Some lawyers without formal performance metrics felt they were still able to demonstrate the value of the legal function to the business. Often this came from informal feedback. Also, the extent to which trusted partnerships with the business exist is measured by the perceived willingness of managers to involve the legal team in business meetings or decisions.

It is clear that many lawyers are wary of the perceived bureaucracy and difficulty involved in performance measurement. They don’t want to see more (or in some cases any) measurement, arguing that “there are only so many hours in the day”. But there is some suggestion that the use of key performance indicators (“KPIs”) may be increasing anyway. A number of interviewees said things like “we’re looking at all aspects of how we run the business, so it is possible that the performance assessment processes and procedures will get looked at”.

WHERE PERFORMANCE MEASUREMENT IS EASY TO INTRODUCE

At the bottom level of the GC value pyramid, setting performance measures is potentially straightforward. Objectives are set and activity is measured (the number of contracts completed, the number of successful projects, time spent on projects etc). Legal spend is usually tracked. For some of our interviewees, the absence of problems – particularly disputes, litigation and prosecutions – is also a valid measure of performance here.

“There is a certain amount of work that comes through from the business areas of the company that are forwarded to the legal function to either complete or assist on. I suppose the measure of that is 1) whether it’s completed within a timely fashion and 2) whether the business managers felt they had been properly assisted and that the work had been properly done.”

“Everything runs smoothly because all the compliance and all the basics are dealt with as and when it comes up and is required to be completed, so I don’t think you can measure that, other than if you’ve missed something you’ll get a regulatory rap over the knuckles or a fine.”

“Partly it’s response and relationships with regulators and also the absence of disputes and of litigation.”

WHERE PERFORMANCE MEASUREMENT GETS MORE CHALLENGING

Many of our respondents thought that performance measurement becomes more difficult as you move up the value pyramid. In the third level of the pyramid, measurement was felt only to be possible when things go wrong (perhaps understandably, as this level includes crisis management and risk mitigation). But the absence of negatives can be measured, as well as performance against objective-setting, feedback from internal clients, risk audits and the performance and cost-effectiveness of external providers.

“That we don’t get taken by surprise by risks we haven’t anticipated – that would be a significant measure.”

“Developing risk matrices, having business continuity plans in place, and maintaining and reviewing our external legal advisors for cost effectiveness.”

“A mechanism to see how people think we are doing so we can take that on board and change our behaviour and service accordingly to make sure we are delivering what they need to be getting.”

Moving into the upper half of the pyramid we start to notice a real lack of suggestions for meaningful measures. At the second level of the pyramid, our GC respondents felt that relevant measures might concentrate on objective-setting and measures of activity (eg number of transactions). Deal thresholds are also cited as a possible measure (with deals up to a certain size being handled in-house and larger deals outsourced).

“A measurement here could be performance review externally, so you go to the people you have been against in a number of transactions and ask them to give an open feedback on how you have performed as a team.”

“The only way is looking at the time spent on such matters and comparing them against potential cost savings that we achieve in negotiating or renegotiating contracts.”

“You would look at the deals and negotiations and determine whether there had been satisfactory outcomes and whether the legal function had added value to those negotiations.”

“You could do it by having deal thresholds, so a deal worth under £20m is done internally, a deal worth under £50m is drafted externally but you run it [...] and you can set those thresholds at whatever is right for your legal department, which will depend on how many bums on seats you have.”



Our interviewees felt that performance metrics for the top level are virtually impossible, although they came up with suggestions including revenue targets for seeking commercial opportunities and introducing deals, and attendance at board-level strategy meetings.

“If you are actually becoming part of the strategic business plan, commercial deals etc then you can start to put your numbers on the top. You can measure it by revenue produced, EBITDA etc.”

“What’s going on all the time is that your colleagues are judging you on when you open your mouth or write something, that you do it sensibly, and when they write you an email that you reply quickly and to the point [...] If I am not doing my job properly I will soon know from the CEO and probably I will be fired because there is no room at the top for even okay-ish performances. You have to be really good.”



Case study

Chris Barnard, European GC at Coca-Cola

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After nearly 32 years with Coca-Cola, does Chris Barnard have the secret formula for corporate success as a lawyer?

Chris Barnard joined Coca-Cola as a management trainee, having started his working life as a private practice litigator in New Zealand. His career evolved rapidly: he ran a couple of Coca-Cola business operations before shifting laterally to the in-house legal function. He has remained there ever since, advising on various aspects of Coca-Cola's business around the world.

Barnard feels that the GC's job has evolved significantly over the years. "The in-house legal role has become more of a business-focused role than that of the traditional lawyer. The question is, are lawyers adequately prepared for this evolving role? The natural conservatism and self reliance of lawyers does not necessarily prepare them to be team players and good managers. However, in business you have no option other than to manage because you are expected to adopt the same management practices as the business: you are living with your client day in and day out and you are surrounded by career managers." There is, says Barnard, a real cultural gap. "Going from private practice to in-house is a step; going from an in-house lawyer into the business is a giant leap, but not an impossible one because not many other functions have quite the exposure that lawyers do across the entire business."

Coca-Cola invests heavily in training lawyers to manage, but for Barnard building a successful in-house team has also been about selecting the right people from the outset. "You can generally tell at interview if people are going to make it in-house," he explains. "They shouldn't be too lawyerly or professorial (sound legal skills are a given) and should have a personality which fits the culture of the organisation". Hiring the wrong lawyers can be a disaster for any GC. It can even lead to increased risks if a good technical lawyer is a poor manager, viewed by the business as unapproachable and becomes therefore cut off from the business and decision-making.

A successful in-house lawyer, according to Barnard, has a personality akin to a "rainmaker". They are deeply curious about the business and their internal client, they have a can-do attitude, they are personable and they can provide advice in context, which is critical to achieving buy in from the commercial side. Managers say time and time again that "trust has to be earned and lawyers need to show that they are more than just a legal resource". This kind of behaviour, says Barnard, is a "win-win, where the more you take this approach, the more you are consulted by the business creating the opportunity to manage risk and thereby ensuring the core responsibilities are being fulfilled".

Quantitative performance metrics are not a natural fit for measuring the legal function, according to Barnard. Demonstrating value is difficult to put a figure on. He is more interested in qualitative feedback around behavioural aspects of the job. "If managers regularly seek you out as an in-house lawyer then you must be doing something right." The interesting questions to ask the business, says Barnard, are "what do you or would you value in a lawyer and how does the legal function help you to achieve your objectives?"

The ultimate questions for Barnard are "why does the legal function exist?" and "why do some companies have legal teams whilst others do not?" He believes that the function's core role is to manage governance and compliance, which directly impacts risk and reputation, but you can't achieve this unless you are a team player and fully integrated into the business from the outset to ensure that the company is properly managing risks and is able to achieve its objectives. It is an acid test for Barnard that lawyers are invited to join the management teams in the relevant divisions across the business. "As an in-house lawyer you need to be fully integrated into the business and are seen to be as valuable as any other team member."

The value of performance measurement

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Our data suggests that performance measurement for in-house legal teams is in its infancy. When it does happen it is usually done in a very basic way, or on a purely individual level.

Most legal functions that have performance measurement in place are being assessed on aspects of their spending and the absence of legal problems. These are the easy wins of performance measurement, but they show little or nothing of the true value added by the legal function to the business. They don't bring the benefits of a fully developed system of performance measurement.

- Measurement should make it easier to identify areas in which GCs can attain leadership.
- It helps senior management to manage the legal department in the wider context of other support functions, and should help a GC manage it too. It should ultimately help to increase value.
- Measuring value helps to manage expectations for costs and results, and possibly also for service levels.

Many GCs we spoke to were interested in developing or refining current performance measures. But they don't know where to start or how to go about this. They cannot see how to map measurement onto the traditional legal function, and struggle to define commercial value in the in-house legal context.

There are many ways forward for in-house counsel. There is no "one size fits all" solution. What is right depends on particular circumstances, resources etc. It is far beyond the scope of this report to look at all the possible alternatives; however, we asked performance management expert Bjarne Rugelsjøn to give us his view on how the in-house legal team may be able to measure its performance and commercial success. Here are his suggestions.



Winning strategies for GCs

Bjarne Rugelsj en

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In this section, based on the findings from the Nabarro survey and my experience as a strategy and performance management consultant for over 40 companies over the last 10 years, I show how GCs might align their outputs to business strategy and measure their commercial success; how a GC can create a winning strategy that is closely aligned to business strategy; how to engage the legal team to drive the behavioural change; and how to measure success.

But what is the key to success? My advice is not to start by identifying specific measures, but to begin with clarifying your objectives jointly with the business.

There is no single approach that suits all companies and industry sectors, and there are many performance management models to choose from. However, the Kaplan and Norton "Balanced Scorecard", developed in the 1990s, is the most highly regarded and widely implemented performance management tool. Over half of all Fortune 500 companies use it to execute strategy and measure success. I have adapted the scorecard and subsequent research by Kaplan and Norton to describe six practical steps GCs could follow to create their own performance management strategy.

SIX PRACTICAL STEPS

- 1. Define the legal team's mission, vision and values**
- 2. Create a high level strategy map**
- 3. Define strategic objectives**
- 4. Identify one or two metrics for each objective and set targets**
- 5. Align existing projects to the strategy and define new projects if necessary**
- 6. Establish governance structure to realise the potential**

1. MISSION, VISION AND VALUES

Defining these begins with gaining in-depth knowledge and understanding of the strategy of the business.

Best practice is to break down the mission and vision into clear “financial”, “client”, “process” and “learning and growth” objectives, and then to organise these into cause and effect categories.

The financial and client objectives define the outcomes, the process objectives are the drivers, and the learning and growth objectives are the enablers.

2. CREATE A HIGH LEVEL STRATEGY MAP

What would a strategy map for a GC look like? The starting point is the key priorities and strategies of the business. These are typically expressed in a set of three to seven high-level strategic themes, with which the GC can align the strategy of the in-house legal team.

Such close alignment to the business strategy demonstrates that the GC is focused on delivering value within the context of common language and structure.

This table shows how an in-house legal team could define a framework for measuring its success that is aligned to a hypothetical business strategy.

	EXAMPLE BUSINESS STRATEGY	EXAMPLE GC STRATEGY
Mission	To provide high-quality services to customers	Manage governance and compliance
Vision	By 2013, be the leading operator in our market	By 2013, be recognised as a business focused function and trusted advisor that improves decision-making and drives sustainable execution of business strategy
Financial theme	Build sustainable shareholder value	Add financial value to the business
Client focus theme (voice of client)	Be the trusted brand	Partner with us and be our trusted advisor
Operational excellence theme	Improve operational efficiency	Improve the way we work
Client relationship theme	Build strong client relationships	Build trusted business partnerships
Innovation and growth theme	Prepare for growth	Prepare for business growth
Learning and growth theme	Build a high-performance team	Build a client-focused in-house legal team
Values	Intelligence, flexibility, business acumen, integrity, reliability	Intelligence, flexibility, business acumen, integrity, reliability

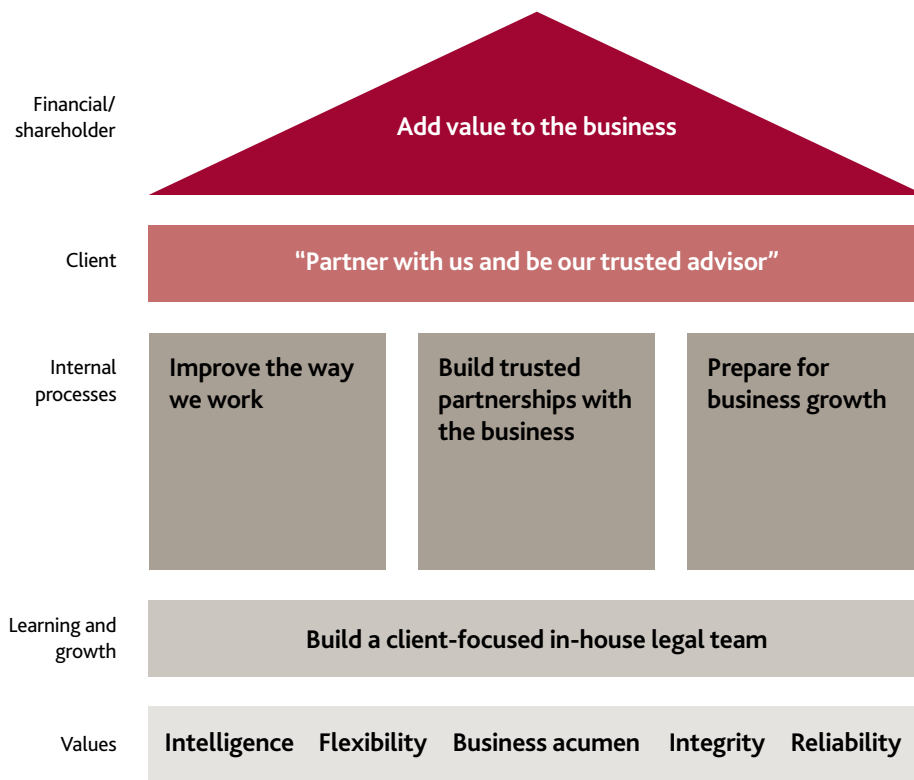
By ensuring close alignment to the business strategy, GCs are more likely to deliver value to the business, as well as creating a common language that the business can easily understand.

This strategy can also be visualised in a simple diagram, which is the beginning of our strategy map. For our example, it would look like this.

A winning strategy for GCs

Mission: Manage governance and compliance

Vision: By 2013 be recognised as a business-focused function, trusted advisor that enabled successful execution of our corporate strategy



3. DEFINE STRATEGIC OBJECTIVES

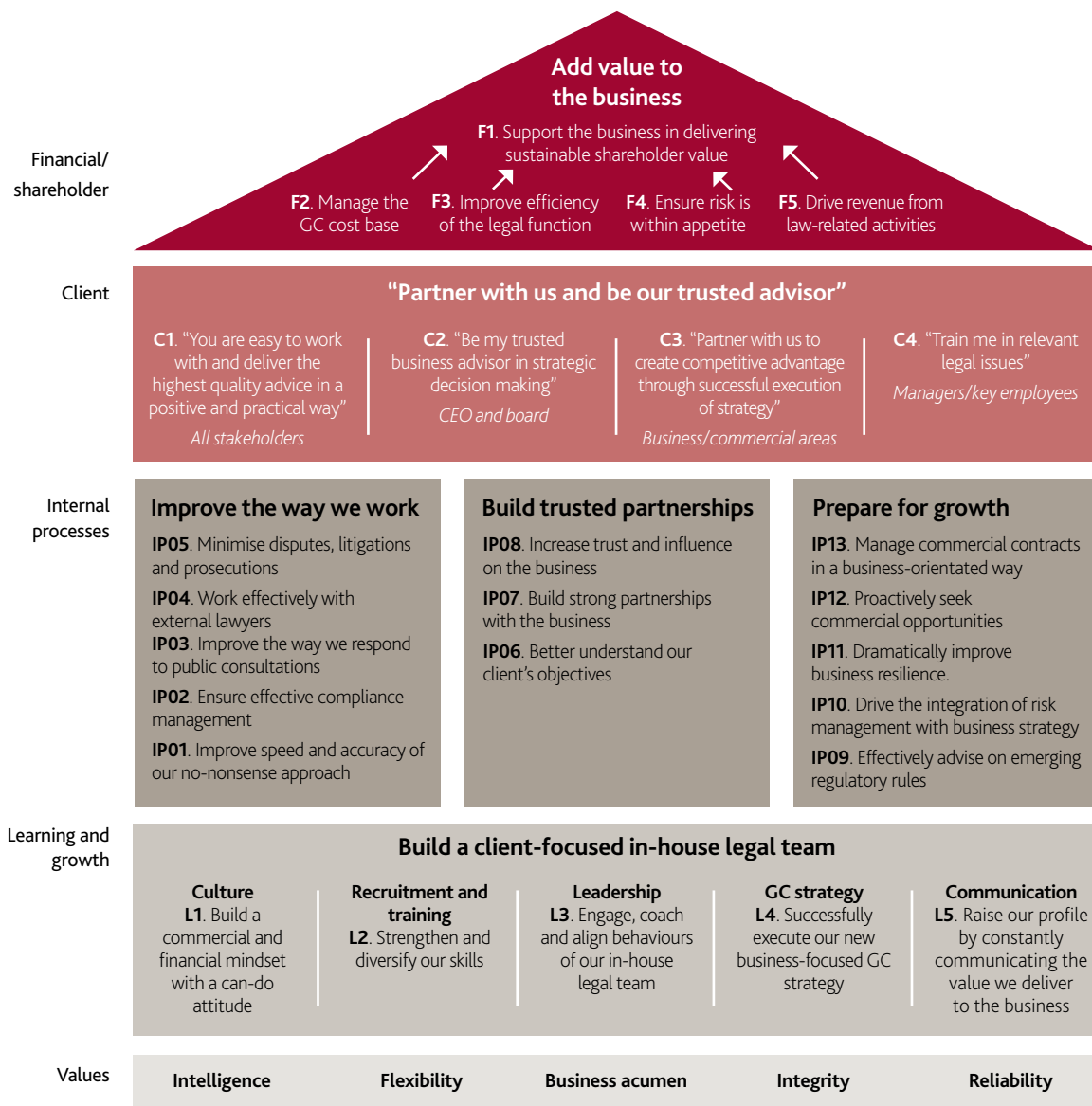
Clear objectives are required for each theme within the strategy map. This ensures buy-in from the business, engages team members and can energise leaders before metrics are selected. One proven way to achieve this is to run leadership workshops, theme team working sessions and one-on-one interviews.

Some example objectives for in-house legal teams might be to:

- **Build a client-focused team** – how well the GC builds a team with a commercial mindset, the right skills, sound leadership and good communication strategies.
- **Improve the way we work** – in terms of compliance, managing external law firms or dispute resolution.
- **Build trusted business partnerships** – improving the legal team’s understanding of the needs of its internal and external clients in terms of improved trust, relationships or influence.
- **Prepare for business growth** – how well the team supports business growth. Advising on how regulation affects the business’s ability to grow is a key focus, as is participating in the integration of risk management with business strategy. Other objectives could be related to improving business resilience and seeking commercial opportunities through involvement in contract management.
- **Partner with us and be our trusted advisor** – how well the legal team succeeds in satisfying internal and external clients. Clients might include the CEO and board, other business units and functions (such as sales, distribution, HR), key managers and any external stakeholders. This is understood through feedback from business clients to understand perceptions and expectations. Example objectives – which should be expressed from the client’s perspective – could be:
 - “Be my trusted business advisor in strategic decision making”
CEO and board
 - “Partner with us to create competitive advantage through the successful execution of strategy” *Business/commercial functions*
 - “Train me in relevant legal issues” *Managers/key employees*
 - “You are easy to work with and deliver high quality advice in a positive and practical way” *All stakeholders*
- **Add financial value to the business** – this may be the hardest area for GCs. A good target would be to have between two and five financial objectives. The overall objective will typically define how the legal team supports the business in delivering sustainable shareholder value. This is often broken down into a cost objective, as well as objectives related to increasing value. Managing the cost base is usually easy to define financially, but increasing value is not. (This is a problem often faced by other support functions too – such as HR, IT, finance and corporate communications.) Examples could involve revenue derived from law-related activities; estimated savings from potential disputes that were successfully mitigated; and how the in-house team has decreased financial value at risk.

The GC strategy map

We can now expand our simple diagram into a full strategy map. This unites the in-house legal team's strategic objectives to show cause and effect linkages. It shows how achieving objectives in the learning and growth and internal process stages helps the team deliver value. The example drawn here lays out strategic themes across the four balanced scorecard perspectives (financial, client, process and learning and growth) and shows how the legal team would add value to the business.



Once strategic themes and objectives have been defined and agreed, you can start working on metrics to track the achievement of objectives. You also need to choose initiatives that will drive improvements in your metrics.

4. METRICS FOR SUCCESS

Here are sample scorecards for two of our themes: "Partner with us and be our trusted advisor" and "Improve the way we work". The former exemplifies outcomes, showing what the GC should try to achieve, while the latter exemplifies drivers, showing how it could be achieved.

When putting together this scorecard, the legal team should work closely with key client groups to understand what they need. Involving employees from these groups in working sessions or interviews will greatly improve the chance of designing a successful performance management framework.

Metrics should not simply measure client satisfaction but should focus on the specific aspects defined in the objectives. If the CEO and board want the GC to

Perspective: Client

Partner with us and be our trusted advisor

Objectives	Measures
<p>C1. "You are easy to work with and deliver the highest quality advice in a positive and practical way" <i>All stakeholders</i></p>	<ul style="list-style-type: none"> • Client feedback: quality of advice • Client feedback: easy to work with
<p>C2. "Be my trusted business advisor in strategic decision-making" <i>CEO and board</i></p>	<ul style="list-style-type: none"> • CEO/board feedback: trusted advisor and provides valuable insight in strategic decision making • Board attendance: % of board meetings invited to / attended
<p>C3. "Partner with us to create competitive advantage through successful execution of strategy" <i>Business/commercial areas</i></p>	<ul style="list-style-type: none"> • Business feedback: creates competitive advantage • Business feedback: contributes commercially • Business feedback: enables us to achieve strategic objectives
<p>C4. "Train me in relevant legal issues" <i>Managers/key employees</i></p>	<ul style="list-style-type: none"> • Managers/employee feedback: training is relevant • Managers/employee feedback: training is plain and practical

“be our trusted business advisor in strategic decision making”, for instance, then the metric should be:

- Do the CEO/board perceive me as a trusted advisor?
- Do the CEO/board see me as providing valuable insights in strategic decision making?

Typically, this information is collected through regular, formal surveys or ad hoc questionnaires after key events. Informal feedback sessions or focus groups could also help to collect data. GCs could also use more indirect metrics – such as board meeting attendance, if getting a seat at the table is an interim measure of success.

The “Improve the way we work” theme scorecard below is closely linked to the objective C1 in the strategy map: “You are easy to work with and deliver the highest quality advice in a positive and practical way”. It identifies one or two measures for each objective, and initiatives which can improve performance.

Perspective: Internal processes Improve the way we work

Objectives	Measures	Initiatives
IP01. Improve speed and accuracy of our no-nonsense approach	<ul style="list-style-type: none"> • Speed • Accuracy 	<ul style="list-style-type: none"> • Work and response rate review
IP02. Ensure effective compliance management	<ul style="list-style-type: none"> • Training compliance: % of targeted people attended training as required • Compliance ratio: # of open over resolved compliance issues 	<ul style="list-style-type: none"> • Training revamp
IP03. Improve the way we respond to public consultations	<ul style="list-style-type: none"> • Consultation turnaround time: FTEs spent on public consultation • Consultation outcome: % of consultations rated as successful 	<ul style="list-style-type: none"> • Redesign the public consultation process
IP04. Work effectively with external lawyers	<ul style="list-style-type: none"> • SLA compliance: % of SLAs met • Partnership success: % of partnerships with external lawyer rated as successful 	<ul style="list-style-type: none"> • Outsourcing assessment – non-core legal functions and complex deals
IP05. Minimise disputes, litigation and prosecutions	<ul style="list-style-type: none"> • Absence of legal problems: # of matters, new and active 	<ul style="list-style-type: none"> • LIMP system redesign: litigation matters process

Which metrics should you use?

Metrics take many shapes: percentages, absolute numbers, scorings, indexes, rankings etc. Quantifiable measures are preferable – although you might have to use more subjective scoring mechanisms to make the “softer” ones work (e.g. “on a scale of 1 to 10...”).

The more generic or loosely defined an objective, the harder it can be to select meaningful measures. A widely used checklist for metrics is the SMART test. There are several versions of this, including the following.

- Specific – Are the metrics clear and well defined?
- Measurable – Can it be monitored and data gathered?
- Achievable – Can we influence the attainment of the metric?
- Relevant – Is it measuring what we are trying to achieve with the objective?
- Timely – Can we define targets (at least quarterly) for different periods?

In addition, it can be useful to check whether metrics align with broader strategy – in particular whether they:

- Drive the right behaviour.
- Enable better decision making.
- Help to communicate what we are focusing on.
- Avoid compromising the professional independence, standards, or duty of a lawyer.

5. ALIGNING PROJECTS

It is important to identify initiatives that will deliver the specific targets set by the metrics. The first step should be to list existing initiatives, to see how they align to the strategy. This should help to focus resources on critical tasks by stopping non-aligned activities and identifying initiatives that are needed where no current change programmes are in place.

6. MAKING IT HAPPEN

Although the process of agreeing to strategic objectives and defining the strategy can create many short term wins in itself, it is important to recognise that this is not a one-off exercise. Defining a structure that enables you to monitor progress, adjust strategic action programmes and ensure progress on an ongoing basis is vital.

Many companies create “theme teams” with theme leaders who are accountable for achieving the goals. They project manage the initiatives for their strategic theme and inform stakeholders of achievements, issues and decisions. They build and maintain progress reports by gathering data about objectives, measures and initiatives. Such reports provide an agenda for governance meetings.



GC strategy map – checklist

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We felt a practical checklist, based on the strategy map, might be helpful, whether as an aide-memoire or as a framework for moving forward. We have also included a pull-out summary of this checklist, in the form of a worksheet, at the back of the report.

1. IS YOUR STRATEGY CLEAR?

Mission Have you defined a mission (why you exist)?

Vision Do you have a defined, easy to understand vision (where you want to be) for your team? Have you defined the strategic destination (where you want to be in three to five years from now)?

Assessments Have you assessed external and internal strengths, weaknesses, opportunities and threats? Have you gathered feedback from key internal clients? Have you conducted a thorough activity analysis to benchmark the status quo?

Alignment Are your strategic goals closely aligned to those of the organisation?

Values Have you defined what the corporate values mean for the in-house legal team?

2. IS YOUR STRATEGY PRACTICAL?

Themes Have you translated your strategy into several easy to understand strategic themes?

Objectives Have you defined financial, client, internal process and learning and growth objectives with key members of the team and key stakeholders?

Measures For each strategic objective, do you have one or two measures? Have you defined targets for these? Are they SMART? Do they drive the right behaviour, enable better decision-making and communicate your focus?

Initiatives Do you have an action programme in place, with clear milestones, deliverables described, budget assigned, and resources allocated?

Accountability Have you assigned accountability for co-ordinating strategic themes, managing strategic initiatives, achieving objectives and gathering data?

3. IS THE TEAM ALIGNED TO YOUR STRATEGY?

Communication Have you developed a communication programme? Are you gathering feedback to improve effectiveness and increase engagement?

Cascade Have you cascaded the objectives to any sub-teams?

Personal objectives Have you aligned your team's personal objectives to your overall strategic objectives?

Skills Have you assessed the competencies and skills of the legal team to ensure the strategy can be executed? Do you have plans in place to recruit, develop and retain the skills needed?

Coaching Have you identified mentoring or coaching programmes for key team members to help drive behaviour change and achieve objectives?



4. HAVE YOU LINKED YOUR STRATEGY WITH YOUR OPERATIONS?

Resource allocation Have you allocated resources to strategic priorities?

Funding Have you sufficiently funded initiatives and (re)allocated budget to strategic priorities?

Processes Have you made any necessary operational process changes?

IT and systems Do you have the systems and IT tools to implement the strategy?

5. HAVE YOU GOT GOVERNANCE STRUCTURES TO MONITOR PROGRESS?

Reporting Have you developed a strategy management report to feed into governance meetings?

Initiative management Do theme teams have regular project management meetings?

Strategic management Are there monthly or quarterly leadership meetings whose agenda is the achievement of your strategy?

Operational management Have you aligned operational meetings to strategic priorities defined in the GC strategy map?

External law firm management Have you got a process for managing your relationship with key external law firms? Have you defined joint objectives and a balanced scorecard which are closely aligned to your strategy?

6. ARE YOU CONTINUALLY MEASURING, TESTING AND ADAPTING YOUR STRATEGY?

Strategy review Do you have annual sessions to test and adapt your GC strategy map and balanced scorecard?

Client feedback Do you gather feedback from key stakeholders to improve your strategy?

Conclusion

So is the role of business counsel waiting to be won? Not for all GCs. We found plenty of evidence that some GCs did not see themselves in a strategic commercial role. Some even felt strongly that they should not be in such a role. And quite a few CEOs agreed.

However, we also found much appetite amongst our interviewees for moving up the value pyramid. There is no shortage of GCs who are keen to show their commercial worth. Indeed some already have proved it, just as some already have introduced metrics (although generally quite basic ones) for measuring their contribution to a company.

Although some in-house lawyers, through their abilities and circumstances, have achieved trust without having formally to prove themselves, our research has led us to believe that progress up the pyramid for most GCs depends on a clear demonstration of value. You will never be in a position to contribute at the highest levels until you've been seen successfully to deliver further down. And for most GCs this is bound up with the question of metrics. You have to be able to show clearly how you're adding value.

We believe that in the current climate GCs with drive and ambition have a chance to become true business counsel and assume a central place in business decision-making. We have shown how GCs might align their outputs to business strategy and measure their commercial success. We know there will always be other factors (such as the gap between how the in-house legal department sees itself and how it is traditionally seen by others in a company – something we hope to look at in future research). Nevertheless, we hope our work here has given you food for thought, and some ideas which might work in your own situation.

We would be very happy to discuss the contents of this report with you. We know that writing discussion papers is easy compared with actually building best practice and delivering change. But at Nabarro we want to support in-house teams as much as we can in this area, both by sharing ideas and, wherever possible, by providing practical help. We are also keen to discuss related issues, such as how GCs can use performance measurement in managing their relationships with law firms.

METHODOLOGY

Our research was conducted during the last quarter of 2009. We commissioned Gracechurch Consulting, an independent business consultancy, to interview GCs, other senior in-house lawyers and CEOs at a range of companies in the UK on the topic of performance measurement.

A combination of telephone interviews and online questions was used to collect the data. In total, 63 lawyers and 13 CEOs were interviewed in this way. In addition, in-depth interviews were conducted with a further 18 in-house lawyers during the development of the survey. Two chief operating officers were also interviewed, and their answers have been included with those of the CEOs.

In January 2010, we hosted an event for over 20 senior in-house lawyers to discuss the preliminary findings of the survey. Their comments were very helpful in the drafting of this paper.

We are grateful to all those who participated for giving their time and sharing their views.

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