

REPORT



N A B A R R O
CLARITY MATTERS

General counsel: vague about value?

A survey and discussion paper



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Foreword

You may think you contribute significant value to your business, but how do you know? How does your team know? How does your CEO know? And what can you do if they don't agree with you about it?

Earlier this year we interviewed over 100 general counsel and other senior in-house lawyers (whom we refer to collectively as GCs in this report). We wanted to understand which factors contribute most to the perceived value of the in-house legal function. We also asked about the contribution that external legal advisers could or should be making. In particular, we wanted to see which 'value indicators' enable GCs to move up the 'value pyramid' (see page 2).

Many of the GCs we talked to mentioned value indicators such as alignment with a company's business strategy, commerciality and technical legal nous. All these things are necessary in a good GC. But, by themselves, they will probably not show your worth. In most companies they will be taken as a given for senior legal staff.

Even if you're a commercially minded and technically savvy GC, does your company value you sufficiently? Probably not. As we explain (on page 6), fewer than 50 per cent of GCs are properly valued in their own organisations. And many of those who are have had to fight really hard for recognition.

This report is about how GCs are seen in their businesses, and what they can do about it if they want to change perceptions. Our aim is to ask real questions and raise issues that should be discussed. While we have a range of ideas, some of which are dealt with in these pages, the right answers for you will depend on your own specific situation.

To reflect the variety of GC experiences, we have also included five case studies in which senior and successful in-house lawyers talk about how some of the issues we have raised apply to them and how they have dealt with them.

Since we published our first GC report last year, we have spoken about value and related issues to over 250 GCs in the UK, Europe and the USA, as well as Asia. We have found it fascinating to talk about both their shared ideas and their individual concerns. We would welcome the chance to discuss this report with you too.



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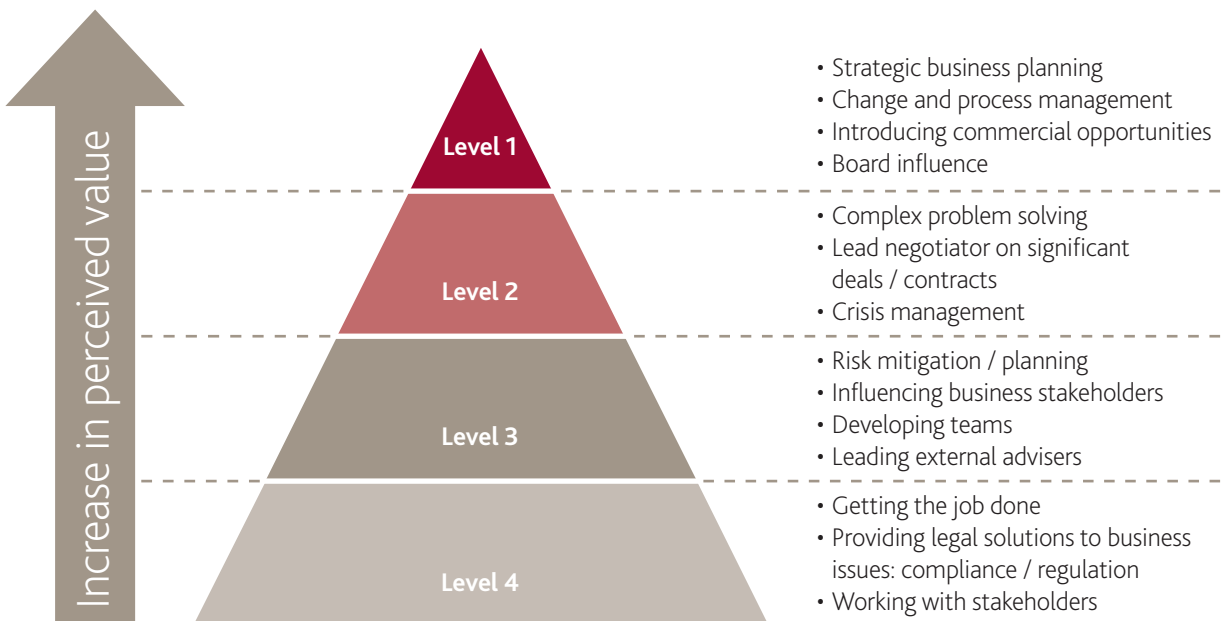
Flashback: The GC value pyramid

02

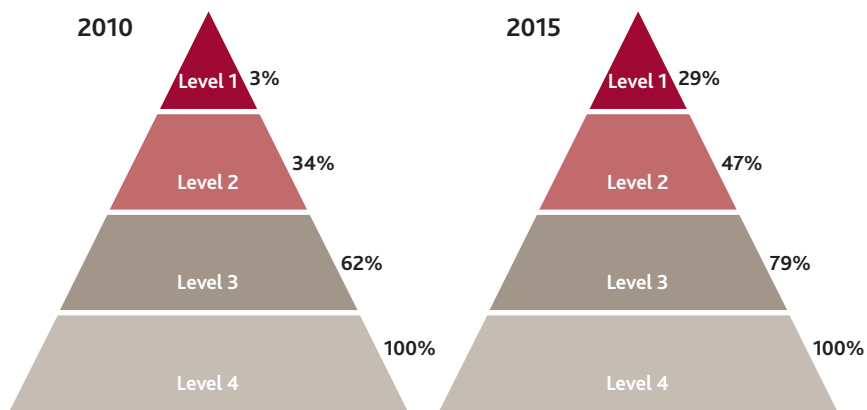


Our previous report *From in-house lawyer to business counsel* introduced the concept of a value pyramid for the in-house legal function. This divides tasks into four levels, according to the value they provide for the business. Level 1 involves tasks with the greatest strategic value to the business. The tasks in the bottom level (Level 4), while essential, are felt to be ‘bread and butter’ work.

Many of those interviewed for our previous report had clear ambitions to take the legal function to the top of the value pyramid. But most of them felt that they had 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 left most GCs in the bottom half of the pyramid, with 38 per cent still operating exclusively in the bottom level.



We asked GCs whether they saw themselves delivering greater value in five years' time. As our diagrams show, 29 per cent expected to be performing tasks at the top level by 2015 compared with three per cent in 2010.



However, we also identified a number of barriers that they have to overcome. For example:

- Routine tasks at the bottom level of the pyramid still need to be performed and these need to be resourced efficiently.
- Many lawyers are perceived to lack the behavioural characteristics expected of senior commercial executives.
- Even if they have such characteristics, they need to win the trust of various stakeholders. For lawyers aspiring to the top of the pyramid, board-level influence is 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.”

So how are GCs to influence perceptions of their contribution to the business? In the following pages we look in more depth at some possible answers.



Key findings

Understanding the commercial objectives of the business was considered either very important or important by 99 per cent of GCs in our survey. Commerciality was widely seen as the single most important factor in senior management's recognition of the value of the legal team.

Nearly all GCs see both technical legal skills and non-legal skills as very important or important, although many believe that technical skills are taken as given.

Just over half our GCs said that the in-house legal team is recognised as adding value to the business. But many suggested that the team was not felt to add substantial value, or that recognition was partial or superficial.

Eighty per cent of GCs in our survey agreed that improving cost-effectiveness was either very important or important. But most simply measured their spend on external legal advisers. Only a third used more sophisticated metrics.

Only 21 per cent of GCs measure the performance of their legal teams with key performance indicators (KPIs). Another 14 per cent say they will in future.

Fewer than half of our GCs saw external lawyers as partners in delivering financial value. Only 53 per cent consult with their external lawyers on delivering increased value and 57 per cent have not implemented value-based billing. Over three-quarters do not quantify the value-added services they receive.

Adding value

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Most of the GCs in our survey feel their legal team is recognised as adding value to the business. However, many suggested that the team was not always seen as adding substantial value.

“There’s been an improvement over a long period. It started with a culture that lawyers were seen as a necessary evil. That perception has now been overcome.”

“There are always a few who don’t think there is a value, but on the whole we are recognised for our input.”

“We have to work hard to make it be seen as value.”

“Generally we just get on with the job. No-one seems to take any interest otherwise.”

“You need to make sure you are not ignored and get the business to understand what it is that the department does.”

We asked how much GCs agreed that the in-house legal team is recognised as adding value to the business. Fifty-five per cent completely agreed, with another 36 per cent mostly agreeing. Some were neutral. Only one per cent disagreed.

However, their comments suggested that the team was not always seen as adding substantial value and that in many cases that recognition may be superficial. For a few, the recognition seemed to come mainly from within the legal team itself.

Another theme which emerged was that the recognition of value did not come easily and took considerable effort to establish: perceptions had to be changed over time. Several GCs had clearly worked hard to turn around negative or ambivalent attitudes in the business or to maintain positive ones.

WE SAY

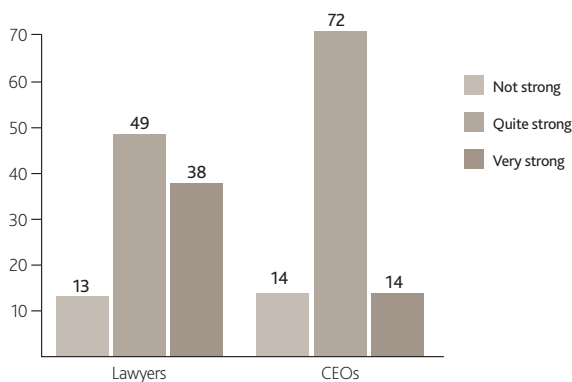
You know you’re worth it – but do others? With only about half of our GCs sure that they are seen as adding value to the business, the answer falls well short of a wholehearted yes. Even some of those who felt appreciated added qualifications. Value may not be perceived in the same way across the board (or, in some cases, by the board), and very often is underestimated. GCs cannot reach the higher levels of the value pyramid without a clear and continuing demonstration of their value. Some are there already. Some are getting there. Our impression is that the majority are not.

WHAT DOES THE CEO THINK?

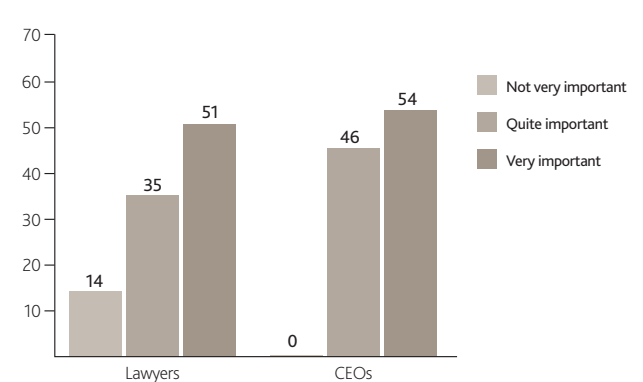
In our previous report we tried to assess the value placed on a GC’s contribution to their business. The answers, as shown by the charts below, were mixed. There were clear differences in opinion between GCs and CEOs.

As our report showed, while GCs no longer have to justify their existence, they often value their contribution to a business more highly than the CEO does. However, as a group they were significantly less inclined than CEOs to believe that an in-house legal function should add economic value to a company.

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



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



Why might some GCs not think it important to add economic value? In the words of one of our interviewees at the time:

“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.”

Case study

Daragh Fagan, General Counsel EMEA, Markets Division at Thomson Reuters

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“Our first priority is obviously to understand the commercial objectives of the business. This applies to the in-house team and also to our external lawyers. I look for an active interest in learning about our business. The best way is just to ask questions – most people love talking about their job.

“When putting together a commercial contract we ask our business colleagues what they are trying to do, how much it is worth, what might go wrong, how long will it last and how it will end, what our competitors are doing in this area etc. You can read up, and we do, but it is often quicker and more effective to talk to people. When our internal clients are working on a key contract, an important acquisition or litigation, we need to understand how personally important the issue may be for them and be sensitive to that. They need to confide in us and have complete trust in us personally as well as our advice.

“Overall our in-house legal team has long been recognised as adding value to the business and I think that our commercial approach is central to that. Key executive committees have a lawyer on them without question. You have to understand that this is a privilege: there are not many seats around that executive table and so you need to demonstrate value consistently.

“An ability to influence and skills in persuasion really matter. For example, when I started at Reuters, Rosemary Martin (who is now Group GC at Vodafone) scheduled chats over coffee for me with most of the key senior executives, which I kept going after she left. Having changed

from the oil and gas industry to the media/technology sector, it was especially important for me to do this, and I probably did 50-60 of those in the first year. I asked what their part of the business was really trying to achieve, what they were worried about, obviously what their experience of the legal function had been etc. What I didn't try to talk about was the law in any abstract way or about me (unless they asked), so that it was a business conversation and about them not me.

“Another thing is being seen in key executive groupings. In any successful organisation there tends to be a tightly networked group at the top, and lawyers who are in that group are then seen as peers by the top executives rather than just being a necessary support function.

“We do have individual performance objectives and appraisals across the business. We do a fairly extensive and roughly biannual customer feedback survey of about 500 of our main contacts across the organisation. The comments and ratings are influential. However, we do not have formal metrics or KPIs for the team as a whole. I have done an exercise in measuring where the legal resource did a form of time sheets over one month in each year, not to backcharge time but to see which business unit

took what percentage of our time. It has led to very productive discussions within the department and with business owners.

“I have heard people talk about metrics such as the number of contracts you complete. That to me is meaningless. Many things we've done well result in things not happening, such as risks or disputes. Measurement is a complex issue: the more numerical you get, the more likely you are to miss things.

“I am really keen on feedback. With our external legal advisers I like to have ad hoc chats. It amazes me that more partners don't just pick up the phone, it seems such an obvious thing. A law firm is a service business and yet I am rarely asked how the service was. Partners shouldn't be frightened of any bad news. It is much better to identify a problem and address it. In fact I would say that feedback is one of the best value-added services a law firm can provide, also on how good and easy a client we have been (clarity of instructions, responsiveness etc). It's a chance to build a genuine partnership and continually improve performance. What's needed is a more proactive approach to client management, combined with building a better understanding of our business, strategy and commercial objectives.”

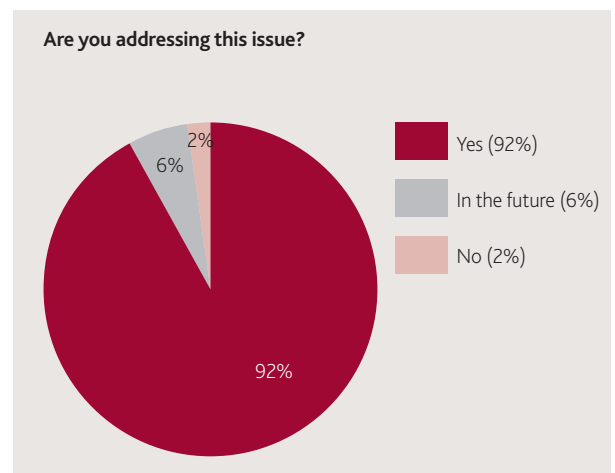
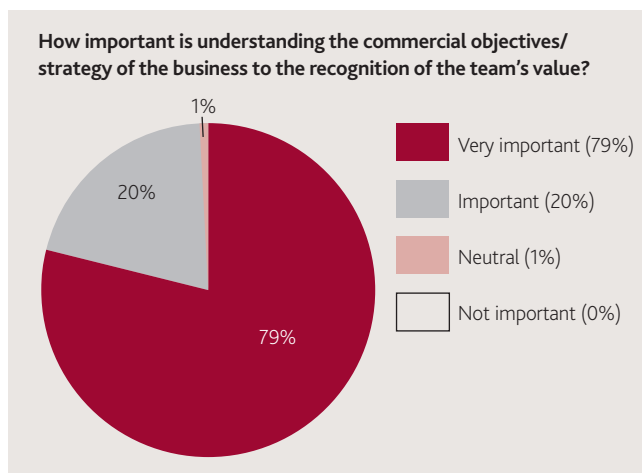
Being commercial

Understanding the commercial objectives of the business was important for nearly all our GCs. Commerciality was widely felt to be the single most important factor in the recognition of the legal team's value.

Interviewees overwhelmingly felt it was important to understand the commercial objectives of a business and its strategy. Seventy-nine per cent said it was very important and 20 per cent that it was important. Unsurprisingly, it is an area which nearly all our GCs are already addressing.

"It's critical for the perception of the team that what we do is focused around the strategy."

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Over 30 per cent of our respondents said commerciality was the most important factor overall for a GC. Another 15 per cent opted for legal or technical skills, while seven per cent said that commerciality and legal/technical skills were equally important. Other respondents came up with a wide range of factors, including visibility, soft skills, the ability to communicate, KPIs, efficiency and excellence at negotiation.

WE SAY

Commerciality is necessary, but it is also becoming a cliché. A measure of it is taken for granted, but we have heard CEOs say that GCs cannot be truly commercial. The question for GCs is: how can they show *outstanding* commerciality?

Technical legal skills and non-legal skills

Both technical legal skills and non-legal skills are seen as very important or important by nearly all GCs, although many also stated that technical legal skills are simply taken as given.

“Common sense, flexibility and a commercial mind are valued skills.”

“People do not come to us just for legal skills but to help them achieve their objective.”

“A large part of my role is managing relationships and risks. Not about being a technical lawyer as such.”

“Soft skills and being a team player are very important, as is conveying messages in a way that people understand.”

“Nothing annoys internal clients more than just giving a legal view. They also want practical advice and help to achieve their objectives.”

Sixty-one per cent of interviewees thought technical legal skills were very important for the recognition of the team’s value. Thirty-two per cent described them as important.

The view of non-legal skills was almost the same. Sixty-two per cent thought them very important and 32 per cent said they were important. Perhaps unsurprisingly, those who were lukewarm about one skills set tended to value the other. For example, all those who were neutral about non-legal skills felt that legal skills were very important, while those who were neutral about legal skills all felt that non-legal skills were either important or very important.

A clear majority of respondents – 58 per cent – felt that GCs’ non-legal skills were very important in determining the perception of their value. Another 39 per cent classed them as important. Three per cent were neutral.

Expanding on other soft skills required, GCs referred repeatedly to communication skills.

When it came to the technical legal skills needed for their own role, just over half our respondents – 51 per cent – said they were very important. Another 36 per cent said they were important. Only two per cent said they were not. But, once more, the situation is more nuanced than the headline figures suggest. Several respondents thought technical legal skills were quite simply assumed and it was the combination of them with a commercial mindset that was central to demonstrating the value of the in-house team.

With legal teams expected to have a clear understanding of the commercial objectives of the business, a majority of GCs also felt that they should also help non-legal teams develop a better understanding of legal issues that affect the business. Reasons for this vary. In some cases it is to ensure better compliance and avoid unnecessary legal team involvement in issues that could easily be avoided.

WE SAY

Different GCs clearly have different experiences. A GC in a small team may need to be more of a hands-on lawyer than one leading a large team spread across the globe. But it is clear that, on the whole, GCs are simply assumed to have legal skills, just as they are expected to be reasonably commercial. There is usually little scope for a GC to show that they have exceptional technical skills.



Case study

Sandie Okoro, General Counsel at Baring Asset Management

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“The first point I would like to make is that in-house legal teams are not there just because of their technical legal skills. That’s a given because we are lawyers. What matters is how we can apply those skills in a commercial way. We need to have good general commercial skills and really understand the drivers and goals of the business.

“We have terms of reference for the legal team which state what we are here to do and our role within the business. We also have a ‘legal charter’ that applies to all our lawyers. However, you can’t really have a deep understanding of the business unless you are embedded in it. It’s important for people to think ‘let’s go and talk to legal’, not to just contact us when an issue blows up. Visibility is important. Being on committees and working groups is key. I attend at not only executive and board meetings but also other relevant committee meetings.

“Responsiveness; practical, succinct, non-legal-jargon-laden advice; and talking in the language the business understands – these are central to the value that in-house legal teams can deliver. I have also come to realise it is important not to scare the business. As lawyers we enjoy solving a tricky problem. But we mustn’t say ‘that’s a big problem’. We must be calm. You don’t want your legal team to be seen to be ‘enjoying’ the fact that a problem has arisen.

“I regularly ask for feedback on the team’s performance as I go along. When we do deals I ask whoever has been involved. I don’t want to add another level of reporting so I do it on an individual basis, often just verbally.

“Management information about the legal team is important to senior management. They want comfort that we are spending time on the right things. Management information is also useful for me as a GC when I need to have discussions about resources.

“We do have KPIs and we have key risk indicators (KRIs) as well. I have about five KRIs covering issues such as the jurisdictions we are in. Another is the number of years of experience in the legal team – there is a level below which we ideally do not want to drop. We can then consider, for example, if we’ve gone into three new jurisdictions, do we have enough people with the appropriate level of experience?

“We review the performance of our legal advisers every few years. Informally, if they are not delivering, I deal with it at the time and replace them if required. We are a small team, so I need fluidity, to be nimble and to turn things around. I can’t say that I am able to clearly measure the value that our external legal advisers deliver, as that’s a very difficult thing to measure.

“Fees are a regular talking point between me and my law firms. Our external lawyers listen and I think they try their best but they do struggle with the whole fees issue. I fully appreciate that firms need to make a profit, but I don’t see a lot of innovation from firms

when it comes to delivering what the client wants on the fees front.

“When it comes to internal profile-raising, I am a big fan of training and collaboration. I invite other departments to ‘lunch and learn’ training sessions which help build knowledge of the business and a stronger mutually beneficial relationship. But the collaboration goes much deeper. For example, I worked closely with our organisational risk, compliance and finance teams in order to create and establish our policies and procedures around the new Bribery Act. Also our organisational risk team did a lot of work with us to identify and establish KRIs for the legal team.

“I also have monthly meetings with our Financial Controller so that I can keep a close eye on our legal spend. It is much easier to control your budget if you review it regularly rather than just once or twice a year. The finance team is also a very good source for general information about the business and is often the easiest and quickest route when you need some background around an issue.

“Understanding not only your business but your industry is one of the most valuable assets a GC can have. The other is having a great team, which I am fortunate to have, and the ability of that team to work with all your other business areas.”

Cost-effectiveness

Eighty per cent of GCs agreed improving cost-effectiveness was very important or important. But most simply measured their spend on external legal advisers, with only one-third using more sophisticated metrics.

Being cost-effective seems like a natural way of demonstrating value. But it does not necessarily strike a chord with GCs. While 80 per cent said that improving cost-effectiveness was either very important or important (with another 15 per cent being neutral about it), it is something that only 45 per cent of them are addressing, with 10 per cent saying they will address it in future. Forty-five per cent do not have plans to address it at all.

Several GCs said they focus on external spend rather than the cost-effectiveness of the legal function as a whole.

Some took a much broader view, stating either that cost-effectiveness was simply one factor in a range, or that the key consideration was the service delivered.

We also asked GCs whether they look at cost-effectiveness in relative or absolute terms: ie as the cost of the legal function as a percentage of turnover, relative to other factors, or simply as total spend? Not all respondents answered this question. Of the 83 GCs who did, 68 per cent used absolute measurements, while 27 per cent used some form of relative measurement. Five per cent used both. A significant minority were unable to answer the question and did not seem to analyse cost at all.

WE SAY

This is an area that deserves greater attention. Reporting on spend is a central requirement for the vast majority of GCs, but many only consider their external legal spend, and then only in absolute terms. Others acknowledge the importance of considering spend in the context of what is happening in the business – something which can help to move board-level discussions forward from a focus on simple cost reduction. Indeed, a more sophisticated approach to cost analysis by GCs may help to demonstrate their commercial focus and support the perception that they are delivering value to the business.

“As with any group in the business you have to be seen as being cost-effective.”

“We keep a tight grip on external costs but not on our own.”

“The service is more important than the cost.”

“We do all of these, but the main metric is total cost.”



Innovation in the legal function

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GCs believe it is important to improve the efficiency of the legal function. But most of them are doing nothing about it.

There was a wide variety of answers to the question 'What approaches or programmes are you implementing to improve the efficiency of the legal function?' The most common response was 'nothing at the moment' – a surprising answer after 80 per cent of our GCs had said that improving cost-effectiveness was important. However, some efficiency improvement ideas did emerge, including:

- knowledge management
- better use of IT, whether to improve teamworking or transaction management
- workflow and workload management, through streamlining process or establishing service levels
- increased use of non-lawyers
- better management of external law firms
- outsourcing and shared services.

We believe that GCs who are active in one or more of these areas are significantly increasing their chances of showing value.

We also asked specifically about legal process outsourcing (LPO). Seventy-eight per cent of those who answered are not using it. Twenty-two per cent are either already using it or thinking of implementing it (albeit in clearly defined areas). A majority of GCs felt that LPO was not appropriate for their business for a variety of reasons, from the volume of work they needed to the type of service they provided. Some had investigated it but had not found a way to make it happen. Specific concerns about quality were voiced by a significant number of GCs.

"I don't think you get the same quality and I'm not prepared to take the risk."

"We have been considering work processes and streamlining. I also want to make more use of non-legal staff to free up the time of professional staff."

"I am looking at setting service levels and establishing clear procedures."

"We are undergoing a restructure to improve efficiency and rationalise our use of external law firms."

"I'm looking at IT-driven programmes to improve the efficiency of transactions."

"There is no push for us to do it here. A lean efficient team is the answer."

Case study

Solomon Osagie, Chief Legal Counsel at TSYS International

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“The in-house legal team is absolutely recognised as adding value to our business. This is where measuring and reporting on their performance against KPIs is very important. If you are providing a service you have to spend time measuring how effectively you deliver it.

“We have KPIs and individuals have to reach out to business colleagues to give a view of them and their performance. You need to be careful about asking for feedback though, because our role is often to tell people not to do what they want to. That can colour their responses. You have to consider the circumstances.

“Motivation, retention and development of the team are all parts of performance management and in my opinion are among the most important non-technical skills for a GC. I am very interested in my team’s own personal development. They had a life before and will have a life after. One of the questions I always ask is ‘what can I do to make you happier?’, because if they are happy they will be motivated and will deliver a better service to our clients. So I need to pay attention to them and talk them through their development and related challenges. For example, I tell my senior lawyers about how they need to build relationships, pick their fights and build alliances. This requirement to hone political skills always surprises them.

“As lawyers we generally don’t talk enough about our success. But if we don’t no-one else will. It is necessary to actively manoeuvre the team into a position of being integral to business success. We have to be seen to be close to the business and that takes sustained

effort. Lawyers go in-house and do legal drafting and then assume that everything else will take care of itself. It doesn’t. That is why it matters that the GC has a seat on the executive team or sits close enough to have an impact.

“Reporting lines are also very important. I am resolutely against GCs reporting to a finance director. It is not always just about money. As a GC you are looking across the whole organisation and spectrum of activities. So the GC should report to the CEO or someone who has responsibility for the breadth of organisational issues. In a previous role I reported to the COO but within a month we had that changed because it didn’t work even from the CEO’s perspective.

“We review the performance of our external lawyers every year and I meet with most of their relationship partners on a fairly regular basis. I always welcome questions about our business. I can’t see how you can give commercial advice unless you know about what we do and our industry at the very least. The external lawyers we use definitely understand our objectives and priorities. They don’t generally ask to the degree and extent that they should – we tell them. That is wrong though. They should be more proactive.

“I believe that I can and do demonstrate the financial value that

our external lawyers deliver, but law firms need to realise that it’s a buyer’s market. They have to start innovating. And they need to be more efficient. I spent time in private practice and I know some firms string things along, but in-house legal teams do not have an inexhaustible budget. We have now recruited someone internally who will take work away from external firms. And the reason why is because of billing. We have in the past disqualified some firms because of their billing practices.

“I believe that the GC is recognised as an essential partner in delivering financial value in my organisation. To other colleagues we need to be seen to manage costs and deliver value. A GC who is on the leadership team can’t sit next to the HR and finance directors and think cost reduction doesn’t apply to their department.

“Lawyers shouldn’t get too hung up on cost reduction as their sole objective though. Different businesses will have different priorities which will also change over time. So it’s important to remember that there are a lot of other things that we bring to the table that can’t be quantified in financial terms. If it was just a numbers game I would often have to say ‘no I can’t help you – goodbye’, and that’s not what we are here for.”

Delivering financial value

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Fewer than 50 per cent of GCs view external lawyers as essential partners in delivering financial value. Forty-seven per cent have neither discussed nor implemented any value-based billing arrangements. Seventy-seven per cent do not quantify or measure the contribution of value-added services.

Only 45 per cent of GCs mostly or wholly agreed that their external lawyers were recognised as essential partners in delivering financial value. The majority disagreed. 'Necessary evil' is a phrase that cropped up in several interviews. It is clear that law firms are often seen simply as an unwelcome, albeit necessary, cost.

Even otherwise positive comments emphasised that the value of external lawyers was not generally appreciated across the business.

WE SAY

The question is: what can GCs do about this? At the very least they should avoid leaving themselves open to any criticism that might undermine their efforts to show their value as a business adviser. In many cases, they might benefit from reviewing how they work with external lawyers in the context of overall efficiency and the service that the in-house team delivers to the business. But more radically, we think they should work with their law firms positively to demonstrate value to the business.

Given the volume of negative responses, it is surprising that only 53 per cent of GCs consult with their external legal advisers on how they can deliver increased financial value. Another 15 per cent indicated that they may do so in the future. As our respondents overwhelmingly believe commerciality to be a key part of their role, this seems a very low figure.

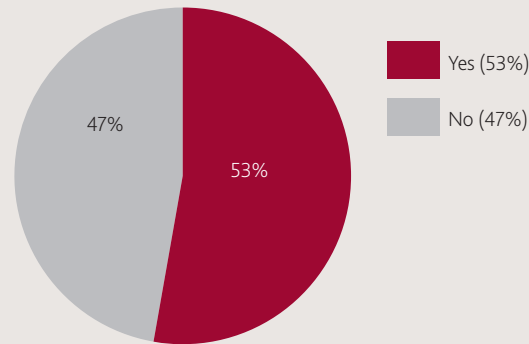
“If they can, it would be an interesting area to explore.”

“It’s about recognition of value. Some understand value. Some would strive for value even at great cost. Others would do just a basic service.”

“There is a wide variance in their enthusiasm and how proactive they are.”

“It’s not measured, but it is valued.”

Do you consult with your external legal advisers on how they can deliver increased financial value to your organisation?



Some discuss financial value with their external lawyers on a matter-by-matter basis. A significant minority expressed an interest in exploring this area in more depth but had not yet done so for a variety of reasons, from lack of time to not really knowing how to approach the issue.

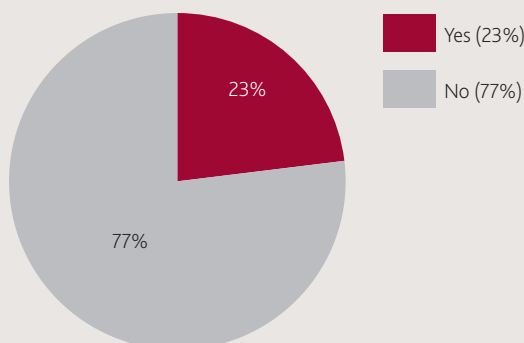
Those GCs who did talk about financial value with their external lawyers found that those discussions mostly focused around negotiating lower fees.

There is an appetite for more discussion in this area, although it is likely to require the GC to take the initiative and explain their needs in more depth.

Many GCs feel that law firms do not really understand the importance of value, quality and cost in delivering their services, or the need to invest in the relationship.

Others focus more on value-added services and have discussions about the value they can deliver, but not about the financial value. However, in response to the question ‘Do you measure the contribution of value-added services?’, a surprisingly large majority of respondents, 77 per cent, did not. Again this suggests that there is potential for GCs to attempt to quantify the value they are getting from external lawyers and use this information to help show the value that they themselves are delivering to their business.

Do you measure the contribution of value-added services?



The reasons that this large majority of GCs gave for not measuring the contribution of value-added services were frank, with several referring to the difficulty of quantifying such services. Some of our interviewees record the value-added services they receive, but do not try to quantify their value or report them to senior management.

Some of those who do quantify and measure the value-added services they receive offered ideas about how to approach this challenge.

“There are some that enable us to reduce cost, such as legal training and library, so we can quantify them. There are others which are important, for example providing industry insight, but it is difficult to put a value on those.”

WE SAY

Both GCs and law firms have been far too slow to pursue opportunities in this area. Traditional templates for relationships between GCs and law firms have not encouraged such dialogue. But that is an argument for finding new ways of collaborating, not for ignoring the problem.

Imaginative GCs and their law firms should investigate possibilities such as redefining service, value and common endeavour. Like much of what we have been discussing, this involves creativity and risk – not traditional characteristics of lawyers, either in-house or in private practice. But the potential rewards are huge.

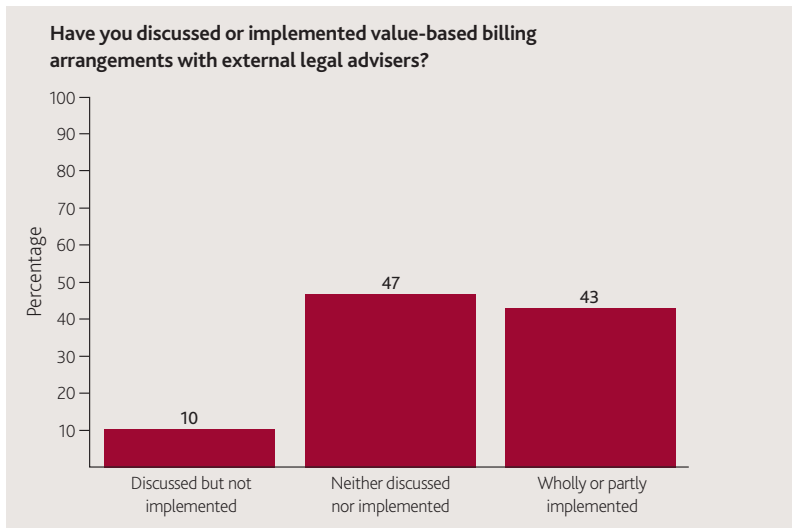
“We do put a value on these elements, a financial value if we can. It’s calculated in various ways, the simplest being a calculation of how much time it would take us to deliver the same service.”

“There is value billing with one firm. With others we negotiate fee rates so we can get value for money.”

“In some cases they’ve been implemented, based sometimes on a percentage of each deal.”

VALUE-BASED BILLING

Forty-seven per cent of our respondents have neither discussed nor implemented any value-based billing arrangements with their external lawyers. Another 10 per cent have had discussions but not implemented anything as a result. Most of those who have made progress in this area seem to have focused on fixed fee arrangements or capped fees. Many only use such arrangements occasionally, or in specific areas.



Again, given the desire to demonstrate value, particularly financial value, and the fact that many referred to the unwelcome cost of their external lawyers, it might have been expected that many more GCs would by now have discussed value-based billing arrangements or asked their external lawyers to come to them with ideas. Some did refer to incorporating such requests into tenders.

Negative comments again centred on time limitations or just the difficulty of doing it.

Case study

Rosemary Martin, Group General Counsel and Company Secretary at Vodafone

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“I don’t agree with the idea that lawyers are not valued in business. Lawyers who make the shift in-house don’t regret saying goodbye to timesheets, but they do enter a world where it’s harder to measure their financial value as they don’t send out invoices for their work, unlike their private practice brethren.

“KPIs are possible, but many lawyers struggle with them, whether in-house or in private practice. Despite this, if the in-house legal team is doing what it should, it will demonstrate its worth. Avoiding costly litigation, finding innovative ways of getting people out of holes, being involved in M&A – all of these things can bring enormous value. As long as the legal team is helping to bring the business forward it has a central role.

“As far as technical legal skills are concerned these are a given for my team. What we get applause for is our ability to get things done. Being fast, reducing complexity and being part of the team that enables the company to go forward are all valued.

“The ability to build a strong commercial insight is a particular benefit of an in-house legal career. You get great exposure to the financial demands and capabilities of the business and can develop a good sense of its commercial rationale. At Vodafone many of our team have deep institutional knowledge which enhances our ability to navigate around the organisation and to bring a degree of calm in a storm.

“Being Company Secretary as well as General Counsel is key to my ability to influence and add value. Some GCs may see the company secretary role as administrative but, whilst it can involve just taking minutes, it is really what you make of it. My role on Vodafone’s board provides a perspective on the business which is invaluable to my role on the executive committee and it facilitates contributions which would not otherwise have been possible.

“I would advise a new GC to aim to perform the company secretary role if they do not already and to turn it into a position of influence. Visibility is definitely important for GCs. More importantly, I sense it matters to have appropriate personal qualities and good standing, to remain calm under pressure and to contribute a respected view. Complete discretion is also essential.

“Beyond dealing with legal and corporate reputation issues, cost is the number one item on my agenda. Making sure we are delivering value to our customers is critical. Having just set up a legal panel, I will be reviewing panel members’ performance in a more organised way. We have spent a lot of time talking to them about fees and how they go about structuring them. We are also interested in what else they can offer to help us further shape the legal function we want. I am looking forward to working with them to build a team that is admired and cost-effective. Above all, we aim to build a partnership with our law firm suppliers in which we mutually deliver the highest possible value to the business.”

Measuring performance

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Only 21 per cent of GCs measure the performance of their legal teams with KPIs. Another 14 per cent say they will in future. Most do not expect to do so at all.

“Customer satisfaction is what is important.”

“We don’t have a method of measuring but a system of feedback from clients.”

“It would be nice to have, but we have not got the time for it.”

Our previous report *From in-house lawyer to business counsel* showed how most legal functions which use performance measurement are being assessed on aspects of their spending, activity levels, internal feedback and appraisals. Unfortunately these metrics show little or nothing of the true value that the legal function adds to the business.

Measurement should make it easier to identify areas in which in-house legal teams can deliver and demonstrate value. It can also help senior management consider the legal department in the wider context of other support functions. It should therefore ultimately help to demonstrate value.

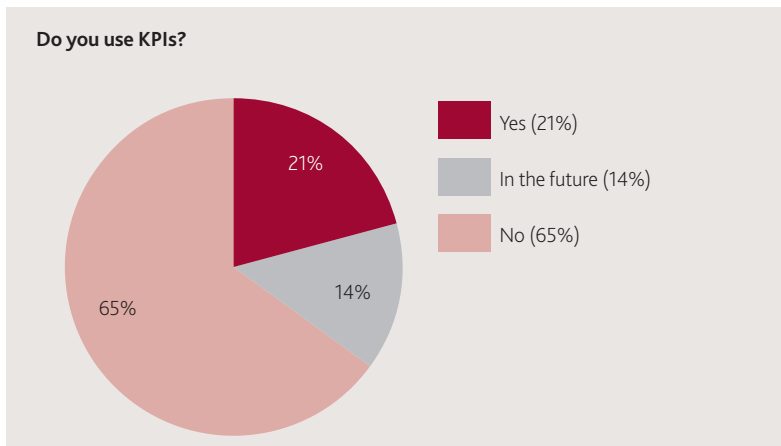
Some of the GCs we talked to in 2010 were interested in developing or refining performance measurement. But the majority did not know where to start, or how to go about implementing it in an efficient, sustainable way. They could not see how to map measurement onto the traditional legal function, and struggled to define commercial value in the in-house legal context.

We decided to revisit this topic in this latest piece of research, to look at how the situation may be developing, and also at how GCs might involve their external legal advisers in performance measurement.

PERFORMANCE MEASUREMENT: IN-HOUSE LEGAL TEAM

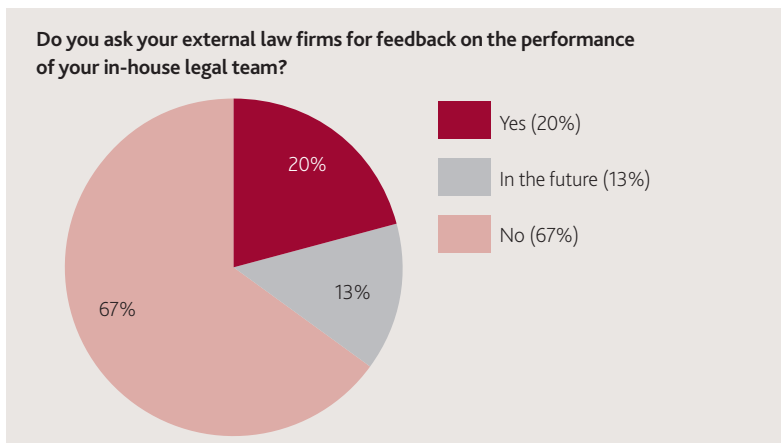
Opinion among the GCs we talked to in 2011 was very much divided on whether measuring and reporting the performance of the legal team against key performance indicators is important for the recognition of the team’s value. Only a quarter believed it was very important or important. A third thought it was not at all important. Such numbers suggest it is not even on the radar of most GCs at the moment. Certainly, most GCs do not believe it influences management perceptions of the value delivered by the in-house team.

This is borne out by the responses to the question of whether GCs are addressing this issue, with only 21 per cent of respondents currently measuring and reporting on their legal teams using KPIs. Another 14 per cent say they will in future. The remaining 65 per cent do not expect to address the issue at all.



However, the true picture is more complex than that. A number of GCs who do not use KPIs are still interested in performance measurement. Many look at customer satisfaction and internal feedback mechanisms, which may be more subtle or sophisticated techniques for measuring the performance of the legal function, assuming they are applied and interpreted consistently.

Among the minority that did use KPIs, some still had doubts as to their value in practice.



Most GCs do not ask external law firms for feedback on the performance of their in-house team. However, 20 per cent do and another 13 per cent said they do not yet do so but would consider it.

“I never thought about this before but it is a good idea.”

WE SAY

For many GCs the jury is still out on the value of KPIs. Critics cite the difficulty of selecting appropriate measures and the overhead involved in collecting and collating data. On the other hand, GCs who use KPIs successfully feel they help with the overall perception of commitment to value they deliver to the business. Our discussions with GCs in the USA suggest that performance measurement is much more embedded there than it is presently in the UK. Like many other US trends it may become part of international business culture, in which case GCs in the UK will come under increasing pressure to adopt it.

“KPIs are important for showing the relevant information to team members. How much this is actually noticed by them is, however, a moot point.”

“There is ongoing dialogue with external law firms, and feedback is helpful, but it is done on an informal basis.”

KPIs are also an area in which the circumstances (and personalities) of individual GCs can make a big difference to what is appropriate, or even possible. There are some organisations and situations in which KPIs would almost certainly fail. Nevertheless, we believe that too many GCs are missing a trick where KPIs are concerned. In most businesses it should be possible to establish a successful and cost-effective system of easily quantifiable KPIs that are clearly relevant to the business's goals.

PERFORMANCE MEASUREMENT: EXTERNAL LEGAL ADVISERS

Most of our respondents regularly review the performance of their external law firms, although a surprisingly large number – 32 per cent – do not. The frequency of review varies greatly: some review after every transaction or describe their reviews as ongoing, while fixed review periods range between one month and three years.



“If I don’t like what they have done I tell them. If I have to tell them too often I go elsewhere.”

“The variety of work makes it difficult and very time consuming with very little benefit.”

“It is the quality of advice that is most important and this is not measurable.”

But these reviews are mostly light on metrics. Only 15 per cent of all our respondents have established KPIs for their external law firms. Another 16 per cent said they might do so in future. But this still leaves over two-thirds of our respondents with no metrics to measure the performance of their chosen providers and no immediate prospects of implementing any.

Why? Some respondents felt it was too much work for a small department. Others said the one-off work they give to external advisers is not suitable for KPIs but that they would think differently about a formally outsourced function or area of work. In some cases, GCs could not see any benefit or felt it was simply not necessary. For a few, the idea of using KPIs for law firms was as difficult as using KPIs for their own teams.

A few respondents use KPIs on certain transactions or in certain areas, or have a limited range of KPIs. One restricts KPIs to panel firms. A number of respondents clearly preferred the idea of informal feedback. Again, for many, this reflected the way in which their in-house teams were run.

Interestingly, 71 per cent of our respondents do not share their assessments of their external law firms with anyone outside the legal department. (“Don’t share outside legal’ is the phrase we adopt.”) Several respondents said specifically that it was the responsibility of the legal department to manage external advisers, or that a board simply would not be interested.



This may be another reason for the widespread lack of interest in using KPIs. It appears that GCs do not have management looking over their shoulders at the performance or value for money of their external advisers. In some cases where information is shared with management, the data seems to be very basic: for example, how much is spent firm-by-firm on an annual basis.

This situation has some interesting knock-ons. Just over half our GCs feel they cannot clearly demonstrate the financial value that their external legal advisers deliver to their organisation. Some would clearly like to, but have not yet worked out how.

The idea that it is very difficult to show financial value in this situation is a widespread one. Many GCs clearly feel they can make a subjective judgment about value for money, but that they cannot produce hard facts to support it. For a few the best test is if no-one questions the bills. Others found it possible in certain areas, notably litigation. And some use added value as a useful metric.

Some GCs effectively predetermine financial value by negotiating fixed price deals. But few of them then formally measure the level of service provided during the transaction, once the fixed fee has been negotiated.

WE SAY

By being able to report performance to senior management on a regular basis, GCs can influence the type and content of discussions that they have at board level. If GCs genuinely want to move away from what appears in many cases to be a sole focus on cost reduction and the procurement model (and the challenges that this presents in terms of moving up the value pyramid), they need to introduce additional metrics. These should be quantifiable and tangible, and therefore likely to be seen as valid by senior management – who will almost certainly already receive such performance reports from other departments in the company.

Case study

Sue Albion, Legal Director at Molson Coors

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“When I joined Molson Coors as GC, I needed to assess the needs of the business and how best the team could deliver against them. This required us to challenge existing perceptions. I realised I had to take the initiative, to articulate the value the legal function could bring, and then show it.

“I think that the key thing is to approach this challenge in a businesslike way. Write a cohesive business plan, highlighting the commercial benefits. Consider where you are now; what works and what doesn't; where you want to take it; and what options you have to take it there. Talk to people across the business, get their views and build support for your ideas. You will get valuable input that may influence your final plan. Remember that the business has to want and value what you are proposing.

“You have to be clear about what the tangible, commercial benefits will be. Language is very important. You must be able to articulate value to senior management. You must understand the business and speak like a business person to have the right kind of discussion. And something that is not often mentioned is that you need to be able to sell. We are in a business after all. You are selling your proposed way of doing things.

“When I joined Molson Coors in 2009 I realised I needed to conduct a thorough assessment of what the legal team was working on, what the business needed legal support with, and what it was costing. That led me to certain conclusions about how we might do things differently. For example, I got board approval for

legal spend by other departments across the business to come under my budget. That enabled me to assess more accurately what the legal needs of the business were and ensure that we resourced appropriately. Of course with that authority came the responsibility to account for it and manage it more effectively. You need to be prepared to stick your head above the parapet to take on the accountability and then deliver against it.

“I split spend into two categories: broadly 'day-to-day' and 'exceptional'. Day-to-day spend is regular expenditure in areas like commercial contracts, property and employment. Some areas we outsource because we don't have the internal technical expertise but we now control this much more actively and have set up a panel who are delivering excellent added value services, which enables us to deliver more to the business. But where possible we do work in house as we believe that our own in-house lawyers are best placed to advise the business as they are living and breathing it, day in, day out. By resourcing as much of this as we can internally we are able to build our knowledge base, while spending less than we were previously. That's a concrete financial value-add that any board would take notice of.

“The exceptional spend is on one-offs like M&A or a large litigation. This is not an area that you can control but that doesn't mean you can't have a significant impact. A large litigation, settled well, can contribute a million pound saving against accruals.

“We were involved in discussions which would have required significant investment in new technical equipment. By understanding the objectives of the investment, we were able to ask the right questions and suggest alternatives that would achieve the same commercial effect, with significantly less investment. Now that's a clear example of delivering real financial value.

“If I was to identify the most important factors to demonstrate value to senior management I would say that you must thoroughly understand your business, show creativity and a drive for results, but most of all, approach things in a businesslike way. You have to do what you say you will. With increased authority comes increased responsibility. You absolutely must deliver. Lots of issues will come flying in from left field and you need to be able to deal with that – it's the nature of the role. But you also need to find the time to look up and out and continually improve.”

The way forward

GCs have to show value if they are going to climb the value pyramid. A few are already where they want to be, but most have some way to go before they can truly demonstrate their value and become strategically influential.

A GC's progress will be affected by many factors, and what works for one GC may not work for another. But our discussions with GCs have led us to identify a few general value indicators which aspirational GCs may be able to use to benchmark themselves and their teams.

- **Alignment** with business strategy, **commerciality** and **legal skills** are popular value indicators but are now generally seen as 'the entry price' for GCs. Unless a GC does something that will be seen as exceptionally commercial, there is very little scope to use these indicators as differentiators.
- There is more scope for a GC to show economic value through **cost-effectiveness** and **innovation**, including the innovative use of **technology**. Our research shows that a significant number of GCs are not exploiting such opportunities. In addition, most are not seeking to increase the **efficiency** of their teams.
- Many GCs do not discuss **financial value** with their external lawyers or use **value-based billing**. Most do not quantify the **value-added services** they get from their law firms. These are missed opportunities. Imaginative GCs can go even further, working with external lawyers to reinvent their relationships.
- **Visibility** and **networking**, both within the business and outside it, can change the way in which a GC's contribution is perceived.
- Clearly, not all value can be measured, and some important aspects of success cannot be quantified. But we continue to believe that an appropriate system of **performance measurement**, as advocated in our previous report, can greatly help to demonstrate value.

Whether or not you agree with us, why not talk to us about value? We will continue to explore this topic in the future and would like to know what you think.



METHODOLOGY

Our research was conducted during the summer of 2011. We conducted telephone interviews with over 100 GCs, Heads of Legal and other senior in-house lawyers at a range of companies in the UK. This included a number of in-depth interviews with several GCs during the development of the report. We are grateful to all those who participated for giving their time and sharing their views.

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