

GCs and HRDs in Employment Law

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Abstract

The tools available to GCs in managing the contracts in any organisation are now well developed. From supply chain certification to distributed document automation, the software tools to collapse legal service support times while improving accuracy and effectiveness are reliable and well developed. Increasingly these tools are now being deployed to cover employment contracts too. Many HRDs are glad to share this burden, and many are happy to focus on the Board level contracts only. GCs should not fear extending their expertise and reach into traditional HR territory. Many UK outsourcers demonstrate why as this is a demonstrably able and growing market which helps GCs and HRDs alike focus on their strengths.

Even more from less

We've come a long way from the days when in-house lawyers (GCs) were simply a way of keeping volatile legal fees in check. Panel reviewing roles became 'more-from-less' ones as GCs 'went native' (from the legal professions' perspective) in the mid-noughties and made commercial legal risk management a truly Board level (CxO) role. What used to be largely concentrated within financial services and parts of the public sector has blossomed now to a common and valued role throughout commerce and industry.¹ The role of the in-house lawyer is increasingly also one performed now by smaller teams, in a wide variety of industries, and with more precisely focused budgets. GCs are now efficiently managing internal legal affairs, reducing external costs, and better managing the risks often deploying technology in all of those roles. Among suppliers to GCs, they acquired a reputation for preaching penury and practicing recruitment; the number of GCs doubled² between 2000 and 2012 and that trend appears to be accelerating. So that begs the question, what is the 'more'; how do GCs deliver value?

In the UK the recent example from the supermarket ASDA provides typical benchmarks:³

- Contracts handled by the team up 342% since '12;
- Response times on contracts down from three weeks to 4 hours;
- The longest template cut by 104 pages;
- Completion times down from 17 weeks to 4 weeks.

The US experience is similar, and of course the ACC have been highlighting these through their Value Challenge for some time now⁴.

¹ Open University Research 09/09/15: [The Lawyer's In-House Attitudes Report](#)

² SRA Research 04/14: [The Role of In-House Solicitors](#); see in particular Professor Flood's literature review from p12.

³ Law Society Gazette 24/09/15: [Supermarket in-House team Revolutionises Contract Process](#)

⁴ ACC: [Small but Mighty 2015](#)

Even among smaller teams the following benchmarks are instructive:

- CSA, a global engineering firm, cut the fees for commercial and employment work in Germany by over 30%;
- Hyundai Motor Manufacturing Alabama reduced employment litigation by 20% and outside counsel spend cut by 48%;
- ZS Associates (a 6 person GC team) cut per hour costs to review and finalise contracts by 50% in 9 months.

Most commentators are looking at this from the perspective of how disruptive the impact on law firms can be. That is, frankly, beside the point. The buyer has had the whip hand here most noticeably since '08, but in effect since Dotcom and Y2K and in some industries well before then. The GC CxO role come of age some time ago.

When GCs lead

A couple of examples from the UK highlight businesses which illustrate how the tools at the disposal of GCs are transformational now.

Supply chain certification is an industry with its origins in the 1970s. When you take the noisy debates around disruptions to private practice out of the picture altogether some interesting legal services models become much clearer. **Achilles**⁵ is a business which had its roots in the Oil & Gas industry. Determining where the risk and responsibility lies makes the terms and conditions wrangles high complexity and higher risk. The GC solution was to certify the whole supply chain and to create communities of suppliers, front loading the compliance issues and facilitating the administration of the whole procurement process. A system conceived by GCs, designed by GCs, developed and delivered by GCs is now spreading well beyond its Nordic Oil & Gas homeland to a global £65m turnover business. A perfect example of the 'fence at the top of the cliff instead of the ambulance at the bottom', deploy this system and the legal T&C wrangles really are minimised. More importantly you decouple the size of the in-house legal team from the growth of the business, while freeing up talent to manage the really risky atypical items. The Achilles genius was also in getting the suppliers to pay for it. As a business model many suppliers resent it, but because it works, it stays. Such approaches are commonplace now in the public sector too. Extensive regulation and American Cyanamid tests have also driven the need to reinforce processes with robust systems.

In the UK, the Institute for Chartered Secretaries and Administrators (**ICSA**) has carved a very successful niche for itself commercially as the developers of Blueprint – a suite of software tools for entity management legally. Compliance lawyers becoming leading software developers? Under the umbrella of a non-profit making Institute? Hadn't these guys read the script? Lawyers shouldn't do that; but they did, do and in fact have done it exceptionally well. A business of just over £1m in sales 20 years ago, it is already a global £15m one growing well. In the UK, the Companies Registration Office collects £56.5m in fines for faulty compliance as opposed to only £55.6m from its registration activities (fees)⁶; **ICSA Software** keeps its members and users on the right side of this risk, but also delivers best of breed company secretarial empowerment.

GCs are consistently proving that they can not only police, but innovate. As is often the case it is entrepreneurs from the market who typify the best of the market and the above two examples are not alone. All the headlines in the market focus on firms like

⁵ Achilles: <http://www.achilles.com/en/about-achilles>

⁶ CRO Report & Accounts 2014/15

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/446159/Annual_Report_2014_15.pdf

Clearspire in the US or **Riverview** in the UK, and there are undoubtedly serious entrepreneurs investing many millions on the hunch that GC software and services budgets are not only significant now, but maturing. The drivers for this are an ever rising tide of regulation and uncertainty, but also a need to clear the decks as new priorities force automation on the old ones. Tech helps but it is not the only source of supply. Here's how Nicole Bradick, now Chief Strategy Officer at **Curo Legal** summarised it:⁷

“There are many phenomenal tools out there today that can help corporate counsel create value. There are data analytics products that are superlative at analyzing outside legal spend and benchmarking firm performance, helping in-house attorneys make better decisions about where and when to spend money on outside counsel and what firms are providing the best value. There are tools that help streamline the competitive bidding process, products that focus on knowledge management and contract management, and next-generation billing software that offers integrated analytics. There are predictive tools that help corporate counsel decide whether or not to pursue a claim. The list goes on and on.”

It does indeed, but it is not the same list as the usual Legal IT one of suppliers of technology to private practice. It is no accident that in London at least the backgrounds of the leadership team in **Axiom** shows that they are as likely to come from **Aon Hewitt**, **McKinsey** and industry as any magic circle law firms. A business that started with a quarter of a million in sales in 2007 – a fantastic case of timing – is now making over £31m in the UK alone very profitably. To quote Axiom: ‘We help in-house teams deliver more efficient and effective legal support and improve legal processes. But we don't practice law’⁸. In supply economics terms, they are certainly able to ‘follow the money’.

The significance of the above three firms as examples is simple. Law firms in the UK currently spend £486.9m pa in total⁹ on legal software. These three GC innovators alone have added £55.2 in sales between them since 2010. The force of the GC budget is clear.

HRD's face similar challenges

Just as GCs are already a long way from the policing role of old, HR Directors are also finding priorities changing. As a CEO I always found Robert Townsend's adage very apposite: ‘Big successful institutions aren't successful because of the way they operate, but in spite of it’¹⁰. Good HR teams were the oil in this turmoil, and it has meant they progressively move from ‘personnel manager’ to ‘organisational developer’. In the past they covered compliance risks from recruitment to exits and the ‘Prefects’ of the HR team used to be the Industrial Relations specialists. Not so now. The HRDs need to focus on board and brand protection and development, and for some time now much of the traditional role of HR has been seen as best delegated to line management¹¹. The Prefects now lie in ‘comp & ben’ and organisational development (OD).

Some commentators are mirroring the new approaches to legal services with a ‘new’ style of HR. This ‘newHR’ is characterised by 4 main strands: (a) tight labour markets, putting recruitment and organisational development top of the HR agenda; (b) increasing regulation; (c) more professionalization of many job roles; and (d) ethical awareness¹². Regulation remains a priority, but it is a qualitatively different entity to the other

⁷ GCResearchClub: [Interview with Nicole Bradick 21/10/14](#)

⁸ Axiom Law: <http://www.axiomlaw.co.uk/what-were-not/>

⁹ Legal Information Suppliers 1995-2015; RBP;

www.nedlegal.co.uk/strategy/paper.asp?sector=LRP&uid=413040071-5719172162012

¹⁰ Townsend, R: *Up The Organisation*; John Wiley

¹¹ *Journal of Workplace Learning*; de Jongh et al: HRD Tasks of First-level Managers

<http://www.emeraldinsight.com/doi/abs/10.1108/13665629910279518>

¹² CIPD: *Contemporary Issues in Human Resources Management 2011*; Stephen Taylor

challenges facing the newHR. A recent case at the Employment Appeal Tribunal (EAT) in the UK, *Ramphal v Department for Transport*,¹³ has shone some light on the role of HR in such contentious situations in the workplace. Whatever the rights or wrongs of the finding, in a world where delegation of HR roles is a necessity, drawing distinctions between ‘lobbying’ and ‘advice’ makes training onerous for personnel professionals, let alone legal ones. In this case the EAT found that HR had lobbied the manager during an investigation and the appeal against unfair dismissal was allowed. There comes a point where the complexity of regulation alone makes training, support and internal case management simply too expensive.

The logical solution would have been for HRDs to automate processes. They have spent decades perfecting the employee administration functions within **Oracle/PeopleSoft, SAP, Salesforce, IBM, Dynamics**, etc but somehow all of these systems touch on compliance and legal issues without fully addressing them. Even mid-market specialists’ systems (and especially payroll led ones) focus on tax compliance almost to the exclusion of employment law case management. ‘Self-service’ in legal compliance is clearly of a different order of complexity and HRDs are not well served by their industry’s software development community in this field (although excellently so in others).

In the UK the incidence of unionised labour is changing. Service industries now dominate and are typically non-unionised. The public sector and NHS ironically remain the focus of trades unions and their traditional role of curbing managerial excess is largely targeted at governmental or quasi-governmental bodies. As such, private sector HR rarely needs to maintain the full strength industrial relations (IR) teams that were common in the late 20th Century. IR has in effect become a project based activity and as such is often outsourced (predominantly to law firms).

So what used to be simply HRDs¹⁴ using GC teams as a ‘cost effective alternative’ to external lawyers or to help procure external services, is now ripe for a more wholesale transfer of responsibilities. The more worthwhile argument is which parts of the processes stay in house and why. Delegating legal compliance issues to line management can be done, but it requires a level of systems support and intervention significantly above the normal HR support on routine issues (especially post the *Ramphal* case, above). The traditional route to solving these issues was for HRDs (and their GCs) appointing law firm advisory support either through panels or on an agreement for a law firm to provide ‘day-to-day’ support. Initially some board members were supported thus, and increasingly support services have been cascaded to (senior) line management.

The interesting facet here is not that GCs are taking on more employment contract or case management work, but rather that they are not overjoyed or especially enthused about doing so. Anecdotal evidence suggests that many cover this area as the HRDs’ support systems were too unstructured in dealing with it. Enterprise software systems, and even dedicated HR administration and payroll ones have a parlous record in building (and especially sustaining) adequate case and matter management modules. Accordingly while very few GCs were claiming to have revolutionised staff policies and contracts, the **Hyundai** and **CSi** examples above show that increasingly it cannot be avoided. We have seen and heard apocryphal stories of the incidence of tribunals being reduced by 75%, so clearly the demand is there; but to what level?

Demand led research routinely suggests increases in spend by GCs on contractual (and potentially also employment law) services, but there is nothing explicit. Possibly because

¹³ UKEAT/0352/14/DA

¹⁴ Nabarro Research 2010: [From In-House Lawyer to Business Counsel](#)

this falls between internal budgets, another approach was needed to see what the trend in spend is (and with whom). If the HRDs were deprioritising employment contracts and their attendant risks, and if GCs were addressing them with outsourcing, there would be a growth market in this aspect of legal process outsourcing. Accordingly we have sought out every UK supplier to see what lessons there are.

The suppliers identified

Predominantly support comes from software and/or services led teams. Publishing solutions play a role, but in the case of publishers in particular revenues from employment law are static or (where they are growing) largely subsumed within the legal IT services below in so far as they are relevant to this issue. Legal IT and BPO software development especially have developed matter management and case management systems to such a level now that they are entering V3.0. Their V1.0 was some rather clunky time and fees practice management suites, V2.0 the integration of case and practice management systems with degrees of platform independence, CRM and DMS linking. V3.0 is extending this to mirroring and even restructuring the legal case process from event, through investigation to pleadings and court processes¹⁵. Surprisingly few of these law firm system specialists, however, focus effectively or at all on services for GCs. Software support comes largely from document automation specialists, but also a wide range of contract lifecycle management (CLM) specialist teams.

In 1995, this document automation subset of the Legal IT UK market was £7.1m in sales overall. In 2015 it is £109m and growing strongly. A relatively mature and growing legal IT market overall is led fairly and squarely by the gem of the document automation and GC-services/CLM one. Early days, but in some industries these services are already showing the same potential as **Achilles** did in removing the daily grind of bulk legal processing almost entirely. The fact that **Thomson Reuters** recently acquired **Business Integrity** (BI) is not of itself surprising. That it took them so long, is. **SAP** acquired **Ariba**¹⁶ and **IBM** bought **Emptoris**¹⁷ back in 2012. This is a new competitive boundary between these global giants and automating the procurement process has become a core part of all enterprise systems. There are now over 40 firms in the UK market alone offering generic and industry specific CLM and document automation solutions. **BI** was a team set up by some **Tarlo Lyons** lawyers, and they quickly found that the GC budgets were a more robust revenue stream than the law firms themselves. **Exari**, the partner of choice for Lexis, have a strong sectoral focus on banking and financial services, but also a broader approach to not just GCs, but Sales, IT, HR and procurement CxOs as well. The boundary in turn between this market and project management solutions has exercised two mid-market enterprise software players recently too. Trimble acquired **Amtech**¹⁸, and **AVEVA** bought **8over8**¹⁹ this year. **8over8**'s ProCon solution has migrated from CLM and project management to 'risk management software'. **Amtech**'s Luckins content and pricing solution for engineers and contractors delivers depth of understanding of the construction industry.

¹⁵ Competitive Dynamics in the Mid-market: UK Legal ITR 95-2020; RBP 2015:

<http://www.nedlegal.co.uk/strategypaper.asp?sector=LTS&uid=779541485-4339111582014>

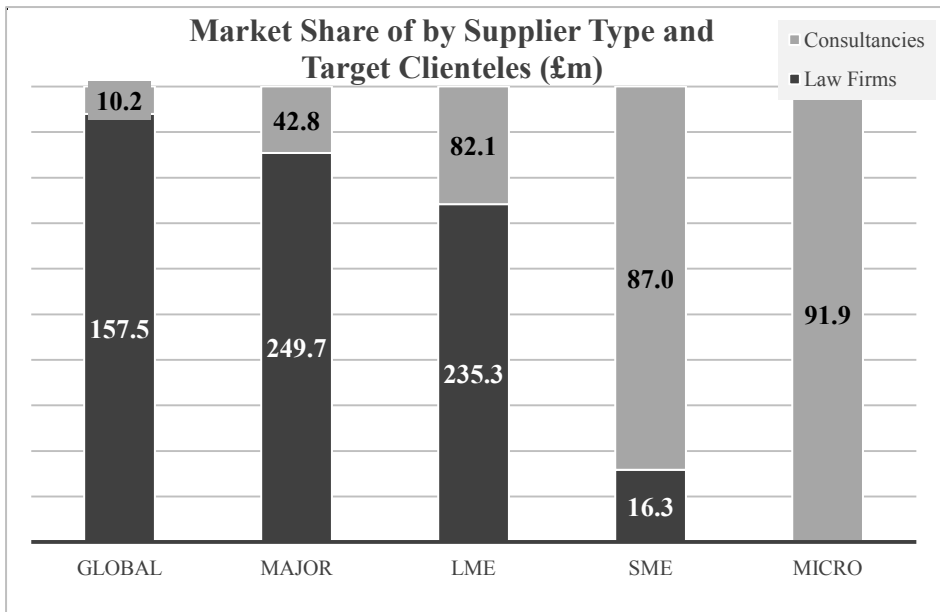
¹⁶ SAP News: global.sap.com/corporate-en/news.epx?PressID=19674

¹⁷ IBM News: www-03.ibm.com/press/us/en/pressrelease/36637.wss

¹⁸ Amtech News: mep.trimble.com/company/press-releases/trimble-acquires-uk-based-amtech-group-expand-its-global-presence-mechanical

¹⁹ 8over8 News: <http://www.8over8.com/press-releases/>

Perhaps equally surprising is that in the UK at least, SMEs have already got their employment regulatory compliance issues covered and covered well. They use a type of firm called ‘regulatory consultancy’, which has insurance ancestry but is effectively a hybrid legal and business process outsourcer. They are not a business model which needs the ABS structures and were in existence decades before that legal furore even started. Our analysis of the penetration of services by these firms compared to traditional law firms offering project support and ‘day-to-day’ employment advice, shows that they have almost entirely taken over the SME business population²⁰. We compared 202 such consultancies (only 26 of whom specialise exclusively on SMEs) with the top law firms (not all of whom only focus on global PLCs either). SMEs here are firms with sub 250 employees, and Micro ones employ fewer than 10 employees²¹. LME’s are those with 250-1000 employees, Majors have typically up to 10,000+ employees and are often public sector, multi-site enterprises. Listed and global firms are the final category, and while some will be smaller, their international perspective defines them.



The 169 law firms in the UK with sizeable teams dedicated to employment law deploy 2377 fee earners (of whom 798 were partners) with a combined turnover in employment law services of £658.9m in 2015. This is a polarising supply market, however. The ability to sustain high and elastic fee rates is shown by the fact that many of the top brands either simply don’t offer employment law services at all, or are quite candid about sub-contracting it to LPO teams. The global law firms have comparatively small employment law teams now, leaving the scale business to **Eversheds** and **Lewis Silkin** in the main. In so far as the magic circle do employment and HR it is brand protection and board risk focused. Global executive hiring and firing, deal structuring and incentive management appear to be the only area where price is elastic enough to attract these deep pockets of

²⁰ Competitive Dynamics in the UK Employment Law and Employee Relations Market 1995-2020; RBP 2015: <http://www.nedlegal.co.uk/strategypaper.asp?sector=REG&uid=651778420-17101319102015>

²¹ EU Company Size Definitions http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition/index_en.htm

expertise. Hourly rates fall sharply from these stellar heights to the ‘day-to-day’ employment law offerings where fixed price suites abound.

The investment initiative could well be with the consultancies now. Nine of the top 20 firms in UK employment law are not law firms. A compliance generalist firm, **Alcumus**, recently traded between VCs in the UK for £92m²², a multiple of over x4.2 annual revenue, whereas **Gateley plc/LLP**, the first listed law firm on the LSE trades at x1.8 annual sales currently²³. These consultancies are profitable high growth teams with focus and potential. Populated with and often run by solicitors, the fact that they have begun to penetrate the mid-market (LMEs and Major companies) is obviously a concern to law firms and many have reacted creatively accordingly. Few have been able to deploy the full potential of their business model, however. It is much more common for a managing partner or team leader to exit the partnership to set up a dedicated commercial operation, than it is for even the larger teams to sustain a cohesive LLP based commercial offering. There are two distinct models emerging, however. On the one hand there is the service led proposition which deploys gradations of PQE solicitor expertise as the key service differentiator, while for others the systems integration issue leads and the advisory back-up can be much lower profile. Some of the best examples are outlined below.

Adviserplus, the big sister to **Riverview Law** (and its main financial backer), came from an RPO stable (recruitment process outsourcing). They are one of the few teams who genuinely deal in seven figure client values, primarily because they are able to bridge the gap between where **PeopleSoft** or **SAP** leaves off and where the GC and HRD need the employment compliance process to be. They do this with extensive implementation protocols and ‘intelligent’ systems architecture which delivers manager centric technology. It is not a content heavy or a reactive advice service, but a fusion of the pre-emptive elements required to make incidences of employee relations failures diminish. A team led by several ex-HRDs²⁴, they are one of the fastest growing in the UK, latest results showing sales in excess of £14m after 10 years. Perhaps their most revealing benchmark is an average salary of £28k; they are investing heavily in new staff to cope with the growth ramp, but they do not need to match law firm salary levels to do so.

OutsetUK have been around a little longer and were shrewd in bringing their M&A competence with them from the legal world. TUPE and M&A work can be a key sales lead into employment law work generally, and they now deploy an Employment law team, a UKHSE (safety) one as well as HR and corporate/commercial experts. Integrated technology is a common theme among the regulatory consulting businesses and Outset even use it for off-line settlement agreements, etc. A fusion of law firm and HRD leaders²⁵, they have migrated towards the regulatory consulting business model much more than the law firm one, while targeting LME and Major clientele.

Then there’s **Abiss Cadres**, **rradar**, not to mention **3HR**, **Eledecks**, **Doyle Clayton**, **GQ Employment**, **Averta**, **Menzies Law**, **CM Murray** - there are now over two dozen law firms doing just employment law, and doing it creatively for LME and Mid-market clientele. Of the 164 firms with significant employment law teams, 38 have already launched specific fused legal and HR services and 72 are competing head to head with the regulatory consultancies for mid-market company business with tailored and fixed price packages. The regulatory consultancy brands may be less well known (you will only know them if they want to know you) but firms like **Adviserplus**, **Croner**, **ELAS**,

²² Inflexion Alcumus: www.inflexion.com/press-releases/inflexion-completes-92m-buyout-alcumus-group-ltd

²³ LSE: GTLY www.londonstockexchange.com/exchange/prices-and-markets/stocks/summary/company-summary/GB00BXB07J71GBGBXASQ1.html

²⁴ Adviserplus Executive Team: <http://www.adviserplus.com/management-team>

²⁵ Outset Leadership Team: <http://www.outsetuk.com/who-we-are/the-teams/>

Ellis Whittam, Judicium, KLC, LawatWork, Park City, VistaHR and many more all play a role. They are more numerous than the law firms and often more focussed; always marathon runners, not sprinters.

The lessons from the supply market

Firstly, there is no shortage of supply. Demand must be strong for so many individuals, small companies, partnerships and others to bet the shop on this future. Coming from HR consultancies, legal process outsourcing, business processing software and regulatory consultancy as well as law firms, it is the remaining law firms who are in fact the minority of suppliers now in this market (a sobering thought). People outside the legal profession (or refugees from it) appear to me more alive to the opportunities here than the law firms are. Market entry costs are not high. While **Riverview Law** in the UK has spent over £7m in 3 years to make their mark, **Axiom** and **Halebury** have made significant UK impacts with significantly less. Most mid-market focused firms are able to invest considerably less than £1m over 3-5 years to achieve critical mass. Compared to pure technology markets and other legal services sectors, this is an unusually receptive environment. In Professor Christensen's terms²⁶, the very top law firm brands are choosing flight, not fight; they have better options elsewhere. The fight is being carried on, however, by a large number of firms from both outside the law firm market and from lower cost base regulatory consultancies. To be clear, these are not the Rockets and Zooms of low cost web platforms; far from it. They have been around for decades, they don't confuse 'consumers' with 'SMEs' and they deliver a service that offers a 'get-out-of-jail-free' proposition that 'free' advice simply can't match.

Secondly, software in and of itself is not the (disruptive) silver bullet solution. It is a vital component for long term success, but not essential even on start-up when seeking to achieve critical mass. Service led teams get above £5m in sales much quicker than software only ones, but they do integrate software from when they reach £1-2m aggressively. The development costs no longer need to be huge, although it is the design which takes time (and time is money). Finding the system which makes data entry accurate and automatable is the key; and this often requires detailed experience in protocols for **SAP, Oracle/PeopleSoft, Salesforce, IBM, Northgate, ADP, Centrefile**, etc. The technology behind document automation and document management systems is mature and readily available. Case and matter management systems which go all the way to the door of the court and beyond are already in place. Diary and asset management systems are plentiful. Designing the components of each of these into an intelligent platform yielding real prevention, handling and business intelligence is the name of the game – the V5.0 of compliance software.

Thirdly, law firms are polarising and in many cases not seeking 'day-to-day' employment law work because they find much better revenue opportunities elsewhere. Just over half of the law firm revenue opportunity among larger and global clients relates to M&A transactional led work, comp & ben, pensions and remuneration design work, and employee/service contract-led brand reputation litigation. Only a handful try to ride both horses. The lessons for innovators facing this disruption is that this typically only works if you set up discrete business units. We coined the phrase 'the competitor who kills you, doesn't look like you' and law firms are realising this slowly. For GCs, however, the Christensen²⁷ lessons mean they should be actively looking beyond their traditional supply panels, and some already are; Samsung and Sainsbury are using them already.

²⁶ Christensen; *The Innovators Dilemma*; HBR 1997.

²⁷ Christensen; *The Innovators' Solution*; HBR 2003.

Fourthly, lawyers are an important 'component', and often teams led by lawyers do better than most, but they are not the definitive component, or even first among equals. The single most successful type of entrepreneur in this environment is the GC or ex-GC, followed closely by those ex-partners from law firms, often with some GC experience as well, who have found an HR 'wing-man' (or more typically woman).

The service priorities

In the UK market we analysed the 72 law firms doing something quite interesting or special in employment law services – typically with a focus directly on in-company purchasers (GCs and HRDs) and process improvement for them. There are another 176 specialist consultancies eager to win the GC/HRD business and actively pursuing it also. In terms of the offerings, HRDs and GCs both want price certainty, and a simple range of issues covered. They boil down to five factors: Advice, 'Proof', Reputation, Capacity and Effectiveness.

Pricing: All offer fixed pricing, and virtually all mean it. There is a world of difference between a 'retainer', some pre-paid 15 minutes advisory slots, and the all-you-can-eat fixed fee solutions offered by these specialists now. A key determinant of whether the supplier is genuinely sharing the risk is whether they see advice work as pivotal to the service. If they do, they want advice to be used frequently and well, and they want no barriers to its take up. This is the antithesis to the price per hour mentality. Service level agreements are complex, and what the service does not cover is often more revealing than what it does. Most 'day-to-day' SLAs typically expressly exclude Trades Union/industrial relations work, TUPE, M&A, Board and senior management level contract support, for example, either because that is retained for external or internal specialists. This is key. Handling the rise of day-to-day work complexity does not mean bringing it all back in house. Outsourcing the low value risks is increasingly common and the market to support that is vibrant.

Advice: often portrayed initially as a 'dedicated advisor' and/or of a certain calibre in terms of solicitor or HR specialist, PQE status, etc, in reality people want competence and no hand-offs, and they know when they're being short changed. The good teams have context sensitive advice and back-up in terms of documentation, precedents and advisory checklists, etc as it is in their interests to get the line managers up to speed. Retainers are typically to advise the HR staff which are care-taking the employee relations brief (and occasionally nominated senior management). Increasingly the services here are fully distributed line manager support services. Such self-service approaches can have graduated support levels for both the risk profiles of the site, the level of manager, their history and the issues in play. The business model can be heavily technology led; more typically it is a targeted deployment of good quality IR and 5-10 year PQE solicitors heavily tech supported. Demand for both is growing, and if anything the HR advice line retainer is now considered a very 'old-school' approach.

Proof: Compliance systems reverse the burden of proof from day 1. They start with an obsessive focus on ensuring both speed and accuracy of evidence collation. Borne of hard lessons in the insurance industry typically, they deliver reduced time, cost and exposure through pre-emptive processes. More usually delivered through a twin track new contract or renewal approach than a big bang, within a short timescale all employment contracting can be captured and secured and exceptions and risks profiled. GCs have the tools to capture and cascade these processes in distributed document management systems (DMS). The output may be a DMS, but the point is getting the ducks in a row. Most employment disputes are lost through procedural irregularity; minimising this is key. Private practice finds this uniquely difficult conceptually; their competitors really don't.

Reputation: GCs and HRDs have the same focus here, but GCs manage the deployment of litigators typically. Dispute resolution is a competence taken for granted among law firms, but it is also a key competence for most of the regulatory consulting teams now. In some cases their expertise will surpass that of generalist law firms as they are often dealing with many more cases nationwide and can have a better understanding of tribunal styles, personnel and local tactics accordingly. The qualitative difference between the new suppliers and the traditional law firm model, however, is that they now promise or stipulate an expected reduction in the incidence of cases up front, and should certainly be able to demonstrate it with reference clients. Getting to Employment Appeal Tribunal or higher is perceived as ‘a bad thing’, and the emphasis on ‘proof’ is a key distinction.

Capacity: Not to be confused with simple scale, in the past this requirement was determined by the ability to handle complex cases. Now it is the ability to specialise in the technology support required, as well as the investigation, document management and case management disciplines involved. For HRDs (as well as GCs) the issue is an unwillingness to harness the size of the employee relations team to the growth of the business. Outsourcers enable this decoupling to work. Simply doing your employment law work cheaper is not the solution, however. It has to be more targeted, technology driven and preventative; that typically makes it ‘better’ and ‘quicker’, ergo cheaper.

Effectiveness: As ever the Gordian knot here is the ability to capture and integrate available data and documentation. Big bangs can work, but carry major risks which can be problematic when risk reduction is the driver. The decision to deploy outsourcers is usually driven by a compliance failure (or near miss), followed by a realisation that even if the technology fix is deployed, sustaining it will be too costly. The mantra is ‘fix and stay fixed’. This is hard to achieve with systems which are not embedded or at arm’s length in any sense. Compliance outsourcers here now put their technology people front and centre every bit as much as the founders, most experienced lawyers or best HR talent.

Conclusion

The initial hypothesis was that GCs and HRDs have a synchronicity in aims. Historically there has been an internal client and adviser relationship on employment law issues. Both teams share the reputational protection motives and need to focus their internal resources on the higher value brand and leadership protection matters. HRDs typically do not have the requirement for significant in-house industrial or employee relations specialists as much as in the past and maintaining in-house employee protection support linked to the scale of the business is increasingly a costly distraction. The enterprise software industry has been reluctant to tackle legal matter and process management, although it has been building services recently in procurement and supply chain management systems. Legal software suppliers have developed contract and document automation solutions alongside a range of legal IT and consulting teams deploying case, matter and BPO software solutions. The market of suppliers (typically outsourcing led) providing solutions to GCs and HRDs in ‘day-to day’ employment law is well hidden, but vibrant and growing strongly. Suppliers come from law firms and regulatory consultancies in the main, but they meet a demand from GCs and HRDs to outsource ‘day-to-day’ employee relations which enables them to focus on brand protection and Board level work. While there are casualties among the disruptors to law firm business models, there are none (so far) among regulatory consulting and compliance outsourcing services; demand is robust.

That demand in the UK is already a significant part of the £973m employment law services market. Consultancies alone in the mid-market have £124.9m and rising, while of the existing law firms making £485m in sales to in the mid-market, 44% of those firms are also now actively investing in ‘disruptive’ innovations (typically ‘day-to-day’ fixed fee employment law solutions). A conservative estimate places the amount of HRD and

GC spend on outsourced employee relations at around the quarter of a billion mark already. By any measure that is a significant market move that all GCs and HRDs should pay attention to.

By selecting the right partner GCs and HRDs are clearly stronger together. Arguably they should include the more mundane aspects of the GRC and especially HSE remits as well, where many of the same issues and solutions apply. GCs can assess the technology platforms and tools on offer, and the legal credibility of the team offering outsourcing; HRDs can assess the data integration, self-service and SLA deliverables. The supplier is currently unlikely to be a large law firm, but very likely to be a creative boutique. It is just as likely to be a non-law firm compliance specialist, and it will probably be a technology-solution second, and an integrated-service one first. GCs can then ensure that all employment contracts are captured in as compliant a way as NDAs, all employee relations risks pre-empted and case managed professionally, and the internal resource to manage this is decoupled from the growth of the firm, while simultaneously reducing the incidence of compliance events by an order of magnitude. It is a goal worth pursuing actively; the technology is in place and the quality and choice of suppliers high and rising.

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