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Tips for managing your
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Panel: Business mindset
How to become a trusted
adviser for high-value legal work

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advise Roche Products (UK)'

Panel: Business mindset

Many lawyers are missing out on high-value instructions by failing to demonstrate commercial awareness, a *Managing Partner* panel has found

General counsel are increasingly asking law firms to demonstrate commercial awareness when working with them. But, what does that really mean? Manju Manglani spoke with Adrian Furner and Ben Kent about how commercially-astute lawyers can become trusted advisors and business partners to multinational corporations.



Manju: What does the term 'commercial awareness' mean to you?



Adrian: From the client perspective, in its simplistic terms it is about providing advice and services that help the client

to deliver their desired outcomes and maximise value.



Ben: Lawyers are very analytical and focused on driving forward client results, but they are often not good at seeing the bigger picture. When I was working as a lawyer on an M&A deal, the focus was on 'let's get the deal and sign the documents'. But, the success or failure of an M&A deal is much more about 'how do we integrate the two businesses, how do we deal with the people issues' – it is everything that happens after the documentation. And, often, the way that lawyers work doesn't really facilitate that.

What we have also seen from our research is that general counsel have

become more influential within corporates and have taken on a more commercial role.¹ But, there is a frustration with external law firms that they are still delivering black-letter law advice.



Manju: Why do you think that's the case? Is it because of their training, risk aversion, firm culture or something else?



Ben: At its heart, there is almost a mindset issue about 'what is my role as an advisor?' There's a sense that 'my role is to highlight all of the risks there could be', but not necessarily to highlight the opportunities to calibrate those risks.

PANEL MEMBERS



MANJU MANGLANI (CHAIR)

Manju Manglani has 15 years' experience as a journalist and editor, and has specialised in creating expert content for the global legal market since 2003. She became editor of *Managing Partner* magazine in April 2010 and has led its development into a leading global resource on law firm management. Manju previously managed Oxford University Press' publications on legal practice management, arbitration and energy law for practitioners. Prior to that, she managed the Asia Law & Practice division at Euromoney and was editor of *Asialaw* magazine, whose audience was corporate counsel in the Asia-Pacific region.



BEN KENT

Ben Kent started his career as a lawyer at global law firm Freshfields Bruckhaus Deringer; he now provides research, consultancy and training to professional service firms. For the past 20 years, Ben has been conducting research into the legal profession, including interviews with corporate counsel about what they want from law firms. In 2001, Ben set up Meridian West, which has advised many of the top global law and accountancy firms, including PwC, Allen & Overy, KPMG, Freshfields, DLA Piper and Shearman & Sterling. Ben developed the 'seven habits of commerciality' framework with Andy Smith and Adrian Furner.



ADRIAN FURNER

Adrian has more than 25 years' experience in designing, implementing and delivering complex commercial transactions through novel business models. Prior to founding Kommercialize, Adrian held senior commercial and operational roles within BAE Systems, where he successfully developed deals across a wide variety of complex, high-value opportunities. He brings a client perspective to the topic of commerciality, having commissioned and worked with a wide range of professional advisors (including law firms). Adrian is a former board member and honorary fellow of the International Association for Contract and Commercial Management.

There is a real danger of lawyers being uncomfortable with giving imperfect information. Never wanting to make a decision is a danger, as is lack of confidence with stepping outside their comfort zone. Successful lawyers have got to where they are after being brilliant at university and knowing the law better than anyone else, and they are really uncomfortable talking outside of that and around business issues where they might not be right.

This issue is being exacerbated by regulatory changes; law firms worry about the risks they might be taking on by giving clear business advice. The way in which they hire people is another challenge, as they often hire people who don't have much industry experience; it is quite a narrow gene pool.

“Law firms worry about the risks they might be taking on by giving clear business advice”



Adrian: I think you made an interesting point around imperfect information. There is an art to knowing when it is optimum to make a decision. If you make it too early, you are perhaps missing something; if you make it too late, you will have perhaps missed an opportunity. And this is where role models in decision making really help to get that right. They quickly identify which decisions they can make so that they can spend time on

the decisions that really require intellectual effort. Consciously thinking about decision making is very important.

Value to clients



Manju: A head of legal at a *Fortune 500* company recently told me that all they want is a one-page advice, or even a one-sentence advice – ‘go or no go, and here is why’ – but that it is often difficult to obtain this from a law firm. Why do you think lawyers struggle to give this type of advice?



Ben: It is really hard, and I think it has gotten worse – it's coming up more and more in our research.² Part of that is driven by overspecialisation in law firms. Back in the

day, there used to be a general corporate lawyer who had client-wide experience in a range of different business disciplines. Nowadays, with a deeper focus on specialisation, it is hard to get that overview. Instead, commercially-minded lawyers are moving in-house! The timesheet culture in law firms is also very unhelpful because it means that lawyers don't pick up their phones to check in with clients, they don't visit their clients and they don't invest in understanding their clients.

A VP in an oil and gas business who was originally an investment banker told me that investment bankers are much more commercial than lawyers. In law firms, no one actually sits down and thinks about what is driving the deal. What's worse, when lawyers do give advice, it is like they are delivering tablets of stone. They give advice, but it is unhelpful to driving the deal forward and they are not flexible in thinking their way around it.



Adrian: Lawyers tend to be intellectually competitive, which often leads to a 'dash to draft', rather than stepping back and asking 'what does the client want, what is the context, what is the bigger picture?' before moving in to focus on the details. A lot of advice that law firms provide is about supporting the client in making a decision. As a lawyer, you need to put your advice in that context and think 'if I was the client, could I make the decision based on what I am writing to them?'



Manju: Also, clients may not understand the complex legal issues as well as lawyers do, particularly when the advice is in a specialist area.



Adrian: Yes. And the client is trying to bring together probably five or more pieces of advice on a big transaction which may or may not be consistent – they can even be conflicting. Providing practical solutions sometimes means interacting with other advisors to finesse the advice into a systems-level solution for the client.

When you are in the situation of doing a deal like that where you have multiple advisors, quite often you will see one or two of them step above the rest and take that more systems-level pragmatic commercial

business view, and they do stand out. Those are the ones clients go back to when they are trying to frame a solution. Firms which differentiate themselves by being more commercial can become trusted advisors.

And clients do differentiate the value they ascribe to those two roles. They still need compliance advice, but is it adding as much value as the solution-developer role? There is a real opportunity for law firms to understand what commerciality means for each of their clients, because each client will have a different view depending on their context. If they understand what the client is looking for, they can assign teams that are the best fit for those different roles.

The better you can resource manage and put the right team on the right opportunity, the more the client will respect and value that, which again is about commerciality. But you have to sit down and have that conversation with your client about 'what does commerciality mean to you in this situation?' Because it changes, depending on the context.

“Firms which differentiate themselves by being more commercial can become trusted advisors”

Professional liability



Manju: The ability to be empathetic towards clients and to have a business mindset (rather than a purely legal mindset) is clearly important. But, there are also risks for lawyers to consider in giving directive advice, particularly professional liability risks. How should these be managed?



Ben: Lawyers think about professional liability too much. They think it is a big barrier, but can you think of many instances where law firms have been sued for delivering commercial advice? I know the guy who runs the professional services division at one of the insurers and he said that big law firms hardly ever get sued – it is usually high street practices because they're dealing with consumers.

It is a hypothetical risk rather than a real one. You also need to be clear with the client about what is it that you are delivering. If they have said 'I want you to assess all these different risks and for me to be absolutely clear on them', that's one thing, but if you are offering an opinion, and saying 'look, this is just my opinion on what you should do', then you have the client's permission, if you like, to be directive.

Clients also have a role in this, in giving their lawyers permission to be commercial. Because you can't have your cake and eat it. You can't have the right to sue Linklaters because they give you what you want. So, you need to be able to give those permissions and say 'look, I want your opinion on this, what would you do in this instance?' I think that, as long as law firms top-and-tail their advice with those kinds of caveats, they are probably okay.



Adrian: It comes back to my previous point about having that conversation with your client and differentiating the kind of advice they want to buy, and then giving them different pricing models for different kinds of advice, rather than treating it all as one package. It is about being commercial and differentiating different pieces of work, putting different terms and conditions on the basics around them, and putting different teams on them with the right skill sets.

Because, in reality, when you sit down and you look at the risks that are involved with giving commercial advice, it is normally far removed from the client actually doing something about it. The client is always or in most cases in the driving seat – they make the final decision. People often look at risk as what is in the contract, not at the other non-contractual components that go around it.

Skills needed



Manju: The next issue to consider is whether lawyers have the skills and competencies to provide truly commercial advice. Which skills should law firms look to develop to ensure they can meet clients' needs?



Adrian: Law firms need to develop people who have the skills and competencies to learn from the past but also to be innovative.

A lot of the way the law has been built up, particularly in the UK, is around precedents and looking to the past for a way forward to the future. Whereas when you work with businesses, increasingly in the interconnected, more complex world, they don't have the luxury of precedents.

If you look at some challenging areas the legal sector has at the moment, we have autonomous vehicles, cloud computing and data protection issues. All of these things are not going to be solved necessarily by the precedents that have been laid out till today. We are at an interesting tipping point in professional services, particularly law and accountancy, where the balance needs to be thought about.

Understanding your client's context and then delivering practical solutions require people to invest in different skill sets which are complementary to the technical professional skills sets which they are traditionally used to. There is a concept called 'design thinking' which is gaining increasing prominence among corporates.³ It is about learning from the process of design to create a more systematic way to create robust business solutions. It is about immersing yourself in your client's world and really understanding what is going on, not just in the legal context but in the wider business context, to create a solution.



Manju: This is especially true with advances in artificial intelligence, where lawyers can be substantially outperformed on technical work by cognitive computing.⁴ Managing partners need to think about how their lawyers are going to differentiate their services in the longer term, particularly when artificial intelligence becomes mainstream and access to the technology no longer gives them a competitive advantage.⁵



Ben: Definitely. I was speaking with a general counsel recently who said there are some firms which are pushing ahead with building commercial awareness in lawyers as a differentiating factor. Reed Smith has implemented a programme where all their trainees are seconded to clients – and not seconded to the legal department; these are secondments to the business teams to apply the learning from their business Masters programme to a client's commercial issues. This sets the mindset from an early

stage as to what it is to be a lawyer.



Manju: Yes, it is a business role, not a technical role.



Ben: Yes, it is a business role. Then you have firms like RPC which have a very good knowledge-management system and creates the kind of culture where entrepreneurialism is encouraged.



Adrian: I have also seen firms like Bird & Bird doing more hires back in from industry, particularly in their aviation, defence and security practice. They have been bringing GCs back in from airlines into their team, which gives them a real insight how their clients tick, how their businesses work. Firms that accept that there is a two-way transfer of knowledge through people moving between their clients and themselves can really unlock opportunities. You then need to marry that up with encouraging secondments and getting them to be seen as a positive part of career progression.

If you can address skills development at these three points in your firm, you can accelerate your move to be more commercial, which you can then market to clients. From the client's perspective, that is a real differentiator, if you have found a firm that truly understands the world you sit in and is able to provide succinct advice or options in a business context, not just the legal aspects.



Ben: The other area where there is a future for a lot of law firms is in hiring non-lawyers. The Big Four accountancy firms are coming into the legal sector and blending financial, compliance and legal skills in quite an exciting way. They are also bringing in people who have developed and run their own organisations. This gives them a different perspective on risk, enabling them to can take advantage of different opportunities and manage them in a way that doesn't take on additional risk.

I think that combination of skills could be very, very powerful for law firms. Law firms which allow their people to run their own business outside of the practice or to develop business skills independently really enhance their role in the firm.



Manju: There does seem to be a move towards more portfolio careers.⁶ Do you think these enable lawyers to be more commercial in the way they work with clients?



Ben: I think so; opening up the gene pool is quite important. There is going to be a greater emergence of contract-lawyer type solutions, which is very good for building commercial awareness, because that means you're sitting at the client's premises, you're right there.⁷

NewLaw vs OldLaw



Manju: Which types of legal service providers do you think are more commercial in the way they provide advice? Are NewLaw firms better than traditional law firms at this?



Ben: Going forward, I think that the firms which nail it will be the specialist firms, rather than the NewLaw firms. Reed Smith has been successful, RPC has been successful, they have really built those kinds of trusted-advisor relationships.

The more-for-less challenge in the legal sector is not going to go away. So you have to make a choice: am I going to compete on price, or am I going to compete on the value I can deliver to clients? Technical excellence is not the basis for competition. It has to be commerciality – 'we help you deliver your results better than anyone else'. That's going to be the impetus, because no traditional law firm wants to compete on price.



Manju: But, equally, there are NewLaw firms which are saying 'we can do it better, we can do it cheaper, we can give you better value, we can be more proactive'.⁸ Do you agree with that?



Ben: I think they can certainly compete. But there are different types of NewLaw offerings, some are competing based on price certainty. There are others which are formed from top partners coming out of the bigger law firms who have niche industry expertise, such as in technology – they are the ones to watch in terms of commerciality. I think that's part of reason why they have been so successful.



Adrian: There is certainly no reason why the larger law firms can't adjust their model to leverage what they have achieved today to move forward to a different business model. Equally, I think the challenge around the NewLaw firms is that it is easier when you start from a blank sheet of paper to deliver something that is more efficient or more effective.

But I haven't seen evidence as to whether the ability to deliver positive client outcomes is any better from the NewLaw firms versus traditional law firms. When you get into the trusted-advisor space, it is that ability to deliver positive outcomes for your clients which is really important and a differentiator. And that is different from efficiency and effectiveness.

It depends on the firm as to whether they are more or less commercial, you can't say all NewLaw firms are more commercial than perhaps the more traditional firms. There are large law firms that are adjusting their business model to create, offshore and onshore, more efficient models for delivering their services. Some are more successful than others, and there are different models being experimented with.

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Tips for lawyers



Manju: Clearly, it's up to each lawyer – regardless of the firm they work in – to continually find ways to ensure client satisfaction with their work. How would you suggest lawyers take a more commercial approach to client services today?



Adrian: It is really important to understand what commerciality means in the context of a specific opportunity when working with a particular client on a particular project. This is about understanding the client context better – the business and client environment, the economic environment

and the people. Once you understand the client context, it is about delivering impact for your client by agreeing the scope of work with the client, communicating with impact and delivering a practical solution.



Ben: In an ideal world, as a lawyer you'd have business experience, you'd have an MBA. But, there are some very simple things people would do. One is, go and visit your client often, meet them for a coffee and ask them about their business. I can't tell you how often clients have said about their lawyers 'it would be terrific if we could just meet up and have a conversation'.



Manju: One general counsel told me he was charged for the time a lawyer spent in the taxi to visit him. The client was also invited to lunch by a law firm to get feedback on a transaction and was then charged for the lawyer's time and meal. It was an accident which was put right, but do you think that firm was instructed again?



Ben: That's interesting. RPC's lawyers are positively encouraged to pick up the telephone and talk to clients. That simple thing makes a big difference.

The second thing I would do is, whenever you get a new piece of work in, spend much more time understanding what is really driving that deal and much more time talking to the client about that.

The third area is to never just deliver a letter of advice. You need to be much more open to discussing different options with the client and make it a much more informal, collaborative way of working.

The final top simple thing to do is, whenever you are delivering a contract or letter of advice to a client, ask yourself 'would my grandmother understand this?' It might be understood by the GC, but it is also going to be read by the CEO, who isn't a lawyer.

As part of that, an increasing number of more professional service firms are using visuals and infographics in communicating advice, to make contracts understandable to normal people. Most contract breaches don't come from poor drafting, they come from people not understanding what is in the contract and therefore not doing it. Visuals help to make the key points clear.

“You need to be much more open to discussing different options with the client and make it a much more informal, collaborative way of working”



Adrian: Also important is understanding that continuous professional development is not just about technical competence, it is about commerciality and the ability to understand your clients, which becomes increasingly important as you move up in terms of experience. Consciously thinking about CPD much wider is an important factor – being commercial does not have a shelf life, the world moves on and you have to keep up with it. **mp**

Manju Manglani is editor of Managing Partner (www.managingpartner.com)

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