

How much?

over priced,
over paid &
over budget?

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This publication is the second in the Listening to Clients series following the widely acclaimed "*Why don't law firms listen*" published in November 2006 and available at www.law-now.com

Executive summary

When we initially sat down to plan this piece of research, it's fair to say that some of the results we predicted were different to those we actually got. First of all, we had assumed that General Counsel in FTSE-250 companies would be under pressure to reduce their costs, as other studies had already suggested. But it didn't. In fact less than 5% of our sample have a specific target by which to reduce their legal expenditure. Instead, our respondents' focus was on controlling and managing cost *increases*.

A number of market forces lie behind this counterintuitive finding, such as the rising cost of salaries (which has a knock-on effect on fee rates), the persistence of hourly charging in the legal industry (which makes budgeting nigh on impossible for everyone) and each client's expanding interests both at home and abroad during a period of economic growth. It seems that most companies have accepted that, given these factors, it does not make commercial sense to curtail their legal expenditure unduly.

Having said that, 46% of our respondents testify to a broader drive across their businesses to reduce costs generally. And, while over 40% feel that law firms have responded positively to this, few can give examples of proactive behaviour by lawyers to support it. Not surprisingly, the senior in-house lawyers in this study have inevitably expressed some less than complimentary opinions about the lack of dynamism in law firms adapting to the clients' needs. Broadly speaking, the legal industry is still not doing enough to help General Counsel manage costs.

Project management

At the centre of clients' frustrations is the continued inability of top-level law firms to deliver a consistently high standard of project management. Our research indicated that improving project management will lead to better cost efficiency and fee transparency. This conclusion was not a surprise to us, as it has been widely commented upon in other research, but it does serve as a timely reminder that the reaction of law firms has been insufficient thus far.

Project management is one area in which the legal industry can react and has already begun to do so according to the interviewees. More difficult will be getting law firms to move away from hourly billing, which the respondents rated as the most important factor to them in cost control and reduction. The main complaint being that it offers no reflection of value

and provides no incentive to be cost effective. Even harder to control is the current inflated market rate for associates' salaries, fuelled by the so-called 'war for talent', which provoked strong reactions from the interviewees.

Unfortunately, there is no direct short-term solution to these issues. However, improving project management, with proper resource planning and task scheduling, along with better communication, would reduce the impact on legal costs.

Multi-jurisdictional legal services

In response to our other questions, it is interesting to note that 60% of our respondents have either informal panel arrangements or no panel at all, which runs contrary to our expectations. We had also anticipated that any law firm with a full service multi-jurisdictional offering would be attractive in the current climate for cost control, but the evidence did not support this. Less than 40% agreed with the basic idea that this model would help, and more than 40% actively disagreed. The reason is that they believe law firms still struggle to provide consistency of service. Just as with any international service brand, law firms must deliver harmonised service standards across borders and a cohesive and consistent brand experience before clients will consider renouncing their prerogative to 'pick and choose' locally.

Single adviser and panels

Finally, the debate over the single adviser arrangement for both Tyco and DuPont caused much discussion and interest but there were very few who thought they would ever really consider putting it into practice. Panels can be reduced to very small numbers but almost all the respondents feel they need a range of expertise and options not least because of conflict. Putting all their eggs in one basket was a dangerous strategy to pursue.

In conclusion, the legal industry has become better at listening but is still failing to act on what it hears. Clients remain frustrated over the same issues and law firms have been painfully slow to react. General Counsel have been charged with controlling legal expenditure rather than reducing it, and this will present opportunities to firms which act proactively.

A genuine commitment to improving project management is the most direct and most effective way to address their issues, at this time.

Introduction

CMS Cameron McKenna commissioned Nisus Consulting to undertake a piece of qualitative research that explored the broad area of cost management in private practice and how clients manage their panel arrangements.

The research was in two parts. In the first we conducted 20 telephone interviews among large international corporates, mostly FTSE-100 companies. This gave us the depth of views and why GCs see things the way they do. This was then supplemented with 37 on-line responses to bring some additional numbers to the sample.

The research was carried out in September and October 2007.

Results

Question 1

Our hypothesis to start was that there is increasing pressure on GCs to reduce legal expenditure. However, our first question soon found in speaking to respondents that while there was a general drive to reduce costs across the business, only rarely was there a specific objective to do so in the legal department with a majority of respondents reporting that they were trying to manage cost inflation rather than tie it down or reduce expenditure.

“What we're trying to do is packaging out ordinary common all garden work. The overall target isn't going to go down at all. On bread and butter expenditure it may even go up to free up the department to do bigger, juicier added value things. We are trying to be lean and mean without any target for reduction at the moment.”

“No target as such. Very tight cost control system in place for three years now. Don't operate on targeted reduction of legal spend. We take a zero based budgeting approach each year.”

Having ascertained that there was not a universal drive to reduce costs, we amended the question in the on-line study to ask respondents to tick which situation described their company's current position on legal cost management.

As a whole, internally and externally, which of the following options best represents your current situation with regard to reducing legal expenditure?

	No	%
Base	37	100%
No reply	1	3%
No specific actions being taken to reduce costs	4	11%
Broader drive across the company generally to reduce costs	17	46%
Specific objective within the legal department to reduce costs by	2	5%
General objective within legal to reduce costs, but no explicit target	13	35%

“ Frankly I'd love to be able to reduce it but I'm trying to manage the increase. My objective is not to see a net increase.”

Question 2

To what extent do you agree with the following statement: "In general, our legal advisors have responded constructively and positively in our drive to reduce costs and/or be more efficient".

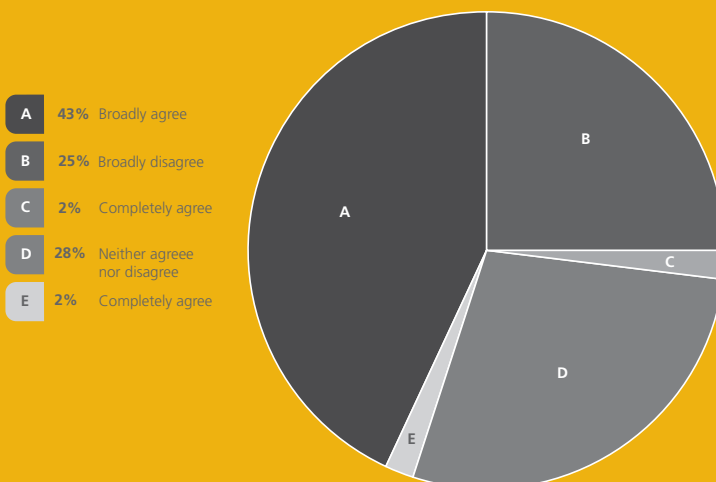
Perhaps surprisingly the largest response was for 'Broadly agree', representing 40% of our combined telephone and on-line sample. However, almost 9/10 of our respondents were covered by the 'Broadly agree', 'Neither agree nor disagree' and 'Broadly disagree' options.

On the one hand most respondents acknowledge that firms have responded constructively, but on the other the inflation in assistants' salaries is inevitably pushing costs up. No-one has an answer for this and the last comment below of it being a "vicious cycle" sums it up.

"In terms of dealing with costs there has been a good response across the board but whether they are more efficient I am not so sure, I think they throw resource at a project and bump up the bill. I think they work more effectively on litigation. Competition and court procedure has driven this."

"The feeling I get from the world at large is that fees are obscene. There's a dynamic between how firms bill - partners are looking for a PEP figure per year; in addition there's assistants' salaries going through the roof. It's not sustainable."

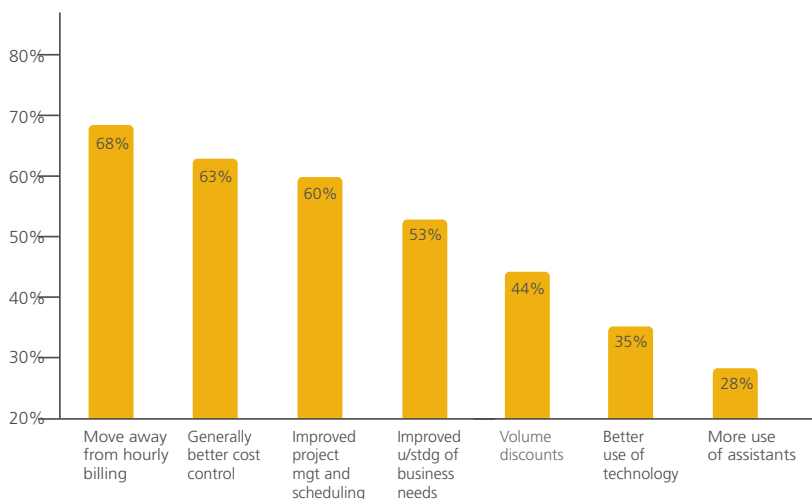
"I'd say everyone is trying but we're locked into a mad world on salaries. Firms are having to pay more money so something has to give - working more billable hours and fees going up. Nobody's happy, it's a vicious cycle."



Question 3

Given the pressures to reduce legal costs, which factors from the following list would you like private practice firms to pursue?

It is important to note here that respondents did not have to score each factor but simply select those factors they thought were important in reducing costs. This has an important effect on the result. Rather than looking at mean scores, we are interested in how many votes each factor received. Of the seven factors offered 'Moving away from hourly billing' came out on top. Most respondents in any study will acknowledge that private practice has come a long way in recent years in terms of offering fixed fees, which makes it all the more surprising that this factor came out ahead of the six others. 'Better cost control' and 'Improved project management' might have been anticipated in the context of improving efficiencies. Project management was almost universally acclaimed in the telephone sample and those who did not select it said it was because they felt their firms were already strong in project management. One respondent noted that all these factors were "tweaking round the edges" next to the main issue which was assistants' salaries.

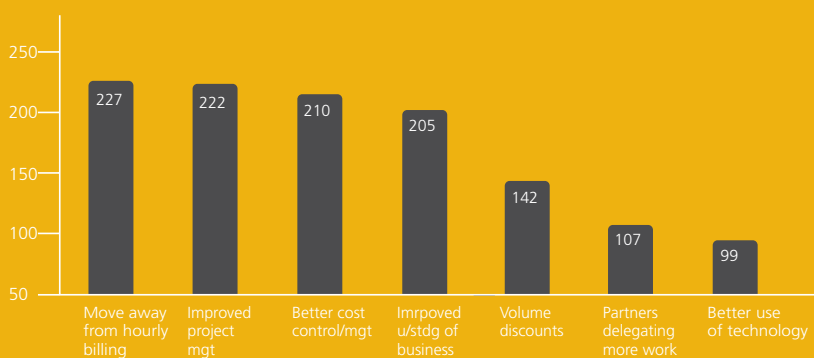


Question 4

Having ascertained which factors were important to respondents, they were then required to put only those they selected into a rank order – in effect giving each factor a weighting. Out of the seven factors the same four came out at the top, although 'Improved project management' went ahead of 'Better cost control' on this measure.

"Improved project management is by far the most important thing [to me]. A lot of time is wasted when assignments are not understood or too many people are assigned [to the project]. It is important to track project's development. Lawyers are not natural project managers - the recipient [of the work] needs to initiate discussion [throughout] the project."

"I want them to get smarter at how they review the work, plan going forward on scheduling, costs etc. Pinsent Masons have a very good decision tree analysis on litigation and tackling a dispute. This gives a very useful breakdown of costs. They're very focused on clarity and transparency and they're running their business like we're running our business."



"Hourly billing is an absolute nonsense. We need to be looking at value rather than how long it takes - I don't give a sod about how long it takes; they need to manage their costs and their time better. It should go out with the bath water."

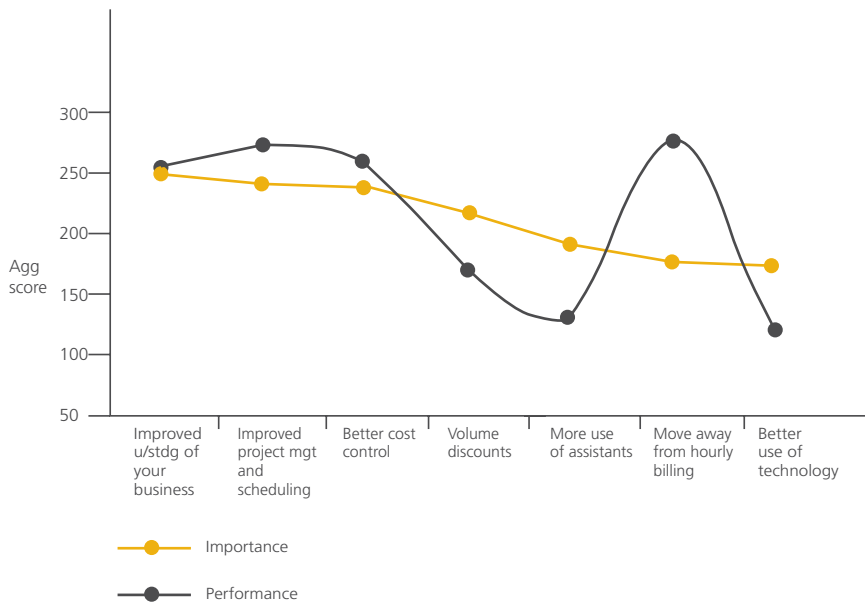
"Suppose you have a project and they estimate £60,000. The first time we get a call is when they're two thirds through and have spent the whole budget. Slaughter's are getting better at it, they do say this more often and forewarn us."

"It's madness that you're paying £90,000 for a newly qualified. It's madness that lawyers have to work 2000 billable hours. On the bigger stuff you agree a rate for the job, but what I get from them is their cost drivers and the need for good people. Only the economy will change this otherwise people have got to get together and agree deals on salary levels - have a common understanding."

Question 5

When respondents scored the same factors in terms of private practice's perceived performance, the results were very mixed.

In an ideal world performance will be aligned to importance. What the chart below suggests is in cost management terms, law firms are aligned with clients' expectations. On project management and cost control law firms are under performing, but not to the extent that the verbatim comments suggest – the margin is not that great. However the variance between importance and performance is most significant on firms moving away from hourly billing. In short what this short series of questions suggests is that if a law firm wants to impress clients on its cost management practices, it is these three factors it should focus its efforts on improving.



Question 6

What is the best example of a firm doing something positive to support you in improving efficiencies?

When respondents were asked "What is the best example of a firm doing something positive to support you in improving efficiencies?" several respondents answered that they were hard pushed to think of anything. While there were examples given of good practice, the wider theme of law firms being able to do a lot more was prevalent. The demand for better practice outweighed examples of good practice.

"Possibly Clifford Chance - they're talking about increased use of extranets and putting training on it; regular meetings on how the business is evolving. It's not necessarily something we've seen from other people. Our other firm knows us so well he is connected almost telepathically."

"Secondments at a reduced cost, which frees me up and it allows them to understand how we work which means I'll give them more work when they go back."

"Seconding lawyers to our internal legal department. They helped me with my resource problems in times of crisis, and that also helped them to understand better the way we work, think, make decisions and also to develop certain "reflexes" as to what it is that we usually do differently than others and what drives our - sometimes off-standard - requests. I believe it helps not only their work for us, but also gives them useful insight into how (certain) clients think."

"How do you measure the value in the hourly rate? If you can't measure the value [hourly billing] is a fraudulent way of billing, it's about quantum not value."

"Not an easy one. I have firms spending time getting to know us which helps, nothing springs to mind. I'm hammering them to give me estimates, monthly reporting on where we are and measuring at the end cost against estimate."

"CMS Cameron McKenna establishing a Bristol office to reduce rates whilst providing a high level of service."

"Inexperienced (or poorly supervised associates), even though cheaper, they are useless as their work has to be redone by more experienced lawyers (meaning loss of time and money)."

"Typically when we're more efficient it's a result of what we've done in-house. There's very little that external actually leads. There isn't a great deal of equity in the relationship... Equity is about quality, performance and value and if they deliver on that then their equity scores will go up."

Question 7

Do you operate a formal panel system?

Yes, a formal panel system	40%
No, an informal panel system	44%
No panel system at all	44%

Despite all the talk of procurement, pitching and panels, one sixth of our sample had no panel system at all and six out of ten respondents had either no panel or only informal arrangements. This is all the more surprising given that so many of the respondents were from large listed companies.

“We want to be flexible and fluid. I'm not too sure what the benefit is of a formal panel. If you spread the work too much, it's not worthwhile for them to focus on you.”

“Formal in the sense we don't go outside the panel unless there's a very good reason for it. But informal because we don't review the whole panel in one go. We review.”

Question 8

How do you structure your panel arrangements in the UK and across Europe?

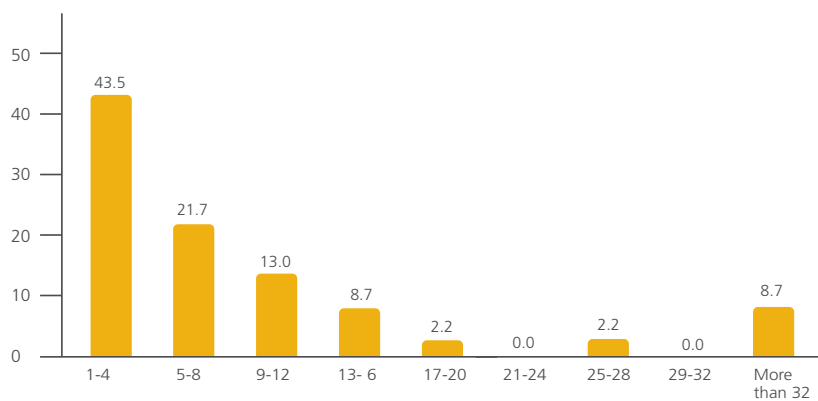
Whilst arrangements vary from the informal to the formal, there is an acknowledgement that selecting firms ad hoc is not a wise approach. Whatever the level of formality, respondents want a handful of relationships that optimises their buying power and gives each firm enough work to keep them motivated in the client. A number of respondents commented on having one top tier firm for major ticket work and then selecting from a pool of smaller firms for everything else. A horses for courses approach is increasingly the order of the day, but as one respondent pointed out, this is putting the squeeze on the firms in the mid ground.

“Three firms on the panel and all work above a certain level goes to one of the three.”

“A number of panels - general advisory and then six specialist ones. A lawyer owns the panel and runs regular review meetings. And we're trying to do the same thing.”

Question 9

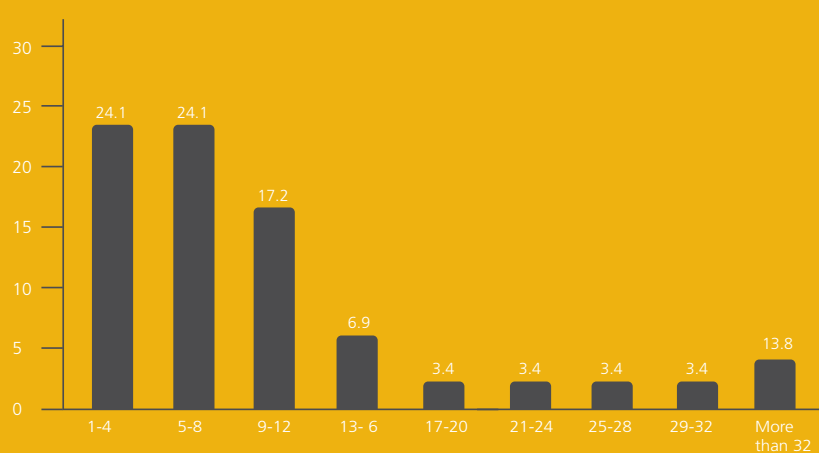
How many firms are on your panel(s) in the UK?



“We use Pinsent’s, Hammonds, CMS Cameron McKenna, Freshfields and Ashurst. Recently used DLA Piper because of conflict.”

Question 10

How many firms are on your panel(s) across Europe (excluding the UK)?



"I like to use a small number of firms in each jurisdiction because I can build relationships and give incentives to them. [I use] from two to three to 10 in any one country. Out of 40-50 countries I manage a subset of these."

"We turn over £2.7bn and 82% of that is UK. In Europe we have local arrangements."

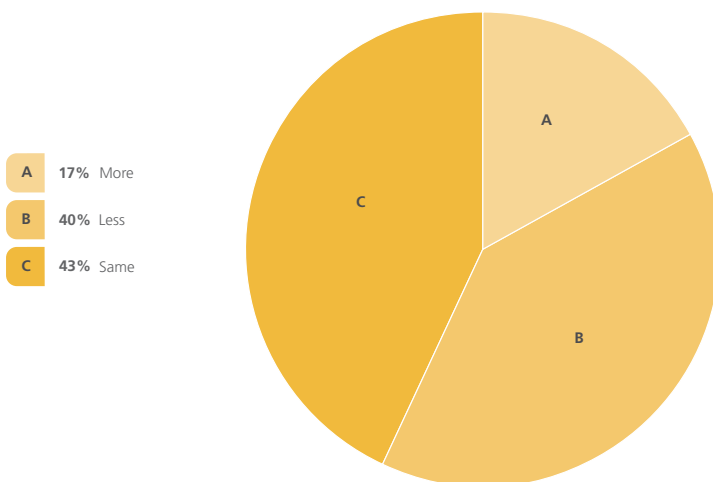
Question 11

In three years' time, do you anticipate you will have more, less or roughly the same number of firms on your panel / roster?

The trend was certainly not for using more firms in the future, instead the majority will either maintain the same number or look to decrease it – indicating that the process of rationalisation and concentration has not yet finished its course. Of those who thought the number of firms might expand, this was usually a function of their anticipated expansion into new foreign markets.

“I think we'll have less. I think we'll end up doing deals for bulk bits of work rather than farming round. At the moment we have someone who does marketing stuff and someone for sponsorship but I think we'll end up going with a larger outfit for everything.”

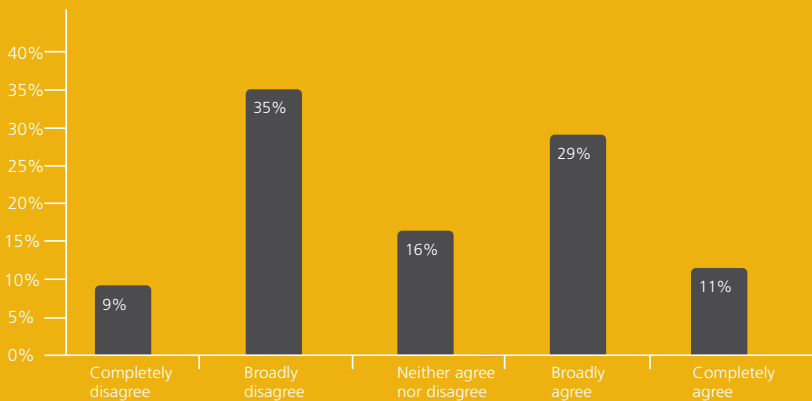
“ Due to likely geographical expansion - we issue RFPs in every new jurisdiction we enter, no guaranteed use for the network of any of the law firms in our existing panel of firms.”



Question 12

In an efficiency drive scenario, to what extent do you agree that a full service firm with an international network of offices is more attractive than panels comprising local advisers?

There was an even split between the number of respondents who agreed and disagreed with the premise that a firm with an international network of offices was going to be able to deliver a better service than individual firms. Those respondents who agreed acknowledged that if it worked there would be a clear benefit in relieving them from having to manage multiple relationships in multiple jurisdictions. However at the same time, as we found in 2002, the number in disagreement indicate that in practice most respondents do not trust their firms' ability to deliver a consistent and seamless service across international boundaries.



"It's easier to administer – but the problem is quality issues. I don't believe that anybody does offer the quality universally"

"I've had many different experiences. Some firms don't have a bloody clue in their other offices... on paper the advantages are there but the reality is something different."

"Very much depends on the work your doing. It's not something I need at the moment. Big firms are like package travel – you're heading off somewhere and want the comfort factor of someone you know."

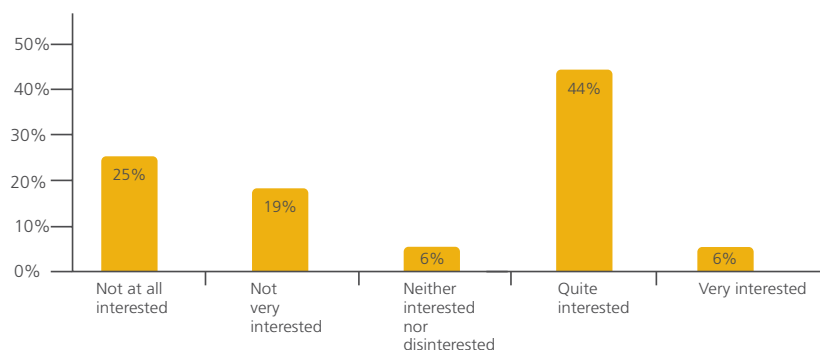
Question 13

How interested for your own company are you by the single adviser arrangement Eversheds has set up with DuPont and Tyco as a way of reducing costs?

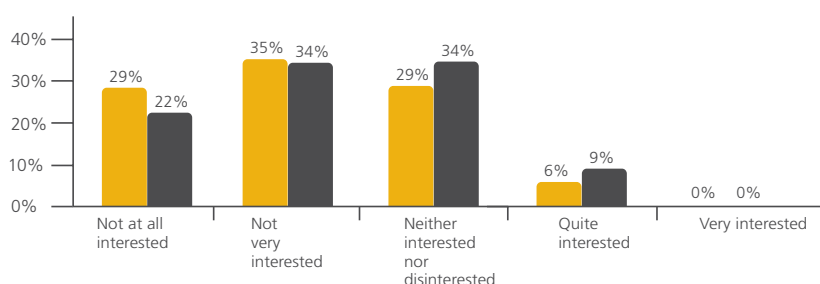
This was a very topical question and a concept that all our respondents were interested in conceptually but far less interested in terms of implementing themselves. The main concern was the problem of conflict or requiring specialist advice in an area. One respondent pointed out that this might work well for a Tyco or DuPont - a foreign company doing business over here, but for a UK based company with broader needs, some choice if it was restricted was required.

The telephone questionnaire framed the question in terms of interest and indeed the majority of respondents were 'quite interested'. However, in the online the question was adapted to refer to likelihood of implementation. The response was different between the two: respondents were interested in such an arrangement in principle but clearly not in terms of actually trying this approach. This was still the case given the option of '...And what about in the medium term (the next three to five years)?'

Interest in the arrangement



Likelihood of implementation



"...As much time and energy as international firms put into harmonised service standards, that still does not always work."

"It could actually be attractive if a firm that has the right mix of technical capacity would have a broad enough international coverage, could provide fee levels that are generally attractive, efficiently shares information about our business across country teams and coordinates their teams well. However, as much time and energy as international firms put into harmonised service standards, that still does not always work."

"If I can find a local firm that has the skills, experience, local connections to key authorities in that country, right team size, flexibility and same or lower rates that are better than the local arm of a network firm, I would probably still go for the local firm. Supplementing the missing technical experience of a local team from the UK office can end up being costly."

Question 14

How do you envisage things will be different in three years' time in terms of managing costs and panels across international boundaries?

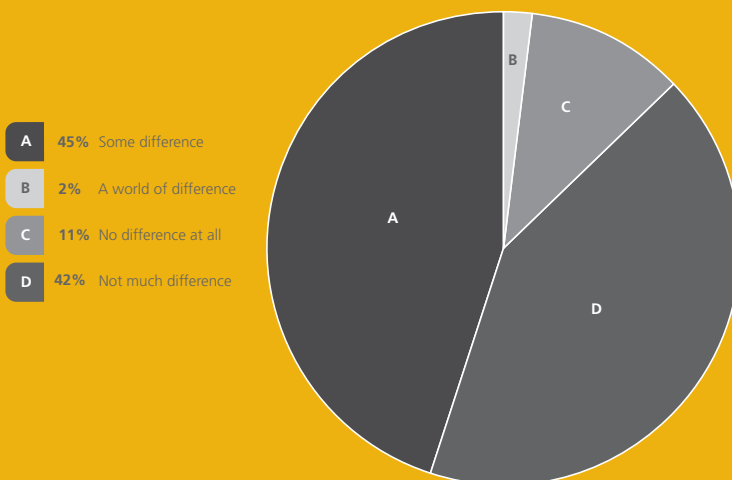
The figures clearly point to respondents suggesting that the pace of change in the legal market is rather slow and they are not expecting it to change any time soon. For all that the balance of opinion is certainly critical of private practice. Peak PEPs and salary inflation continues to make GCs' lives more difficult. The view is that law firms have no incentive to change, no incentive to reduce their margins. A lot of the respondents said such change that there was, in terms of billing arrangements etc., tended to be driven from their end and not the firms.

“ Not hugely different because it's one directional - clients looking for change, not law firms. It takes two to tango.”

“Not hugely different because it's one directional - clients looking for change, not law firms. It takes two to tango. I think you'll find that equity in the relationship will continue to fall because of inability to dance. More pressure on GCs because legal is not delivering savings that other areas of the business are, which means that procurement will get more involved, which will reduce equity further. Where law firms are increasing equity it's because of what in-house are doing.”

“We are aiming to create deeper and stronger relationships with fewer firms.”

“I think there should be even greater transparency - understanding what's on the clock at a particular time. I can't see a lot else changing other than increasing use of technology, which I think law firms have done well.”



Appendix

Telephone interviews

Company	Name	Job title
Anglo American	Ben Keisler	General Counsel
BA	Maria Dacunha	Head of Legal
Barclays	Jeremy Ogden	Assistant Counsel
BAT	Philip Scourfield	Assistant Counsel
Bridgepoint	Barry Lawson	General Counsel
Cadbury's Schweppes	John Mills	Head of Legal
Costain	Tracey Wood	Head of Legal
Eurotunnel	Ken Morrison	Senior Legal Adviser
Honda	Daniela Baker	Company Solicitor (UK)
Inbev	Deepak Malhotra	GLS & Western Europe Legal
Legal & General	Geoffrey Timms	General Counsel
Man Investments	Jasveer Singh	General Counsel
Marks & Spencer	Robert Ivens	Head of Legal
Molsen Coors	Joanne Malcolm	Head of Legal Services (Interim)
National Grid	Ian Leedham	Senior Counsel - Commercial
QinetiQ	Lynton Boardman	General Counsel
Serco	Mark Duckworth	Head of Legal
Smith & Nephew	Claire Vaughan	General Counsel
The Linde Group (formerly BOC)	Roger Williams	Assistant Counsel
Whitbread	Sim Barratt	Company secretary and head of legal
37 On-line surveys anonymously	Various size of organisation	General Counsel & Snr Legal

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