

SHALL WE DANCE?

Eduardo Reyes, Editor of The In-House Lawyer (IHL) takes an in-depth look at the different working partnerships between in-house lawyers and law firms

Can in-house and private practice ever be in true 'partnership', or is talk of partnering just a new way of branding fairly ordinary relationships? As Eduardo Reyes reports, for any model to succeed, it also needs some old ingredients

Partnering is a term with a loose definition when applied to the way that in-house legal departments work with their private practice advisers. This may be because the word is bandied about by law firms themselves in an ill-disciplined way. After all, insisting you 'work in partnership with clients to meet their needs' sounds more attractive than, 'we accept instructions and give the correct legal advice'. As Burges Salmon partner Marcus Harling puts it: 'Our working relationships come down to personality. I've seen things sold as partnering and relationship models where, if you lift the lid, you actually find something very ordinary.'

In-house lawyers are also willing to define partnering according to quite a low threshold. Lara Oyesanya, head of legal at Lex Vehicle Leasing, defines partnering as 'both parties... working towards the same objective and sharing information as necessary to achieve their goals'. So, how is partnering different to getting good service from a bright, personable and commercial lawyer who knows how to listen?

Which steps?

It's perhaps easier to think of there being a sliding scale of what constitutes 'partnering', where arguably neither end of the 'scale' exists in pure form in practice. At one end of the scale there is a situation where legal advice is like a product in a tin – the advice needed for a problem is a certainty, the client decides what they need, comes in and buys it, is told how to use it, and leaves.

The next stage along the scale is familiar to most. A client has used a law firm a number of times, has built up a rapport with one or more partners and associates, and as a result the private practice lawyers know a bit more about the client's business, and the client may do more by way of sounding out the private practice lawyers about legal issues they are facing before they come to a head.

At the next level the law firm may produce client briefings and alerts on legal issues affecting them. Some private practice lawyers may be seconded to the client.

Above that, the law firm may be appointed to a panel or panels after a competitive tender. The conditions of appointment may require the firm to make changes to its systems – bringing billing and recording systems into line with the client's own, or agreeing to a different fee structure.

Going further up the scale, the in-house team may not just manage the instruction, but co-resource it – creating a team that includes in-house and external lawyers.

At the penultimate stage, as in the famous DuPont legal model, the client demands that a drastically reduced number of law firms commit to working on ways to improve its bottom line and meeting other objectives, such as promoting diversity. In return the client might commit to steps like prompt or early payment of legal bills, and there's an expectation of increased instructions.

At the very top of the scale would be a direct business interest by the law firm in the client's matters of the type that investment bankers have. As Harling argues: 'If it's true risk-sharing then you would have a share in their business.' But that's something which, so far, clients have run shy of.

Moving as one

US corporate giant DuPont started the debate on partnering in 1992 when it created the DuPont model – bringing the sort of high-powered management theories employed in other areas of business thinking to bear on its procurement and use of legal services. In the latest revision of the model, DuPont outlined the six aims it expected law firms that advised it to sign up to:

- competence, excellence and getting results;
- mutual financial success;
- technology and work process re-engineering;
- the retention and contribution of women and minorities;
- taking risks and advancing creativity; and
- a willingness to be innovative.

The concept is that by moving in unison – like dancing partners – client and adviser will achieve a smoother result. Partnering recognises the mutual dependence of the two. DuPont claims impressive results from the application of the model – the sixth of seven tiers in IHL's partnering scale (see box, below). And hundreds of businesses have arranged to go to DuPont to see the model in action.

However, in the UK at least, there is still some scepticism about applying too much process to the selection and management of legal services. This may be because of in-house counsel's experience of working with the procurement of supply management colleagues. Generally, in-house lawyers won't place their views of supply management professionals on the record, but a survey conducted by IHL and Pinsent Masons last year revealed a widespread view that procurement principles had too great an emphasis on cost, and not enough on issues like legal risk, commercial sense, and the importance of good working relationships with advisers.

Same old tunes?

But therein lies the attraction of the sort of partnering models trumpeted by companies like DuPont – it draws attention away from simple legal costs, though they are still an important consideration, and towards an emphasis on both values and added value. And that may mean less of a departure from a lawyer's comfort zone than the coverage the DuPont model received might suggest.

Alison Bond, client service partner at Pinsent Masons, suggests: 'The DuPont list of requirements are all things that you'd be trying to show you would provide in a proposal to a prospective client.'

One major company that's recently developed its own partnering model is Tyco. For the EMEA region, it's decided that one firm, Eversheds, will provide all its external counsel needs – whereas in the past up to 250 law firms were used. Announcing the model last month, Gardner Courson, vice-president and general counsel of Tyco Fire & Security, explained: 'What began as a competitive exercise to achieve greater cost

efficiencies for legal services in the EMEA region has really evolved into a partnership with Eversheds.'

Just as legal advice doesn't come in a convenient tin, so there aren't a range of ready-made partnering models waiting to be picked off the shelf. Tyco believes its 'model' will work because it is part of a total rethink of its legal needs that also involved a restructuring of its legal department. 'The relationship with Eversheds is just the tip of the iceberg,' notes Trevor Faure, Tyco's EMEA general counsel. 'We've gone through a root and branch process, of which the arrangement with Eversheds is part. We had been going through a process of analysis of a range of factors – including looking at Tyco and its legal needs, and the part that legal could play in delivering shareholder value.'

High on Tyco's list of priorities was to manage risk and further embed a strong corporate governance ethic. As Faure explains: 'Internally, we've developed an analysis of legal services – how many lawyers we have and where. We realised that where the business was biggest, it tended to have more lawyers – but that didn't necessarily always make sense. So we created a matrix of "risks" and "revenues", and mapped the business across the matrix.' Risk, he says, was determined by matters such as corruption perceptions, with the corruption index playing a part. 'This took us away from thinking that the legal function had to be big where the business was biggest.'

On Eversheds' part, changes made to its processes make all aspects of an instruction easy to monitor. A list of ten 'friendly' questions answered by Tyco clients about the service received on each instruction mean that satisfaction and quality levels can be monitored by its in-house lawyers at any time – removing the need to conduct a lengthy review process, say, two or three years into the arrangement. Faure adds: 'We can see at any time whether we've increase coverage, quality and control, and if we have decreased cost.'

Faure believes that Tyco's creation of the SMARTER initiative (see below) has already shown a return on the time and resources invested in it. He says: 'That process is paying dividends, with strong hires that are changing the dynamic of the department. When we talk about increased coverage, quality and control, and reduced cost, the net effect is enhanced shareholder value.'

That view on progress made is echoed by third parties. Although a few years ago the company had a chequered history on governance matters, Gavin Anderson, CEO of Governance Metrics International, says: 'No other company we have followed has made such a leap.' GMI recently gave Tyco its highest rating (a ten), placing it among a top 20 of America's largest 1,800 public companies – up from a 2002 score of 1.5.

Taking the lead

A counter-intuitive option for 'partnering' may be to outsource not just work, but the decisions about which law firms to instruct – the 'Mexican Wave' model developed by Lovells. Real estate partner Bob Kidby recalls the conception of the idea: 'After ten years of working for the Prudential, we went to them to say we thought they were paying too much for some services, and not enough for others. We said, if you trust us, as we know what's out there in terms of practitioners, we can provide you with all this for a price that makes sense.'

Like all other 'partnering' it presupposes a long-term future for the in-house/private practice relationship. Kidby adds: 'It only really works if there is a relationship there – it's based on the idea that there is a future for the two organisations going forward. What it's not practical for is something that's a one-off – unless the one-off is a really big project, such as the purchase of a major shopping centre.'

It has, Kidby says, worked well as an arrangement. The client can monitor all aspects of the deal – including who is doing what – via the MexNet extranet. Analysis of the throughput of work would seem to justify the decision to follow the model, with a financial upside for both Lovells and its client. 'It was set up four years ago, and we've since done 5,000 jobs for the Pru, using lots of different people in lots of different ways,' Kidby concludes.

Where the law firm panel 'convergence' process has left more than one panel member standing, there is also a practice emerging that demands that the firms practise 'partnering' not so much with the client, as with each other. Last year three London councils, Newham, Waltham Forest and Tower Hamlets appointed Mills & Reeve, Sharpe Pritchard and Trowers & Hamblins to a panel that has some novel features.

Newham's head of legal, Helen Siddell, explains: 'Things like discounted fees when a certain volume of instructions have been taken by a firm are spread across all three councils.' What's more, as all three councils are members of the same benchmarking group, in-house lawyers at each one will also know when advice or the response to a question has already been provided on a particular subject to another.

Siddell adds that one further commitment had been sought from the law firms who won a space on the panel: 'We want them to be able to work in a spirit of partnership with each other. We're looking forward to seeing what added value the commitment they've made on that front is able to deliver for us.'

Dance, then

Something Prudential has in common with Tyco and DuPont is its size – these are all very large clients, with the muscle that accompanies the volume of legal work they have to hand out. To put it simply, a client above a certain size is in a position to call the shots. Harling adds: 'Certain partnering models need a lot of "machinery" underpinning them – on both sides.'

That impression is strengthened when one considers how much investment a law firm like Eversheds will make to fit the needs of a large client. 'The investment is considerable,' confirms Eversheds partner Paul Smith. 'We invested a great deal of time and money in training people in project management, and in the use of the systems that are needed.' Of the list of six DuPont requirements, Smith says, it's the third one – 'technology and work process re-engineering' – that does most to mark out a partnering model from good, if imaginative, practice.

But many elements of 'partnering' could be applied to a smaller book of business. Parts of the model should, fans insist, be 'scalable'. The wholesale redesign of a law firm's systems around those of the in-house department may not be on the cards, but three factors may give a smaller company leverage. First of all 'convergence' – reducing the number of external law firms the company instructs – is key. Although Smith notes that panel reduction 'is often confused with partnering', it is at least a way of gaining more leverage with a reduced number of advisers.

Secondly, for law firms, it may not just be the fees that count, but how and when they are paid. As Smith notes: 'Transactional throughput can vary considerably, so having clients who commit to paying promptly, or through an upfront retainer, is important.' Thirdly, it's worth remembering that even though labels like 'model' are used, many of the ingredients really are very familiar. As Kidby says: 'For any "partnering" arrangement, it all comes down to trust, quality and cost, and how you play around with those three components.'

'Every relationship between a lawyer and a client has some aspects that are bespoke,' Bond notes. 'In my experience the way a client wants things done can't be predicted by their size or even the sector they're from, so conversations about the relationship, and how it should work, will be taking place.' Smith concurs: 'Although you can't transfer working models wholesale between clients, and certain things come with size, by cherry-picking parts of the partnering model, more clients could achieve some very easy wins.'

Edging closer – the seven stages of partnering

- #1 Advice in a tin Legal advice is a commodity.
- #2 Tea and sympathy Strong informal relationships built on a history of instructions.
- #3 Saw this and thought of you Client alerts and secondments.
- #4 Owed to so few Law firm panel created. Firms make changes to working practices and billing.
- #5 Two become one Co-resourced teams.
- #6 I've got you The DuPont model. The law firm signs up to shared objectives, including innovation, creativity and new working methods.
- #7 Split the winnings the law firm has a direct business interest in the venture it advises on, making the project a full joint venture.

Clever moves – Tyco's SMARTER model

While other companies have drastically reduced the number of their approved law firm service providers – a process known as 'convergence' – Tyco's initiative takes that strategy to a new level. It assures unprecedented advances in corporate governance at a time when corporations throughout the world are working to streamline services while helping to ensure seamless compliance management.

Under the model, dubbed 'Segment and Subject Management, Regional Teams and External Resources' (SMARTER), the department is managed by senior lawyers with responsibility for a specific business segment in the region. Regional lawyers report to them and provide the local law and language expertise across segments, and external resources (dedicated, full-time Eversheds lawyers) ensure broad geographic coverage and an ongoing link with the parent firm.

The SMARTER model offers several specific innovations for its work in EMEA countries, including:

- a 24 x 7 x 365 multilingual legal hotline;
- local language and business expertise in contracts, employment, compliance, environmental health and safety, major litigation, intellectual property, and general corporate matters;

- contract automation, business process redesign and a legal extranet integrated into Tyco's business by Eversheds (to facilitate online reporting and invoicing);
- fixed and risk-sharing fee structures, as well as predictable, fixed fees based on business size and complexity; and
- full-time, dedicated Eversheds lawyers in the UK, France, Germany, Italy, the Middle East, Poland, Benelux and South Africa linked to the regional teams.

Eduardo Reyes is the editor The In-House Lawyer
Eduardo.reyes@legalease.co.uk

This article first appeared in the February 2007 issue of The In-House Lawyer.