

FROM IN-HOUSE LAWYER TO BUSINESS COUNSEL

Posted on 22/08/2010

“The dramatic pace of the developments being undertaken in many of these countries is inevitably headline-grabbing. Mozambique is seven times bigger than Portugal, Angola is twelve times bigger, and Brazil is bigger still.”

Agostinho Pereira de Miranda



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A significant percentage of General Counsel want to be more influential within their businesses, but first they need to demonstrate how they add value and to design and adopt performance measurement criteria to demonstrate this

Over the past year Nabarro has conducted research asking UK-based general counsel (GCs), other senior inhouse lawyers and Chief Executive Officers (CEOs) about their role and status, the commercial value that inhouse legal teams contribute to a company, and how that value can be measured and expressed.



Jonathan Warne

In fact, lawyers and CEOs differ in assessing the contribution that the inhouse legal team makes to a company; nearly 40 per cent of lawyers felt the in-house team made a very strong contribution last year and yet only 14 per cent of CEOs felt the same.

Our survey however found that inhouse legal teams no longer have to justify their existence. That battle has been won. But many told us that they struggle to be seen as anything other than "business preventers". Relatively few senior managers believe their inhouse legal function delivers significant economic value to the business. Instead, lawyers are often felt to be there only to make sure the commercial team do not make mistakes – in other words, to avoid negative outcomes rather than to generate positive ones. Without action on the part of GCs, this is unlikely to change.

Muchos directores de asesoría jurídica quieren tener más influencia en sus empresas, pero para ello deberán demostrar en qué medida añaden valor y adoptar criterios para medir dicho valor, afirman

Jonathan Warne y Peter Williamson, socios de Nabarro en Londres y autores del informe "De asesor jurídico a asesor de empresa: el momento de replantear el status, función y papel del director de asesoría jurídica? "

At the moment few GCs hold a position in the upper level of their company's strategic, managerial or planning functions. Most perform a quasi-risk management and legal management function, with little understanding in the business of how truly successful they are. Some are content with this.

Others, who want to move up the business "value pyramid", face a problem. They are confident of their worth, and they know they contribute commercially, but they don't have a way to show it. And in-house lawyers who cannot show that they add value to a business are unlikely to become strategically influential.

The value of performance measurement

Our data suggests that performance measurement for in-house legal teams is in its infancy. When it does happen it is usually done in a very basic way, or on a purely individual level.

Most legal functions that have performance measurement in place are being assessed on aspects of their spending and the absence of legal problems. These are the easy wins of performance measurement, but they show little or nothing of the true value added by the legal function to the business. They don't bring the benefits of a fully developed system of performance measurement.

Measurement should make it easier to identify areas in which GCs can attain leadership. It helps senior management to manage the legal department in the wider context of other support functions, and should help a GC manage it too. Measuring value helps to manage expectations for costs and results, and possibly also for service levels.

Many GCs we spoke to were interested in developing or refining current performance measures. But they don't know where to start or how to go about this. They cannot see how to map measurement onto the traditional legal function, and struggle to define commercial value in the in-house legal context.

There are many ways forward for in-house counsel. There is no "one size fits all" solution.

What is right depends on particular circumstances and the available resources. The concluding part of our research includes a "GC Strategy Map", a generic checklist for GCs aiming to create and measure value.

We believe progress depends on a clear demonstration of both value and a real contribution to the business on terms derived from the business itself. Inevitably, there are some significant hurdles to progress. For example:

GCs – can GCs themselves adapt and move out of their legal comfort zone?

GCs' employers – can employers change their corporate perception of lawyers as risk-averse business blockers?

Job description – is the role and function of a traditional GC too narrow? Can it be changed to allow for greater opportunity for progression?

Approach – can GCs move away from an events-driven approach to performance and create a role that is proactive rather than reactive in approach?

Measurement – can GCs help themselves by setting value-based performance measures to align themselves with their businesses?

If you are an in-house lawyer who wants to move up the value chain, we think you need to answer

"yes" to each of those questions. Even if you are not, we feel much of this may still be relevant to you – GCs who don't want to move to a more senior or commercial role may still need to demonstrate that the in-house legal department is value for money.

The title of our research report is From in-house lawyer to business counsel; we believe GCs who successfully align themselves to their businesses and demonstrate their value can truly become business counsel, as opposed to just lawyers who work in-house.

Key findings

Nearly one in seven GCs felt it was "not particularly" important that the in-house legal team should add commercial value to the business.

None of the CEOs agreed.

- Most GCs and CEOs, (86 per cent and 85 per cent respectively), thought it was quite easy or very easy for in-house lawyers to contribute commercially.
- Only one-third of in-house legal teams currently operate in the top half of the "value pyramid" (a full explanation of this can be found in the wider report). However nearly half of the GCs interviewed want to be in the top half by 2015, with over a quarter aiming for the top quarter of the pyramid.
- CEOs tend to be sceptical about whether GCs can reach the top of the pyramid.
- Nabarro believes performance and value measurement will be crucial for GCs seeking to move up the value pyramid, and will be increasingly important for others as well.
- Only one-third of GCs currently have a formal performance measurement system in place.
- Nearly all the in-house lawyers who do measure performance find their metrics either quite effective or very effective.
- Many GCs who are interested in the idea of performance measurement struggle to define the commercial value added by their teams, and find it difficult to create a measurement system suitable for an in-house legal function.

Based on the findings from our survey (see box The value of performance measurement), GCs need to show how they might align themselves to business strategy and measure their commercial success to demonstrate economic value to the business. They need to create a winning strategy and engage the legal team to drive behavioural change.

Only 32 per cent of the GCs surveyed use formal performance measurements and fewer than half of these were directly involved in creating the measurements they use.

Measuring value is often seen as a challenging process for an in-house legal team. There may be concerns about resourcing, the introduction of bureaucracy or inadequate returns. Our conversations with GCs and experts in the field suggest it need not be that way. Simple and practical approaches and systems can be introduced to clarify objectives, improve performance and measure value. Such tools should make it easier to run an in-house legal department, and may also make it simpler to identify areas in which GCs and other senior in-house lawyers can attain leadership.

There is no single formula for measuring value. Business strategies, operational structures and cultures vary enormously and measurement has to reflect this. But there are common themes and obvious starting points.

Value pyramid

So is the role of business counsel waiting to be won? Not for all GCs. We found plenty of evidence

that some GCs did not see themselves in a strategic commercial role. Some even felt strongly that they should not be in such a role. And quite a few CEOs agreed.

However, we also found much appetite amongst the GCs interviewed for moving up the value pyramid. There is no shortage of those keen to show their commercial value. Indeed some already have proved it, just as some already have introduced metrics (although generally quite basic ones) for measuring their contribution to a company.

Although some in-house lawyers, through their abilities and circumstances, have achieved trust without having formally to prove themselves, our research has led us to believe that progress up the pyramid for most GCs depends on a clear demonstration of value. You will never be in a position to contribute at the highest levels until you've been seen successfully to deliver further down. And for most GCs this is bound up with the question of metrics. You have to be able to show clearly how you're adding value.

We believe that in the current climate GCs with drive and ambition have a chance to become true business counsel and assume a central place in business decision-making. We have shown how GCs might align their outputs to business strategy and measure their commercial success. We know there will always be other factors (such as the gap between how the in-house legal department sees itself and how it is traditionally seen by others in a company). Nevertheless, we hope our work will give "food for thought", and some ideas which might work in your own situation.

And we know, of course, that writing discussion papers is easy compared with actually building best practice and delivering change.

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