Footnotes

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Examining the Long Term Impact of Outsourcing Know How

Abstract: This article by Loyita Worley examines the potential effects of outsourcing knowledge management processes in law firms and discusses the impact it may have on the firm, its information resources and the clients involved.
Keywords: outsourcing; legal information; law firms; clients; knowledge management

Introduction

This article originated from a talk that I was asked to give at a conference on outsourcing know how in law firms – specifically on the potential long-term impact. At that point, outsourcing was not something that I had considered much, although I was aware that it was a concept that was being used increasingly in connection with law firms. It was only recently that I had heard of the term specifically in connection with know how or knowledge management. I accepted the offer to speak and decided to use it as an opportunity to explore the possibilities of outsourcing in relation to legal information provision. The first thing I discovered was that, when people talk of knowledge management in the context of outsourcing, they can be referring to any number of things. Either to what we would normally consider to be a firm's 'know how'- i.e. standard forms, briefing notes, lecture papers etc, or indeed to library services themselves, such as certain types of research (business development enquiries perhaps), current awareness or maybe subscription management and therefore I am using the terms very loosely in this article.


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At Reed Smith Richards Butler we do not outsource know how or any knowledge management functions, but we have relied upon an external company to process, classify, index and add metadata to our know how database and index our know how - although not create the know how itself – for several years, which I suppose is a form of outsourcing.

As we all know, the legal profession is very risk averse, and therefore has been comparatively slow to embrace outsourcing as a whole and, in particular, the more challenging aspects of outsourcing which would include KM. I have enquired extensively to see whether any law firms have outsourced any of their KM and then subsequently brought it back in-house, but have not found anybody within the legal sector – or at least not anyone who will admit to it! This effectively means that examining the long term impact of outsourcing KM involves a lot of crystal ball gazing. I have drawn upon discussions that I have had with interested parties and I have also looked at the experiences of other business sectors.

Looking at the long-term impact is most important as any outsourcing initiative is likely to involve a considerable investment of time and money and should therefore always be viewed as a long term strategy. There are potentially many types of KM that can be considered for outsourcing – some of which I have already touched on - as well as many outsourcing models that can be put in place.

According to Accenture's report *Driving High-Performance Outsourcing: Best Practices from the Masters* (2004), the longer a company engages in outsourcing, the better it becomes at its actual management, and performance and satisfaction tend to increase over the long term. More experienced outsourcers (those with seven or more years of experience) consistently gain more benefits than those with two to seven years of experience. This would therefore suggest that the longer the outsourcing continues the more effective it should get.

But whilst time and experience may make some aspects of the partnership between law firm and outsourcer smoother, simultaneously it will pose other challenges.

How will a long-term outsourcing contract impact on your firm, your resources and your clients?

KM outsourcing relates to high-end, high value added services and therefore has greater implications for the business than other types of outsourcing, such as IT or secretarial services, may have. Manpower problems include availability of trained manpower, high attrition rates and rising salaries. These are all challenges that law firms face, but they are equally challenges faced within outsourcers. All these problems will be compounded as firms expand their services and scale up.

However, you are hoping that the benefits of outsourcing will provide:

- ***Increased flexibility to deal with existing and new matters***
  This will be especially so in the case of global firms who will be able to offer more availability around the clock.
- ***Extended capacity***
  Which may mean that a firm will be able to take on other work of different types.
- ***Maintained or improved quality of service***
  Remember that quality of the outsourced product should always at least equal if not surpass that of the in-house product.
- ***Maintained consistency***
  Having the actual work removed means that you can more easily focus attention on standards and consistency.
- ***Saving time***
  Time saved can be directed to other projects which is probably one of the most obvious advantages.
- ***Saving money***
  In some cases, resources may be reduced or less costly resources brought in.
- ***Improved job satisfaction***
  As a result of removing some of the more repetitive tasks, you may be able to improve levels of job satisfaction and raise levels of morale in-house.

Impact on your clients

In many cases, it is the clients who are pushing for outsourcing. Many of them, the investment banks for instance, have done it themselves so expect no less of their legal advisers. They know that certain tasks can be done more cheaply and without paying London rates and they expect to enjoy those benefits.

They are looking for:

- Lower fees
- Increased capacity
- Consistency
- Access to new services

An agreement would need to be in place before any outsourcing took place, as it is important to get the client's buy in and in any case the client's consent is required to disclose any information relating to them to a third party. In conversation, I gather that clients have raised concerns relating to outsourcing, some of which may be obvious and others not so. The most significant of these is probably confidentiality and data protection, but these are closely followed by disaster recovery. Whilst we might worry about terrorist activity (which could occur now anywhere in the world), if the outsourcing is happening in another country there may also be disasters like storms, hurricanes and typhoons to contend with. These issues are important but contingency plans can be made to deal with them.

More sobering is consideration of the impact if the outsourcing had to be brought back in house. Would this result in increased fees for the client? How happy would the client be then? Might it have been better not to have outsourced in the first instance? All of which are food for thought.

Maintaining momentum

Once outsourcing is underway, it is vital that original standards are maintained. There are various methods to achieve this:

- ***Setting targets***

Business outcomes are expected from day one and it has been shown that virtually everybody introduces them by the third year of an arrangement. The best way to demonstrate these is by measuring effectiveness. This will involve regular reviews and feedback. Without detailed costing and rate of return calculations in advance, it will be impossible to set targets for an outsourcing project

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and to know how well it is performing. These are therefore essential to success.

- ***Achieving cost savings***

Upfront cost savings are fine but people are looking for continuously declining costs. These cannot be achieved by always completing a process the way it is done today. Inevitably companies are driven to look beyond cost towards deeper process improvements and business transformation. These are best achieved by a long term partnership.

- ***Assuring quality***

The outsourced product should be at least as good as, if not better than, anything produced in house. Accuracy and currency are key to a law firm's work product and should be a given to any client. At the beginning of an outsourcing project, much attention is paid to quality assurance but once people become accustomed to outsourced service, they tend not to look so closely at output. This can lead to complacency and a slide in quality.

- ***Assessing output***

Examining output in context of the targets set and using them to drive the project forward and develop new strategies. This phase is very important.

Potential issues

We all know the saying 'no pain – no gain' and whilst we have generally been looking at the benefits of outsourcing, there are of course various potentially negative aspects which may include:

- ***Loss of in-house experience***

Outsourcing routine research reduces the opportunity for junior lawyers to learn on the job. Pressure on time and for billing makes it easy for lawyers to lose that side of their intellectual capacity. If outsourcing increases, it is conceivable that young lawyers, such as trainees, may never gain practical experience of legal research or drafting precedents.

Also, having outsourced and reallocated staff resource, firms don't have people with expertise (experience) in house and it can be difficult to recruit people with that relevant experience. This makes bringing the function back in house potentially difficult if the relationship breaks down.

- ***Reduction in quality***

To what degree can external providers classify content accurately? It is unlikely that they would have the same firm or client-specific business/commercial awareness as internal staff, even over a long period of time, which is why deciding what is to be outsourced and how it is done is of such importance.

There can be no compromise on quality if client satisfaction is to be maintained.

- ***Maintaining boundaries***

A damaging tendency, which can occur when arrangements have been in place for longer, is to allow in-house activity to stray into the same areas that have been handed to an outsource. Doing something yourself and paying someone else to do it is the worst of both worlds.

- ***Internal politics***

There may be a need to protect external sources against internal politics. Savings and service improvements are noticed when first achieved, but rapidly get taken for granted – until something goes wrong. The possibility of such disruption arises as soon as the original architect of an outsourcing relationship moves upwards or out of the company, leaving no-one to argue its merits when questions are raised about it. The trigger for such disruption can be when new managers arrive and seek to establish their authority by implementing quick changes.

Finding that key areas have been passed to an outsourcer, and having to work through them, can be a source of frustration that causes the out-of-house work to be viewed unduly harshly. Even if the original sponsor is still on hand to remind the company of why it outsourced, and how performance improved as a result, the outsource is recommended to make contact with new management to explain the rationale, and to suggest what could now be improved. This way, the new drive for change can be channelled into moving to the next level of outsourcing benefits, rather than swinging the pendulum and taking work back in-house – or changing supplier – only to discover that you can't beat what was originally there.

- ***Upskilling and ongoing training of outsourcers***

Whilst every effort will have initially been made to ensure that the outsourcer has the skills needed for the job, with an ongoing relationship, these skills will need to be reviewed and where there are changes in the law, for instance, or in staff turnover, a regular training programme will need to be instigated.

Integration with the outsourcer is essential throughout the course of the contract and not just at the outset. Better relations and outcomes can be facilitated by:

1. Establishing continuous improvement processes and programmes, which are beneficial to knowledge sharing and ensure centres of excellence, knowledge sharing and collaboration methods.
2. Creating intellectual property and intellectual assets agreements that meet business needs and are appropriate to the countries and organisations involved.
3. As you identify the various processes that the other location or company will perform, incorporate team and individual learning sessions into each function.

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An owner is required for these processes. Determine key processes needed and how best to codify or transfer this learning from the outsource company back to the originating company in a timely, ongoing manner.

4. Develop shared tools and services. Standardise processes where possible and ensure they are integrated with the way the company works, are culturally appropriate and are adhered to by all groups.
5. Review and identify the technology needed to capture and transfer learnings where appropriate. Include these costs within the budgetary requirements of doing business. Appoint owners for the resulting data within the originating company. Give them analytical tools to review and incorporate learning into the originating company.
6. Structure processes so that internal groups can analyse the resulting analysis, and incorporate trends and patterns in future strategy decisions.
7. Incorporate ownership of the processes and use of resulting knowledge into the project management, quality assurance, organisational effectiveness, training, HR, business development and other groups as appropriate. Again, implement standardised processes based on dialogue and discussion to increase effectiveness and speed of understanding and application.

All of these will help avoid deterioration in the quality of the outsourced service process and avoid one of the most commonly cited reasons for outsourcing breakdown – lack of control. They may also contribute to some of the hidden costs associated with outsourcing contracts which may not be obvious from the outset.

How to avoid dependency on an outsourced resource?

Relying on an external supplier for generic KM resources involves an element of risk, but there are various ways that the risk can be minimised and total dependency avoided:

- ***Relationship management***

The relationship management layer is a critical interface with any outsourced project. However much is outsourced, there will always need to be a strong layer of 'customer' facing staff to interface between the law firm and the outsourcer and this – as with all successful initiatives – will need to be supported from the top.

Examples of this in certain law firms have been the secondment of senior employees for significant periods of time to the countries in which the outsourcing is taking place, whilst at the same time having senior management teams managing the project from the UK.

The more that is understood about the processes, the more flexibility there exists to make changes.

- ***Parallel in-sourcing***

Keeping some of a division's work in-house, and outsourcing another part, can be a valuable way of benchmarking the two options and avoiding the all-or-nothing risk of spinning everything out. But the division between what goes out and what stays in must be clearly drawn, and adhered to while the comparisons are being made. This is often most appropriate in the early stages of outsourcing, when its feasibility and the best people to do it are still being assessed. It can be an expensive option and it is unlikely that you would maintain both in-house and outsourced services indefinitely as it would be too costly and resource heavy. I have spoken to one law firm where parallel in-sourcing is working successfully. In a particular project, the lower end work is being done externally while the higher end work of the same kind continues to be done in-house.

Less comprehensive than parallel in-sourcing, but a good means of retaining in-house skills and maintaining quality, is to have the KM product outsourced but to have it checked in-house. For instance, some firms rely on third party content, but retain overall control over what is delivered. (i.e. perhaps get PSLs to cross-check the quality of data and append value added opinion that demonstrates its significance to clients).

- ***Using multiple outsourcers***

An obvious way to avoid dependency on a single outsourcer is to spread the outsourcing over a number of companies. This would probably best be done once an initial outsource had taken place and processes and procedures had been well documented following an initial period of time. Multi-vendor sourcing is a key trend in some areas. It minimises risk of disruption when a sole supplier fails to deliver or suffers a quality lapse. It does require more time and effort to set up and monitor, and the legal sector is limited by choice, as there are not many outsourcers available within our sphere.

If an outsourcing relationship succeeds, and widens into new areas of activity, it can become increasingly difficult to consider re-tendering for a contract and changing the outsourcer. Outsourcing partners must be given a reasonably long contract if they are to invest in providing specialist services, and be motivated to suggest improvements. There can also be a tendency to renew without looking at alternatives.

Unless the present outsource is compared with others available, it is impossible to know whether they are delivering as good a service for as low a cost as possible. Once assured that a contract will continue without further contest, previously hard working and pro-active suppliers may be tempted to slacken off, or assign lower quality resources to a contract. So outsourcing can lose

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its edge through loss of convincing benchmarks. Multiple outsourcing therefore provides an easier option of comparing the services of more than one outsourcer at a time but of course this does depend on there being competition.

Ensuring contract flexibility to allow for changing needs

It is likely that, as the outsourcing relationship continues over a longer period of time, you may want to make changes to your outsourcing contract, so it is important that some flexibility is built in from the start.

Don't accept standard contracts:

- Negotiate and agree terms that are mutually beneficial to both parties.
- Most contracts are a minimum of 1–3 years. One of the benefits of this would be the tie-in on price.
- Building a good partnership with an outsourcer involves a level of investment on both sides and this should be reflected in the contract.
- It is important to build in provisions for revisiting service levels and quality, and to incorporate get out clauses should the need arise.

Contracts should allow for:

You assessing against future needs to ensure scalability

Problems often arise when an outsource meets or exceeds the improvement target for the work first assigned to it – at which point the excited client may pass more work out to them, only to find that performance has suddenly deteriorated. Suppliers must be chosen with a view to what you might want them to be doing at the end of a five year contract as well as what they will be doing in the first phase.

Moving on from the initial assignment to performance assessment and re-tendering

After the move from initial investigation of the outsourcing market to the award and management of the first contract, the management task evolves again, to the assessment of performance and arrangement for re-tendering. The renewal of a contract gives an opportunity not only to assess whether the outsourcer has done well enough within the contract parameters, but also to check that the parameters were sensibly set.

Using IT as an example - while IT was initially popular because new computing and communication technology was seen as exotic, requiring handling by specialists, subsequent new and more user-friendly machines and software may allow the basic functions to come back in-house, with outsources needed instead for more complex functions such as software development, database management and analytics. So a contract may need to be re-tendered not just because other outsourcers could do the job better, but also because a different job may need to be done. Business models may change as may the circumstances of the firm and/or outsourcer, and therefore, flexibility is very important.

The element of change means that the majority of outsourcing contracts need to be renegotiated before the termination date so reality suggests that it is wise to accept and plan for the change in advance. Much legal time and attention is spent on drafting and negotiating contracts which are then forgotten about post-signature. Post-contract variation is possible – either orally or under the operational change amendment procedures of the main contract. The contract should include a service level agreement provision that lets the customer keep up with competing customer organisations and with pricing of other providers. It is important to keep the agreement aligned with the market and to maintain the right to pull work back internally, or use a different provider, to help manage performance.

A contract may not protect the customer in transition in a number of ways:

- You might find that the pool of people used by the supplier to provide the service is 'managed' by the supplier so that some of the best people are diverted elsewhere and do not transfer back to the customer.
- There may be no obligations on the supplier to provide the information which is needed by competing suppliers in a re-tendering situation in order to assess the costs associated with the labour pool.
- Perhaps you discover that you do not own intellectual property rights that are vital to the continued provision of the services, whether provided by the contract itself or a new supplier – although you would hope that a law firm would have considered this! Significant unexpected costs might attach to the continued availability of such rights, either via the first generation supplier or via a third party, or some combination of the two.

Be prepared for a breach of contract and have terms that specify who is in charge of what and how to mitigate the damage.

The passage of time means that many first generation contracts have ended and the learning gained from these can be incorporated within the second generation contracts. This can include first hand experience of exit management – often given little attention in first generation contracts.

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Developing an exit strategy

Whilst setting out with the very best of intentions, it is always advisable to have a strategy in place should the worst happen and you want to withdraw from the outsourcing arrangement. Once you outsource it is hard to bring the work back in-house but much easier if you have a plan in place in advance. Exit strategy and contingency plans are critical to deal with the possibility of changes in the supplier relationship or service quality that might require transitional arrangements.

- In a survey conducted by Addleshaw Goddard in 2007 (Addleshaw Goddard survey reported in Computer Weekly.com of 25 October 2007), 60% of FTSE 350 companies have had to exit or renegotiate an outsourcing contract before the end of its term, typically due to poor service from the supplier.

And

- One in three UK organisations have taken or intend to take a business function that has been outsourced back in-house.

The firms questioned in the survey were mainly operating in the financial and retail sectors, markets that have seen widespread outsourcing. The survey explored organisational approaches to managing the outsourcing contractual process and the key issues that companies face at each stage. When it comes to the breakdown in the relationship:

- Over half of those companies cited service quality problems as the main driver.
- Two fifths said that the failure to deliver cost savings was the reason behind their decision.
- Another reason given was lack of control.

Exiting

The study found that the main risk associated with exiting was inadequate exit planning – 24% of respondents said that their company had been significantly affected by inadequate exit planning. Exiting was the area where companies felt the least confident in their abilities as part of the whole outsourcing process.

Regarding the perception of outsourcing risks, 21% thought that the deterioration in the quality of the outsourced service process was the factor most likely to cause the failure of outsourcing.

Lack of control was cited as the second largest risk, by 18%. Hidden costs associated with outsourcing contracts were deemed less risky with 13% citing this risk.

With regard to the outsourcing lifecycle, transition is seen as the riskiest phase. Lack of internal resource to affect transition (cited by 60%) and lack of supplier skills (41%) were seen as the main risks in transition. This indicates that as much planning should be given to exiting the contract as to embarking upon it in the first place.

It is important to understand the implications of termination:

- How easy is it to get out?
- What is the wind down process?
- What are the costs?
- Who bears them?

You may be able to work with the outsourcer to take work back in-house. Perhaps you could put a consultancy agreement in place for an interim period?

Finally…

So, how does outsourcing compare to doing the work internally? It is generally agreed at present that outsourcing will never entirely replace internal know how support but who knows what future developments may bring? For now, the scale needed to be able to achieve cost savings and the amount of time that has to be invested can only be undertaken by the largest law firms, although others are using innovative means of outsourcing - to locations outside major cities or to third party information vendors for instance. Therefore, for the moment at least it would appear that outsourcing KM is still in its infancy but is definitely one to watch.

Biography

Loyita Worley is Senior Manager of EME Library Operations at Reed Smith Richards Butler LLP.