

A Thorogood Special Briefing

Chapter 1

Establishing an in-house legal team

- Rationale
- Management commitment
- Pitfalls
- A suggested starting point

Chapter 1

Establishing an in-house legal team

Rationale

When you are presented with an opportunity to establish an in-house legal department, you have to ask yourself what is the primary motivation. It may be any one or more of the following:

- to reduce expenditure on external advisers
- to entrust to a safe pair of hands issues which the managers consider to be tedious or complex
- to obtain the exclusive services of a practitioner who has impressed
- to show that the organisation has reached a certain level of activity.

When we are involved in advising an organisation on the pros and cons of establishing an in-house legal department, we ask whether they envisage the first in-house lawyer:

- being a valuable and respected member of staff supporting and guiding the management team and colleagues
- taking a key (but not the primary) role in managing legal risk
- assisting with business development.

If the answer to all three is positive, then the opportunity is worth considering. If not, it may be better for the organisation to make more coherent use of external advisers.

Management commitment

For an in-house lawyer to be able to perform to best effect there needs to be management commitment to:

- involve the in-house lawyer in the process of approving business strategy and important initiatives and projects

- provide the in-house lawyer with ready access to the most senior executives either by virtue of the reporting structure or regular meetings
- manage legal risk by getting early guidance from the in-house lawyer
- encourage coherent use of in-house legal resource
- staff the in-house function at a level which enables it to meet agreed expectations
- support the training and development needs of the in-house legal team.

My belief is that the minimum size for a viable legal department is two, one of whom may be a good support person with paralegal capabilities. I have met so many sole in-house lawyers who are at the end of their tether, that I strongly recommend that you get some assurance that you will be able to recruit a colleague within a year. Being on your own is hugely stimulating, but I do not think it is sustainable, unless you have considerable scope for outsourcing.

Pitfalls

‘Exciting opportunity to be the first general counsel for this innovative and dynamic organisation’.

From time-to-time you see job advertisements with this sort of banner. It may be true or it may be an invitation to find yourself in an unenviable situation, where impatient business people expect you to deal with a range of legal issues beyond your experience, without recourse to external advisers.

There are two main misconceptions, which you need to dispel, preferably at the interview stage or at least early on:

- Managers can expect a significant cost saving as an in-house lawyer will not need to use external advisers.
- Managers can abdicate responsibility for the legal implications of the commitments they make or the actions they take, as the in-house lawyer will take care of them.

A suggested starting point

Your manager may just want you to ‘get on with it, as long as you don’t empire build’. However, it is highly desirable you devote some time to the following:

- Building your commercial and organisational awareness
- Plotting the need for and use of legal services
- Formulating a blueprint for legal services
- Getting a budget approved.

You will be treading a tightrope of trying to please, impress, help and not inviting all and sundry to dump unwanted work or activities on the new arrival.

By the end of your first six months (at the latest) you should have made good progress in putting together a first pass at your strategy and had some discussions to test its validity and likely acceptance. It should cover:

- What you are going to concentrate on
- What you are going to use external advisers for
- What business colleagues should be encouraged and expected to do.

It is worth remembering that some organisations will want to use their lawyers incoherently – one minute as people carrying out a tedious ministerial task and the next expecting true general counsel input. Even if you get your strategy accepted, you will have to deal with behaviour which cuts across it. Nevertheless, having no strategy condemns you to perpetual fire-fighting or drudgery.

Appendix C **Strategy for legal services** is a sample of how you might deliver your blueprint.

PRACTICAL CHECKLIST

A. OFFICE EQUIPMENT AND SERVICES

What space/budget is envisaged for desk, workstation, files, support staff?

- A comfortable chair and a work surface on which a number of documents can be spread
- A laptop with a docking station for the IT network, extra keyboard and a larger monitor
- A printer and a fax facility close by, to which general access is restricted.
- Convenient access to a quality copier with collation
- Secure filing cabinets of which at least one should be fireproof
- Mobile phone and or hand-held device
- E-mail account
- Remote access

Depending on what dedicated support staff you will have, you need to establish what services are available within the organisation for:

- Document processing copying and faxing
- Ordering stationery – don't forget the business cards
- Post collections and courier services
- IT support
- Travel arrangements and taxis
- Meeting rooms and teleconference facilities (even if it is only 3 way calling)

B. SUPPORT STAFF

It will be rare that you have a dedicated person from day one, but you need to make sure that you have some assured level of support. (See Chapter 6.)

C. AWARENESS OF STAFF POLICIES/ATTITUDES WHICH MAY AFFECT HOW YOU OPERATE

- Hours of work
- Holidays

- Travel, especially in more comfort
- Use of car for business travel
- Working from home
- Availability/email and call forwarding when out of the office/on holiday
- Internet access and use in the office
- Dress codes
- Entertaining at the company's expense
- Personal email/phone calls

D. BUDGET

- Professional memberships
- Periodicals/database subscriptions
- Reference Books – be selective. You are not setting up a law firm
- Travel – if you are choosing the destinations
- Training – law and management
- Equipment – unless covered elsewhere
- Office supplies – unless covered elsewhere
- Staff costs and benefits
- External advisers – if you are instructing
- IT solutions

E. EXTERNAL ADVISERS

- Who are they?
- What are they currently doing and for whom?
- Ask them for a status report of WIP, with estimated cost to complete and summary of what they have done over the last 2 years and what they charged for it? Suggest that you meet them to review this information, once they have sent it to you. This should prevent the first meeting being unproductive. As you progress your induction you should build up an internal picture and see how it matches.
- Don't be too rapid to be the new broom and pull work back in-house or switch firms.

F. THE LAW YOU NEED TO KNOW

- Which topics do you need to reinforce or refresh? Search for relevant articles
- Who are the experts?
- Are there any round tables or in-house lawyer groups, websites or periodicals which are sector specific?
- Bear in mind that demanding training in your early days can be disconcerting to an organisation, which thought it had recruited someone who knew what to do!