



WINNING PERFORMANCE

With a lack of objective data for sizing up relationships with their US legal counsel, London market clients are left with a subjective approach to measuring quality of service, says **Dwayne Hermes**

To paraphrase the founders of legal services firm Axiom Global, the relationship between clients and the legal industry is a broken marketplace. Even more troubling, this is a marketplace without any insight into the extent to which it is broken.

In 2017, in my role as a US attorney serving the Lloyd's market, I met 26 managing agents, and when the conversation in these meetings turned to the topic of measuring the performance of their attorneys in the States, all but one acknowledged that there was no objective measure being applied.

The general sentiment was: "I have a good personal relationship with my attorneys and they have kept me out of trouble."

With further inquiry into key performance indicators (KPIs) for attorney performance – for example,

average legal fees per file, budget accuracy, evaluation accuracy and average case life – the same general response was forthcoming.

Mostly, all of those with whom I spoke acknowledged the benefit of having such "data" (the magic word of the day, especially when coupled with "analytics") and lamented the reality that it was currently not available to them. To their credit, one of the 26 was beginning to take steps to capture this data.

But would this lack of insight into the quality of a service be accepted by any of us in any other setting?

Subjective approach

With the lack of objective data upon which to measure the relationship with attorneys in the States, the market is left with a subjective approach to measuring quality. Thus, a counsel selection process exists that

is often based upon friendships, social interactions and a general perception of value.

For example, in Texas, where I practice, it can be socialising at the gun range that supports the relationship.

If this is the state of affairs, is there actually any measurement of quality at all? When one considers the amount of money that changes hands within these relationships, can there be a valid argument that the "store is being properly tended to"?

If there is no measure of quality that has a basis in objective fact, how can there be a foundation on which to pursue improvement? How can one service provider be compared to another? How can the buyer know when it is time to make a change? Is counsel selection determined solely

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based on price, with little to no accurate consideration of value?

The intent of this commentary is not to chastise those who are selecting counsel without objective insights. With the void created by the lack of data, what are claims professionals left to turn to other than subjective relationships? Even if they wanted to base the buying decision on objective data, due to the structural and reporting realities of the market, the necessary information is not available to them, or at least is very difficult to mine.

In a time when all industries, all professionals and all commercial endeavours are expected to be “better, faster, cheaper” (see “Tomorrow’s Lawyers”, by Richard Susskind, Oxford University Press, 2013; “Living Through a Paradigm Shift,” by William D Henderson, NALP Bulletin August 2014; and “The Last Mile: The ‘Last Mile’ Problem and the ‘Last Mile’ Solution,” by William D Henderson, Legal Evolution, 26 May 2017, originally published on Law.com) how can this sophisticated market justify the inability, due to the lack of data, to apply these principles to the retention of legal experts?

The current state of affairs allows for, and even promotes, unhealthy professional and commercial relationships that lack transparency and accountability and therefore allow for complacency and stagnation.

It impedes any hope of continual process improvement and innovation. We know that “what gets measured gets done”, so the lack of measurement results in a lack of alignment around KPIs. The fact that there is no return on investment measure for legal experts further exacerbates the problem.

Tomorrow’s lawyers

So, what is my professional background upon which I rely to raise these questions?

By outside appearance, I am a typical insurance defence attorney like all the others regularly seen in the market. I have been practicing law for over 30 years in Texas, one of the most litigious states in the US. During my career, I have been responsible for

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originating over \$75mn in legal fees.

After 15 years of practicing with one of the best defence firms in Texas, I embarked on the path of starting my own firm. That firm became the 45th largest in Texas, with over 50 attorneys, over 100 employees and hundreds of client relationships, and was well received by the insurance industry. It had a successful run for 15 years.

Two-and-a-half years ago, I participated in the voluntary dissolution of that firm and started what we believe is, or is in the process of becoming, the first working model of the Richard Susskind-type law firm envisioned in “Tomorrow’s Lawyers” (a statement made by some in the academic community).

This current business vehicle is where the atypical nature of my professional leaning has become more public. The goal of myself and of my colleagues in this “next generation law firm” is to disrupt the way in which law firms in the United States operate and how legal services are measured and delivered.

A full embrace of legal metrics, analytics and value-based compensation is at our core. In the continuum of legal services identified by Richard Susskind, we are moving from “bespoke” to “systematised” through the use of process management, checklists, technology, knowledge management and workflow.

My belief is that what we are doing should be the standard fare that the market expects from its attorneys in the States. By instituting this

standard, the market will have law firm partners (pun intended) that are collecting and reporting on the relevant data and, in turn, the market will be able to properly select and oversee its counsel.

This benefit, in and of itself, is an adequate basis to merit this change. An additional, and potentially just as impactful, outcome will be the opportunity for the market to enter into a relationship of continuous process improvement. The continual process improvement will be rocket-fuelled by a move to “value-based compensation” – but that is a topic for another day.

The path ahead

You may ask, now that I have stated my opinion on the state of affairs between the market and the providers of legal services in the States, what is the path to a better-performing relationship?

The answer is an agreed-upon set of measures. To this end, the Lloyd’s Market Association has initiated a project to improve data on, and support the oversight of, experts. My firm is working with the Lloyd’s Market Association, Professor William Henderson of the Indiana University Maurer School of Law and other interested professionals in the market, through a working group focused on performance-based measures, management information, analytics and intelligence, in order to identify the opportunities to enhance the legal service provider model via technology and data.

With these key measures, the next step will be capturing data from actual performance and benchmarking against these measures. With that data,

relationships will need to be reviewed and monitored.

Within a professional relationship, friendship and objective measurements of quality are not mutually exclusive, and they are not necessarily inclusive. Where deficiencies are identified, efforts will need to be undertaken to obtain better performance or to identify new providers.



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