



The Law Society

Legal process outsourcing: what you should know



supporting
solicitors



Introduction - President of the Law Society, John Wotton



John Wotton

President, The Law Society
2011-2012

Any business in a competitive environment like the legal services market needs to have a clear understanding of the options and business models available to maximise efficiency, while preserving high standards of client care and service.

Recently there has been a trend for some solicitors to outsource specific business functions, such as human resources, accounting or customer related services to a third-party provider. This is known as business process outsourcing. Legal firms have also been able to take advantage of legal process outsourcing - obtaining legal support services from another law firm, or a legal support services company, very often based in another country.

Outsourcing is not just the preserve of larger commercial law firms, nor does it refer to just one way of working or doing business. It can allow law firms more opportunities to offer a wider range of service to clients, potentially attracting a broader client base.

This booklet is not intended to champion outsourcing or to promote one outsourcing model over another. Any decisions made about the future of your business must be based on your own assessment of your workload, your clients, your costs and the relationship that you have with your other providers. It is designed, however, to provide our members with information about alternative ways of pursuing their practice, delivering excellent customer service without compromising on quality or responsiveness and complying with demanding regulatory requirements. I am grateful to those colleagues who have outlined their experiences of legal process outsourcing.

Whatever the future of outsourcing, the Law Society will continue to help members understand the potential opportunities, assess the suitability for their firm and identify how to mitigate potential risks.

A handwritten signature in black ink, appearing to read 'John Wotton', written in a cursive style.

Why are firms outsourcing their work?

The legal industry operates in a global marketplace, and both clients and firms are seeking to understand how global outsourcing can add value to their businesses. Legal outsourcing is not a new concept. Lawyers have always outsourced work to other lawyers with specialist knowledge and foreign law elements of transactions to lawyers in other jurisdictions. Some law firms have also started to 'spin-off' or commoditise parts of their business. In some cases, firms are using their offices in other jurisdictions to do their legal work and offering that service to other firms. In others, general counsel are going directly to legal process outsourcing (LPO) providers and bypassing panel firms.

Outsourcing is generally considered the preserve of the larger commercial law firms, but there are signs that small to medium-sized firms are beginning to look at outsourcing and other sourcing options such as shared services to cut costs and remain competitive.

The ongoing economic crisis has significantly impacted law firms, with pressure on legal spend by corporations across sectors - in particular financial services, telecommunications and construction - and the consequent push for firms to cut costs. The drastic reduction in market activity in areas such as mergers and acquisitions and property has also badly affected firms' profitability and compelled them to consider new ways to reduce costs.

The focus of this report is on LPO -however this is not the only form of outsourcing. Some legal practices have chosen to outsource parts of their business which are common to many organisations, such as HR processes. This is often know as business process outsourcing (BPO).

BPO focuses on the middle or back-office operations of a firm. The BPO market is significantly larger than the LPO market and includes outsourcing of IT, finance and accounting, business development, facilities management, communications, administration and HR processes. Increasingly firms are seeking to outsource their business processes in a drive to reduce middle and back office costs. BPO providers claim to provide significant savings to firms, not only by providing the services offshore where costs are often cheaper, but also through the 'shared service platform' model, where a number of firms have services such as IT provided by one team located offsite.



Los Angeles



New York

Trends in legal process outsourcing

- The global legal market is worth approximately \$400 billion USD - 60% of this total is accounted for by the US. The global LPO market is currently estimated to be worth approximately \$440 million USD or 0.1% of the whole legal sector. Current market size represents nearly a 50% increase on the approximate LPO market sector of \$300 million USD in 2008.
- The most popular international destination for LPO is India, closely followed by the Philippines, South Africa and New Zealand. LPO firms in India and the Philippines are expected to generate approximately \$960 million USD by 2015¹
- According to a 2010 report, three quarters of the current Indian LPO business is generated by US firms and corporations and one fifth comes from the UK. The UK figure is picking up speed, and is expected to grow significantly throughout 2012-13. More than 90% of work is being outsourced directly by corporate counsel or on their behalf by law firms.
- Outsourced work includes patent applications and records management, litigation support, document review, legal research and sometimes drafting pre-trial motions and briefs. Traditionally, this is work done by junior lawyers or paralegals in law firms.

What services are outsourced?

Outsourced legal work includes, but is not restricted to:

- contract drafting
- review and management
- compliance assistance
- e-discovery
- litigation support
- patent support

Who is providing LPO Services?

Most LPO providers are staffed by lawyers that have been trained in the host jurisdiction. The main providers of LPO are:

- third party providers - companies set up specifically to provide business process or legal process outsourcing to several clients
- 'captives' - companies set up by firms offshore for whom the firm is the only client
- regional offices or offshore offices of firms
- firms set up specifically to provide LPO services in lower cost commercial centres in the UK



London



Tokyo

1. 'Top 10 Trends for Legal Outsourcing in 2010' Report by Fronterion LLC, available at www.fronterion.com/top-10-lpo-trends-in-2010

On-shore or offshore?



Michael Stevens, Senior Partner - Cripps, Harries, Hall

Mexican-Wave is the brand name given to the outsourcing of real estate legal services for prudential property investment managers or PRUPIM. It came about because of a confluence of advances in information technology, and at the same time considerable pressure from general counsel on legal fees.

Under Mexican-Wave, the real estate work for PRUPIM is undertaken by three firms, with Hogan Lovells taking the lead and managing the overall relationship but with a considerable amount of the work undertaken by two regional law firms, Cripps Harries Hall in Tunbridge Wells and Knights in the Midlands. The work is generally distributed according to certain value thresholds. Value, however, is not a determinant of complexity so that it is not just process driven work that is undertaken by the regional firms.

Within the world of outsourcing there is a further distinction to be made between off-shoring and outsourcing on-shore. Whilst the focus on off-shore legal work has been significant, a number of firms have chosen to dip a tentative toe into the outsourcing water closer to home.

On-shore outsourcing

The on-shore outsourcing market while small, is growing. Some small regional firms are taking advantage of their low cost base to offer services to larger London firms, often more than one at the same time. A recent survey of 10 top firms and 17 global outsourcing providers identified approximately 300 full-time lawyers and legal professionals working in outsourcing centres in Scotland, Wales and south-west England. Tellingly, 80% of the firms surveyed said they preferred to outsource on-shore, at least initially. For many firms, making use of LPO is a significant step to take and some may well want to adopt a cautious approach, preferring to work with companies that are in the same country. Also firms may prefer outsourcing to businesses that share the same regulatory framework and for some of their clients staying within England and Wales may be more important.



In my view legal services outsourcing is a win-win for all the parties.

The client achieves a permanent cost reduction and overall enhanced service, the outsourcing firm retains the client whilst only undertaking profitable work. Because we operate from a different cost base to a London or city based firm, the regional firms ensure that senior people undertake the work in circumstances where in London the firm could only justify putting in place a junior lawyer. The great benefit of Mexican-Wave or any other onshore outsourcing model is that different firms participate for the benefit of the client.

First and foremost the legal services provider must have the expertise and people in place who can handle the work.

It is an obvious point but it does mean a very considerable investment in time and money to have the right people and the right systems in place. In addition a project management team dedicated to the provision of outsourced legal services is essential for ensuring that all the processes required to give an effective service are delivered on time and in the manner required by the client quality. Best practice in each firm is shared for the benefit of the client therefore each firm has to ensure that its service standards are at least as good as the other participating firms. This allows the lawyers to concentrate on the task for which they are trained and paid free from the inevitable bureaucracy that surrounds any legal service.

Another very important element between the outsourcing firm and the legal services provider is one of trust and to an extent, shared values, but trust is key. Trust that each party will deliver its side of the bargain and trust that the outsourcing firm is providing you with all the information required to deliver the agreed outcome for the client. This is particularly relevant to project work or corporate real estate work when the activities carried out by one firm might only be a small part of a larger overall deal.

Lessons learned and future prospects

There is a market for onshore outsourcing and small law firms can benefit from it provided the key elements of expertise, efficient project management and trust are in place. The market is likely to grow considerably - the pressure from general counsel and others to reduce legal spend will not go away even after the end of the recession, rather, it will intensify. For large city based firms with large cost bases and the need to maintain partner profits, the model is likely to change to one where there are smaller teams and fewer assistants/associates. The partner will therefore undertake more legal work and charge higher rates for every minute of his or her time that requires their expertise. But for the larger amount of work that does not require their specialist expertise, they will be able to avoid the need for large teams by outsourcing the more routine work to trusted legal services providers.

The challenge for mid-size firms in London and other cities will be how to compete with the very large firms. All of this will be a huge opportunity for smart and fleet of foot smaller firms operating from a lower cost base.

Offshore outsourcing

Offshore outsourcing, the most common form of outsourcing, involves core and legal support services being outsourced to lawyers, law firms and specialist LPO providers in other jurisdictions.



Nigel Kissack, Head of Litigation and Arbitration, Pinsent Masons

Pinsent Masons' off-shore outsourcing arrangement started with outsourcing of typing and other secretarial work to South Africa in 2005/6.

We previously used paralegals in London for document review work but with increasing volumes of electronically stored information and consequent cost, we needed a different model to provide clients with a value for money option. In late 2008 we approached our South African typing provider with a view to recruiting a document review team and within six months a new team was up and running in Cape Town.

We now have a dedicated core team of four South African lawyers servicing the firm's review work managing a flexible team of legal reviewers (38 in total on a recent case). A team from the firm sets up each new project on a shared electronic platform and agrees the detail and quality assurance for the review. To ensure confidentiality and security, the documents under review are only fully accessible in UK offices and can be viewed and worked on jointly but cannot be downloaded or printed abroad.

The benefits of outsourcing include providing a better financial deal for clients, and a greater level of reviewing expertise from a team with English as a first language and a two hour time difference. The potential pitfalls are the same as in any investment abroad, including risks of poor infrastructure support, civil unrest and political or regulatory uncertainty.

Quality is built through consistent use of the same provider and collaboration in building the most suitable systems has been a significant contributor to a successful relationship.

Lessons learned and future prospects

Outsourcing off-shore is just one aspect of our effort to develop efficiency. We work on harnessing technology and adopting new working practices to enhance our client service, and given the competitive market we all work within, off-shoring and LPO play a part in delivering a better client experience.



The view from industry *Richard Reade, UK General Counsel*

The benefits of LPO used to be labour costs arbitrage but that has changed over time as LPO costs have risen especially as more demanding work is outsourced. ISS has a longstanding outsourcing relationship with a provider based in India and the services we receive continue to be of excellent quality. This is partly because our provider not only specialises in the 'process driven' work but also in work higher up the 'value chain' where real legal advice is delivered. In addition, they fortify their service by contributing innovative value-adding approaches to other parts of our business, for example, by working with our new IT based instruction system.

The relationship with the outsourcing provider has sometimes proved to be more 'frank' than with a law firm due to the ability to build a team that works much more closely and regularly with the company and its every day legal issues. There is also often a greater commercial awareness demonstrated by the outsourcing provider than is traditionally seen in law firms.

Sometimes the language and cultural differences can be an impediment to a successful outsourcing engagement and it takes time to develop a mutual understanding and expression of needs. ISS has sought to mitigate that issue by insisting on English qualified lawyers working at operational and managerial level in the LPO provider to ensure quality and meet the expectations of the company. The increasing availability of English trained or qualified lawyers around the world provides an unexpected confidence and assurance of the level of service and ability. One of the frustrations is the requirement to separate the 'process' work from the other legal work, especially on issues covered by Professional Indemnity (PI) Insurance. Thus, more creative solutions are required if PI insurance is to cover the arrangement. One way to do this is send all work through a practicing English qualified lawyer who is covered by his own PI insurance. That lawyer must then check and amend (if necessary) any advice before it is delivered. However, even then, PI cover tends to be less than one would be accustomed to receiving from an English law firm.

Future prospects

The effects of recent social policy-making on issues such as access to justice and equality and diversity have had an impact on the public and business perception of legal services, how and by whom they are provided. This has been reflected in a change in the power and status of GCs in the UK as the commercial models of most companies have changed. The business models of many law firms, however, have remained largely unchanged (or are changing very slowly) which is an increasingly untenable position. The softening of the regulatory framework following the provisions of the Legal Services Act 2007 with its further liberalisation of the legal services market will inevitably lead to increasing competition in the provision of legal services and a rise in providers. Outsourcing - either externally or setting up captive operations - will certainly play an increasing role in that.



Legal process outsourcing - what to consider

Legal process outsourcing has the potential to offer many benefits to legal practices. However there are a range of issues to consider before deciding to outsource and in your choice of provider.

Regulatory obligations

With the introduction of outcomes-focused regulation, the SRA has provided more information on outsourcing than it has previously made available. The SRA does not provide a definition of outsourcing but has indicated in its quick guide, 'Outcomes-focused regulation at a glance' that the provisions are aimed at practices, in-house or solicitors, who use third parties to carry out work. The quick guide also provides a non-exhaustive list of examples of outsourcing activities that the Code covers.

The SRA Handbook outlines ten mandatory principles which apply to all those who the SRA regulate and the Code of Conduct 2011 (establishing outcomes-focused conduct requirements). Specific elements of both are particularly relevant to outsourcing:

SRA Principles:

Principle 5 - provide a proper standard of service to your clients

Principle 7 - comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner

Principle 8 - run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles

SRA Code of Conduct 2011:

Chapter 4 on confidentiality and disclosure

Chapter 7 on Management of your business- two outcomes specifically reference outsourcing.

The introduction to the SRA Handbook states clearly that although practices have greater freedom in the way they offer services (for example, by outsourcing certain functions), practices 'may not abrogate responsibility for compliance with regulatory requirements'

Outsourcing will present regulatory challenges, however through appropriate risk-assessment and following good practice it will be possible to use LPO and meet the requirements of the regulator. For more information, see the Law Society's Practice Note, "Outcomes Focused Regulation (OFR) - Outsourcing

Other legislation

Beyond the regulatory framework there is wider legislation that governs the export of certain services. In the US, for example, the Export Administration Regulations (EAR), govern the international dissemination of certain technologies and the US Patents and Trademark Office also provides guidance on sending particular legal documents abroad. Firms should consider reviewing the provisions and limitations imposed by similar legislation in the UK and EU such as the UK Data Protection Act and EU Anti-Competition legislation prior to considering an outsourcing arrangement

Considerations for your practice

In addition to regulatory requirements there will be a number of issues that your firm will need to consider. While this list is not exhaustive it is intended to indicate which areas will require detailed discussion and assessment.

1. Be clear on what the introduction of LPO is intended to achieve for your business. Beyond reducing costs, what other benefits in improving quality, increasing efficiency, portfolio management are you expecting LPO to bring?
2. Consider the impact on your business. Is there sufficient buy-in internally from partners and/or senior management? What will be the impact on other staff - will it free them up to do other work or will you potentially need to reduce your staffing levels - if so, how will that impact on morale? Will outsourcing 'fit' with the culture and values of your business? Will the impact on your clients be positive, neutral or negative?
3. Could staff augmentation on specific projects or BPO provide the efficiencies you need instead of LPO?
4. Identify the technologies, processes, expertise and governance structure in order to identify the best vendor to meet your objectives;
5. It will be essential that you conduct in-depth due diligence on potential LPO vendors to ensure that they meet your key risk management targets, including client confidentiality, data protection and potential conflicts of interest, and that they understand SRA regulatory requirements. How will you carry out that due diligence and if you need advice on this process where will that come from?
6. The contract will need to cover key issues such as allocation of liability; termination rights and obligations; roles of personnel; framework for managing client concerns; business continuity plans; quality supervision and governance structure;





The Law Society

113 Chancery Lane
London
WC2A 1PL

www.lawsociety.org.uk

© The Law Society 2011
For alternative formats email accessibility@lawsociety.org.uk