PANEL GAMES: HOW DO CLIENTS SELECT AND RETAIN THEIR PREFERRED EXTERNAL LEGAL ADVISERS?

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ABSTRACT

This qualitative study investigates why and how client organizations select and retain panels of preferred law firms as exclusive suppliers of external legal services, and how influential - if it all - the reputations and media assessments of law firms might be in the process of panel appointment. I find that that law firms are usually linked to a client through a combination of history, luck, and ritualistic 'beauty parade' tournaments. Panels of law firms are devised in order to take advantage of favourable price and benefits arrangements; to aid the development of long term client specific knowledge; to deal with specialist or high-risk legal matters; and to cement historic relationships. Client organizations vary in the composition of their legal panels, yet all retain a "Magic Circle" adviser and most have long term relationships with trusted law firms which are virtually unassailable. Whilst price is an important consideration for some panel appointments, the most significant factor influencing the appointment and retention of panel firms is the development of relationships which develop trust and client specific expertise. Few client organizations display any kind of rigour in the process of panel reviews, which for most are a ceremonial display. In-house counsel are dismissive of secondary information sources such as reputations and media assessments when finding and choosing panel firms, but there is some evidence to suggest that these have some influence on their perceptions over the long term.

INTRODUCTION

In recent years, buyers of professional services - especially large corporate organizations - have become increasingly discerning in their choice of professional advisers, particularly with regard to the quality, price, and standard of attention they expect from the professional firms or individuals they engage. For example, it is now common practice for client organizations to employ a range of law firms to handle their external legal requirements, rather than remaining loyal to one or two firms. Many such clients operate a 'panel' system, whereby several law firms are selected and retained as exclusive suppliers of external legal services for a defined time period. In return for their select panel membership, law firms offer their clients, *inter alia*, reduced fees, specified partner relationships, and special access to training and social events.

Research investigating the nature and significance of the relationship between professional service firms ("PSFs") and their clients is limited, and most of the empirical studies in this area have tended to rely on data from the professionals or PSFs (e.g. Galanter & Palay; Uzzi & Lancaster, 2003). Although there have been some studies which examine client satisfaction and service evaluation (e.g., Johnston, 1994; Patterson & Johnson, 1993; Pieters, Koelemeijer & Roest, 1995), there has been very little research examining the process by which clients choose their professional advisers, and none has looked at panel selection. Investigating clients' perspectives would certainly provide significant insights into their relationships with PSFs, and is likely to have implications for the effective establishment, maintenance and management of client relationships by PSFs, which are fundamental to the sustained growth, profits, cash flow, and reputations of these firms.

The paucity of research examining the criteria clients use to select and retain professional advisers, and the permutation of firms they choose to retain as panel firms, prompts this investigation into the process by which clients find, assess, choose, combine, review, and maintain relationships with, their external legal providers. In particular, this paper will investigate:

- the factors which influence the initial selection and ongoing retention of clients' preferred legal advisers;
- the composition of panels (how many firms? of what type? which firms do what type of work?);
- the process by which non-panel law firms create credentials sufficient to usurp existing panel members; and
- the influence, if any, of firm and/or individual reputations and media opinion on client decision-making.

The structure of this paper is as follows. First I review the existing literature and theoretical perspectives relating to the selection and retention of professional service advisers, and the influence of reputational and media assessments, in order to contextualize and emphasize the current deficiency of understanding in relation to clients' selection and retention of panel law firms. A discussion of the methods and research context follows. I then show, using an analysis of interview and documentary data, how clients assess, select, combine, review, retain and/or reject their panel firms. I develop the results of this analysis to discuss their implications for the understanding, development and management of lawyer-client relationships, and suggestions for subsequent research

THEORETICAL PERSPECTIVES

Choosing a Professional Adviser

The existing literature examining business-to-business marketing emphasizes that the establishment, development, and maintenance of successful long-term relationships requires the existence of trust. Clients' trust provides social capital for a firm in a manner which influences clients' decisions to select and retain their external service providers (e.g., Cooper et al., 2000). However, trust is difficult to prove or create in the high credibility/intangibility context of the purchase of a professional service. Engaging a professional is perceived as high in personal involvement and potential risk (Patterson, 1993), and clients find it difficult to measure the quality of service provided (Clark, 1993; Nayyar, 1990), before, during and after the service event. A number of studies which have considered the relationship between PSFs and their clients claim that purchasers of professional services are almost always at a disadvantage because of the fundamental asymmetry of information and power existing between the client and the professional (Glückler & Armbrüster, 2003). This argument is normally supported by the assertion that the provision of legal services is particularly difficult to evaluate, since the service

provided is intangible, and the subject matter is complex, highly ambiguous, and unpredictable. As Hadfield (2000: 969) points out:

> "Law is not merely complex. It is so complex that it is also highly ambiguous and unpredictable. The necessity and quality of legal services are not merely difficult for nonexperts to judge; they are also difficult for experts, even the expert providing the service, to judge"

A survey of the literature relating to the selection of professional service advisers reveals that there has been limited academic research, and even less in the specific area of legal services. In addition, few of these studies are based outside of North America, raising questions about the generalizability of these largely US-based research findings to UK and European legal practice, where marketing functions and strategy are still poorly developed (Morgan, 1991) and are often seen as an unnecessary intrusion into the legal profession (O'Malley & Harris, 1999). Much of the research which has been done is also based on the views of individual consumers rather than corporate clients, and as a consequence many such studies emphasise rather parochial selection factors. For example, although Hughes & Kasulis (1985) found that private clients consider years of experience, speciality, personal qualities, and recommendations when selecting a lawyer, they placed equal importance on convenient office hours and location when making their selection. Crane (1989) found that non-corporate clients were won over by competence, courtesy, and credibility; these criteria were amply demonstrated by personal referrals, the reception they received from the prospective lawyer, and the physical appearance of the lawyer's offices. The generalizability of these studies to sophisticated corporate clients—in the form of legally-qualified in-house or general counsel—would appear suspect.

In terms of the few studies which have investigated the perceptions of corporate clients when choosing professional advisers, many emphasize the importance of a good personal relationship between professional adviser and client, and the approval or endorsement of a prospective lawyer or law firm by a client's trusted contacts. For example, File, Cermack, & Prince, (1994) found that US-based CEOs rated word-of-mouth recommendations as very important in their choice of lawyers, whilst Day & Barksdale (1992) found that prior experience, and the 'personal chemistry' between clients and service firms, were the most important criteria in selecting US architectural and engineering services. Mitchell (1994) suggests that in a context characterized by high levels of uncertainty, corporate clients are inclined to use a recognized set of locally based firms because of their ease of access and contact.

In their study of client perceptions of a regional UK law firm, Ellis & Watterson (2001) found that corporate clients, as well as being far more cognizant of the legal market and the specialities of particular firms than individual clients, were influenced in their choice of legal adviser by the past experience of a firm, and by word-of-mouth recommendations. In particular, their findings suggested that clients were concerned that they would receive a good technical outcome (or, at least, that a firm had a reputation for such), and a successful functional service (e.g., that the firm or lawyer was approachable and that a rapport was established).

Given clients' uncertainty about the quality of service that will be provided, or even whether the service, once provided, is superior or below standard for the industry, the research studies outlined above suggest that clients tend to rely on secondary cues to establish the credibility of a PSF. These may include industry reputation, referrals from a colleague or other professional, and/or recommendations from trusted personal sources (Clark, 1993; File et al., 1994; Galanter & Palay, 1991; Granovetter, 1985; Gulati, 1995; Strub & Priest, 1976). Clients are wary of external service providers whose names they have not heard of, or those who have not been recommended by their network of contacts (Spar, 1997).

Although these studies are indicative of the factors which in-house legal counsel may consider important in their decision to choose an external law firm, none acknowledges the multi-choice dimension of clients' selection of advisers. Given that in-house counsel may not deal exclusively with a single lawyer or law firm for all of their external legal requirements, perhaps the 'personal chemistry' between client and legal adviser, which previous studies have emphasized, is not the most important factor in all of their appointment decisions? In putting together a panel of law firms, it is possible that in-house legal counsel are concerned to establish a close personal affinity with those lawyers or firms with whom they will co-ordinate complex, high-value, or high risk transactions, but are rather less concerned about this as a criterion for the selection of firms who will handle its more workaday, commoditized legal matters.

None of the previous research outlined here appears to take any account of the possibility that the type of legal advice required from a lawyer or law firm may influence the criteria used to appoint them. In other words, the factors which influence the choice of a specialist legal adviser may differ from those used to select a firm which will carry out low-value, 'commoditized' legal work. Nor does the research capture the sophistication and experience of the individuals who select and retain several legal advisers simultaneously, using knowledge of the legal market from their own experience as former private practice lawyers and often as ex-employees of some of the firms who may be under consideration. The view of legal services as 'credence goods', whereby consumers of such services are regarded as unable to gauge the quality of the services because of the technical complexity of the services and the 'professional' judgement involved, loses sight of the fact that many clients—particularly those who are legally trained and work within organizations—work alongside their external advisers as an integral member of a project team, adding their own commercial, industry-specific knowledge to the matter at hand. In addition, there has been no previous research examining the factors which influence the composition, size and work allocation of corporate legal panels. This paper attempts to capture the flavor of the significant factors which characterize the process by which legally-qualified and sophisticated clients choose a variety of legal advisers to service a variety of legal needs.

Retaining a Professional Adviser

The relationship between law firms and their client organizations is usually a long-standing one, a characteristic common to many types of PSF (Levinthal & Fichman, 1988). This stability favours both parties by facilitating future sales opportunities

(Crosby et al., 1990) and firm growth (Yli-Renko et al., 2001) for the PSF, and customer satisfaction and retention (Baker & Faulkner, 1991; Crosby & Stephens, 1987; Price et al., 1995), and the cost and time savings of not having to 'reinvent the wheel', for clients. Client-specific knowledge — usually fostered in long term relationships — is an important resource for a PSF (Empson, 2001): it is about understanding how a client organization operates, and knowing individuals on a personal level.

Before the recent attention paid to relationship marketing by large law firms — encouraged by such PSF "gurus" as David Maister (e.g., Maister, 1993; 2006) — very little emphasis was placed by law firms on maintaining client loyalty (Palihawadana & Barnes, 2004). However, a number of studies have demonstrated the advantages accruing to a PSF from obtaining repeat client business, which may have encouraged the adoption of a formal marketing strategy by a significant number of firms. For example, client retention is positively associated with firm profitability (e.g., Reichheld & Sasser, 1990), partly due to the fact that the one-off costs of sales, marketing, and gathering client specific knowledge are reduced over time, and some transactions can become standardized for repeat clients. In addition, satisfied clients provide referrals and favourable publicity for the firm, pay less attention to competing firms, and can become less price sensitive (and may be willing to pay a premium) (Kotler, 1994).

Amongst the studies which have examined the reasons why *clients* maintain their relationships with professional service advisers, many have focused on client evaluations of service quality. Client's perceptions of lawyers' service quality have been found to be related to their willingness to consider alternative providers (Morgan, 1990), or to switch providers (Ellis, 1997). A client's experience-based trust of a particular service provider may sometimes obviate the need to carry out market screening prior to engaging them (Glückler & Armbrüster, 2003): favorable personal experience produces trust which consequently eases selection for future transactions. In a study of CEO's evaluations of their legal service providers, Jackson, Brown, & Keith (1985) found that the technical quality of a law firm, and its expertise in specific areas, were almost as significant as a lawyer's interpersonal relationship with their client: factors such as taking a personal interest in the client's business, and keeping the client informed of progress were considered to be important factors in CEO's assessment of lawyer's service.

Whilst there is a strand of thinking in the professional services literature which suggests that client perspectives on lawyer quality are limited because lay clients cannot adequately assess legal competence (see above), it is clear that client opinions are crucial to the retention of external legal advisers, as evidenced by the ubiquity of client satisfaction surveys, which are probably the most common form of performance evaluation conducted by lawyers. Whilst the technical performance, products and outcomes of a legal service may be difficult to evaluate, clients are able to judge the tangible aspects of personal service, including a lawyer's overall handling of a case, promptness, understanding, honesty, their willingness to explain matters and keep the client informed, attentiveness, predictions of how long a matter might take, the handling of complaints, and their confidence in advocacy and negotiations (Rosenthal, 1974; Binder, Bergman & Price, 1990).

Hilton & Migdal (2005) describe the mechanism by which clients establish a lasting relationship as a two-stage process, with client dependency a first step in the client-PSF relationship, followed by the establishment of client trust. Bendapudi & Berry (1997) provided evidence for this dual stage progression in a study which found that clients can be divided into two types: those who 'want to stay' with their service providers, and those who 'need to stay'. The former exhibit behaviours which may have a positive impact on the service organization, such as cooperation, cross-selling, identification (e.g. 'my' lawyer), and recommending the organization to others. By contrast, clients who feel they need to maintain their relationship may act in ways which are more acquiescent, and are more interested in seeking out alternative service providers; they may even spread negative word-of-mouth opinion about the service they have received (Richens, 1983). Hilton & Migdal (2005) found that client dependence develops where lawyers establish and maintain 'relationship specific investments' (p. 151): customized investments or 'sunk costs' in things like getting to know the client's organization, industry, or the very personal nature of their situation, as well as, e.g., recruiting to strengthen the expertise of a client team; or investing in processes to deliver a more responsive client-specific service. Dependence was also fostered where clients' expertise was recognized and treated as an important part of the resolution of legal problems, and where there was 'social bonding': client and lawyer established and maintained a good personal relationship.

Palihawadana & Barnes' (2005) investigation of the factors which influence client loyalty and defection among corporate clients of UK law firms found that the primary reason clients stay loyal to firms is because they are satisfied with the service they receive. This is considered more important than the quality of the legal advice, or the technical skills of their lawyer. Conversely, poor quality client-PSF interaction is the most significant contributor to client defection. The least important factors influencing client loyalty and defection were industry expertise, reputation, geographic proximity, size of firm, and price.

Whilst these studies emphasize the importance of service satisfaction to client loyalty, there is little indication of how far service quality, or other important performance factors, must decline before law firms are replaced or "sacked". One wonders whether, in the context of a legal panel, out-of-favour firms are formally removed, or whether they are just "frozen out" when work is allocated to other panel firms.

Whilst this paper will investigate the factors which may affect the continued retention of external legal advisers by corporate clients, in order to confirm or augment existing studies of client loyalty, it will also examine the nature and function of panels of law firms. Such panels are often established or reviewed using a "beauty parade" procedure, but little is known about how this process results in the selection of a consortium of different firms, each presumably with different strengths and weaknesses, and each chosen for a particular purpose. How objective is the selection process? Are panels just an excuse to formalize long-standing relationships which are unlikely to change? Are they just "myth and ceremony" (Meyer & Rowan, 1977): formal, institutionalized

structures which appear to be an efficient way to manage a stable of law firms in order to receive the best service quality and value for money, yet merely a façade of isomorphic conformity to a legitimized form of organization which perpetuates a status quo? To what extent do panels change, or are new firms appointed? Are incumbent firms ever removed? If so, on what criteria? This paper attempts to examine some, if not all, of these questions.

Role of the Media?

Some studies suggest that reputation is one of the least important factors influencing client loyalty (Palihawadana & Barnes, 2005), yet a significant theme in the professional services literature is that clients are often uncertain about the quality of service that will be provided and thus will tend to rely on secondary cues, such as reputation, to establish the credibility of a PSF. Previous research has indicated that personal recommendations—which are a form of reputational capital—are an important criterion in the selection of external service providers (e.g., File, Cermack & Prince, 1994; Galanter & Palay, 1991; Granovetter, 1985; Spar, 1997). Other researchers suggest that a firm's "image" (Nachum, 1996; Wilson, 1984) is a factor in client choice, or that social cues such as the status or relationships of a PSF are a consideration (Johnston & Lyth, 1991).

Mass communication research has found that the tone of media reports (positive or negative) is accepted by audiences as a legitimate expression of approval or disapproval of firms and/or their actions (Elsbach, 1994). Opinion leaders, such as journalists and media industry experts, express their judgement, thereby allowing others to deal with uncertainty by imitating them. Pollock & Rindova (2003) found that the extent and tone of media reports of IPOs affected investment choices by influencing stakeholders' sense-making and their impressions of firms, with some firms being seen as more desirable or legitimate than others. This, they suggest, affects these firms' access to resources (Suchman, 1995, as cited in Pollock & Rindova, 2003). In particular, they found that the press were able to create a positive "buzz" about certain firms (Dye, 2000) — an increased perception of a firm's value — which drove up its stock price. The study controlled for the effects of firm-produced information such as press releases, finding that these did not have any effect on market outcomes: the authors thus tentatively suggest that media produced information has the credibility and range to influence investor behaviour.

Several other research studies have concluded that media coverage can affect firms' reputations (e.g., Fombrun & Shanley, 1990) and financial performance (Deephouse, 2000), and that the promotion of product categories and rankings by the media encourages comparisons and facilitates sense-making for consumers or clients (Anand & Peterson, 2000). Carroll & McCombs (2003) argued that positive media coverage, and companies' inclusion in ranking lists, results in positive public opinion, and that corporate efforts to influence the media through press releases and the seeding of stories with journalists corresponds to the amount of media coverage it receives.

It would not be surprising if the vigorous UK legal press—which supports two weekly newspapers, several monthly magazines and two-widely read industry directories providing reputational assessments of the 500 largest UK firms (Fairclough, 2005)—played a role in shaping firm assessments by clients. This may be particularly so given clients' tendency to look to indirect information sources for the credibility and confidence they require in the PSFs they employ. This tendency may be exaggerated in an industry where information about service quality and experience is shrouded by the normative standards of client confidentiality and discretion which dictate an "introverted façade" (Fombrun, 1996) for law firms. If so, clients' information deficiency may bestow significant influence on the opinions and evaluations of the legal press. This paper will examine the role played by law firm reputations and media opinion in the 'choice and discard' process undertaken by corporate clients, particularly in their selection and composition of legal panels.

METHODS

The purpose of the study was to gain a better understanding of the range of factors which might influence the choice and composition of panels of law firms by client organizations.

Data was collected over a three month period, in conjunction with a doctoral research project examining the emergence, maintenance and persistence of an institutionalized professional elite. Whilst gathering data from the clients of elite UK law firms about the meaning, significance, origins, persistence and future prospects of the professional elite known as the "Magic Circle", I asked respondents from client organizations to explain the rationale behind the establishment and composition of their law firm panels. Although the interviews were conducted with the primary aim of eliciting data in connection with my doctoral research, and thus the questions gave a particular emphasis to the significance of the "Magic Circle" categorization/reputation in clients' selection and retention of panel firms, the responses received were considered to be of general applicability to the research questions under consideration in this paper. Indeed, as the data collection continued I directed the interview questions in order to specifically elicit responses for both my doctoral research, and for the emerging themes relevant to this research.

The primary form of data collection was a series of open-ended, semi-structured, face-to-face interviews with 14 in-house general counsel and legal counsel of leading UK client organizations. All of the interviewees were responsible for selecting and retaining law firms for their national and international legal matters. The interviews focused on interviewees' perceptions of the process for appointing and retaining external legal advisers; the factors influencing clients' choice of law firms; the effect of reputations, rankings, industry stratifications, categories, awards and gossip on the appointment, retention or rejection of firms; the particular influence of media assessments of firms on appointment decisions; the composition of panels and the work assigned to panel members; the methods by which information about firms is gathered; the conditions under which firms were removed from a panel; explanations for the successful inclusion of new firms onto established panels; and the circumstances under which a non-panel firm might be employed. The interviews also covered more general issues, including lawyers' institutional and professional contexts: the topics covered were not limited strictly to issues of reputational labels and the media. Moreover, the analytical framework used in this study emerged in the analysis of data during and after the interviews were completed.

Interview data was collected using a combined 'purposive' and 'snowball' sampling design (Glaser & Strauss, 1967; Lincoln & Cuba, 1985), a strategy which involves choosing successive subjects based on information already obtained, as well as using initial contacts with respondents as a basis for establishing contacting with others. Interviews lasted about 54 minutes on average, and ranged from 35 minutes to 75 minutes. With the permission of respondents, all interviews were recorded for verification and transcription purposes.

The qualitative data analysis followed an iterative approach of traveling back and forth between the emerging theory, the existing literature, and the data (Glaser & Strauss, 1967; Eisenhardt, 1989). Some documentary and media sources have also been consulted in order to establish a historical context for some of the relationships described by interviewees. These included organizational documents such as company brochures, as well as articles, rankings, and editorial comment from legal newspapers, legal magazines, and a legal directory - *The Legal 500: The Clients' Guide to UK Law Firms* (Pritchard, 1988-2006) - which has been published every year since 1988.

The findings were examined using both within-case analysis and cross-case analysis methods. All related comments were clustered together within a given theme. The method used to analyze the interviews was a subjective approach to form categories or themes of significance. Using NVivo 2.0, I analyzed the interviews using thematic analysis (Spradley, 1979) by examining each transcript to identify the dominant themes underlying each interviewee's account of the appointment and retention of their preferred external legal advisers. The themes were derived from the messages and feelings that the interviewee conveyed (Taylor & Bogdan, 1984). The themes were then reinterpreted to form a more meaningful understanding of the interviewees' collective experience. Finally, I created broad categories of related sub-themes in order to further analyze and interpret the data (Strauss & Corbin, 1990).

Emphasis was placed on extensive verbatim quotations from respondents, resulting in a comprehensive list of quotations for each of the research issues. Rather than report exhaustive details, this paper presents representative illustrations to demonstrate the consistencies of views. It should be noted that a number of details have been altered o preserve anonymity (including the names of people, locations and job titles).

Research context

General, or in-house, legal counsel are qualified lawyers who are employed by, and represent commercial organizations. They may manage teams of in-house lawyers and non-legally qualified assistants within legal departments wholly within their organizations. In England, in-house counsel can be English-qualified barristers or solicitors, or may even be qualified in an overseas jurisdiction. They are normally charged with providing, in conjunction with the members of their legal department (if any), legal advice and representation, and with researching, negotiating and drafting contracts and legal documents. In addition, in-house counsel are generally the primary instigators of relationships with external law firms and lawyers, who provide advice and assistance beyond the capacities of the in house lawyer or his legal department.

The UK legal profession provides a powerful example of an organizational field stratified by reputation; in particular it demonstrates a segmentation of elite solicitors' firms — known as the "Magic Circle" — whose reputations for quality, size, profitability, and range of international and domestic "blue chip" clients, have gained widespread recognition and understanding within the legal industry and beyond. The Magic Circle is generally acknowledged to encompass the firms of *Allen & Overy, Clifford Chance,*

Freshfields Bruckhaus Deringer, *Linklaters*, and *Slaughter & May* (Fairclough, 2005). Understanding and use of the term 'Magic Circle' by lawyers, clients and legal journalists stretches as far as mainland Europe, Australasia, and the United States. Penridge (2004) claims that the term has become a brand "equivalent to the 'Nike' of the sports world or indeed the 'Coca-Cola' of the drinks industry". These firms are amongst the largest in the British legal profession: they employ thousands of lawyers and support staff across a network of offices spanning many jurisdictions and continents, and bringing in millions of pounds worth of revenues. *Clifford Chance* is the biggest law firm in the world, employing 2912 lawyers in 29 international offices, 574 partners and having a turnover of £1030 million in 2006[1].

The British legal media include a number of practice-oriented periodicals, which provide a serious exposition of case law and legislation through their reporting of recent judicial hearings, changes and developments in statute law, and relevant practice issues for solicitors, barristers, academics and legal executives. These include *New Law Journal*, *Solicitors' Journal*, and *The Law Society's Gazette*. The latter is the most widely read of all legal publications, with an audited circulation of 106, 172 in the year to June 2004, reaching 83% of all solicitors, 81% of all partners (Law Society, 2004).

However, there are also a range of publications which chart the ups, downs and gossip of the legal world, which provide frequent rankings of law firms on a variety of general and specific criteria. These include the ubiquitous weekly magazines *The Lawyer* and its offshoot, *Legal Week*, as well as *Legal Business* magazine, a monthly publication targeted at senior legal professionals – principally partners – which is one of the most prestigious and widely read, reaching an audience of some 25,000.

In addition, a number of legal directories have been established, listing law firms and lawyers according to their reputations by work category. Two are universally distributed to law firms and clients alike, and are widely-acknowledged as the definitive analysis of the legal industry: *The Legal 500: The Clients' Guide to the UK Legal Profession* and *Chambers & Partners: A Guide to the Legal Profession.*

FINDINGS

Why have a panel?

All of the general/in-house counsel interviewed for this study were assisted in the management and discharge of legal matters by legally-qualified and other staff who were also employees of their organization; indeed, some were in charge of large in-house legal departments up to 75 lawyers strong. However, despite the fact that many in-house counsel were keen to perform as much of their legal work as possible internally, and that most were set up, as Wallace (1995) observed, as autonomous "mini-law firms" within their organization, not a single client organization was able to operate without regular recourse to external legal advice. The number of law firms retained by each client

[1] *Legal Business* magazine, September 2006

organization for UK-based legal matters ranged from 3 to 22. The average number of retained firms was 9.8.

Three respondents were reluctant to describe their preferred law firms as a "panel", or claimed that they did not have one. However, these individuals did in fact use a number of favoured firms, and were happy to describe them as a "set of relationships", or a system of "preferred law firms who we try to push as much work as we can to". Similarly, there were a number of interviewees who were keen to stress that their panels were not rigid lists of law firms, but were "flexible", or "floating", with room for additions or subtractions as their circumstances changed. Nevertheless, all respondents were able to list the firms from whom they frequently sought advice, and it appeared that there was little difference in the nature of client-firm relationships between those respondents who claimed to use a panel system, and those that did not.

As regards respondents' reasons for the establishment of a panel or set of firm relationships, the most cited reason for assigning legal work to a range of external law firms was to ensure that all legal matters were handled both in a cost-effective manner, and with the requisite level of expertise:

"…the watch word really for us is to make sure we've got the right firm and the right lawyer for the particular job. That I would say is the most important thing."

"I mean the purpose of this is to try and concentrate the work into the hands of a few law firms who get to know us as a result of seeing enough of our work, see some real benefit in managing our relationship properly, 'cos they get paid enough by us. And the more you fragment that the less you achieve that objective."

The most-used expression by interviewees in this study was "horses for courses", meaning that clients were keen to allocate their work according to principles of efficiency and expertise: not paying more than a fair market rate for straightforward, or "commoditized" legal work, but recognizing that a premium rate was payable for complex, high risk, or unusual legal matters performed by legal experts:

"…depending on the nature of the dispute, the degree to which it's something which you need a Rolls-Royce service on, or the degree to which it's something which actually you just want to get sorted quick and cheaply, then I will choose an individual who I know is best suited to how I want the approach adopted."

More specifically, the primary reasons for constructing a panel of external law firms can be divided into four main categories.

1. Favourable terms/price. A number of interviewees mentioned that retaining a panel of law firms encouraged competition between rival firms on price, which resulted in "preferential terms agreed with those preferred law firms" or "financial discounts". As one interviewee said, "commercially, it keeps all the firms on their mettle". In addition, as relationships deepen between a client and a firm, and a steady stream of work begins to flow between them, the opportunity to negotiate fee discounts arises, or can result in the writing off of fees for the benefit of the client:

"And let's say, you know, you work on a deal and the law firm runs up fifty thousand pounds worth of fees and the deal goes nowhere and you're sitting there with a fifty thousand pound bill. Okay. If this is the one and only job that I've ever hired you on I've sort of got to pay that. Right, I can't exactly say gee I've tried you once, fifty thousand, you know, please write off the fifty thousand fee. On the other hand with a firm like *Allen & Overy* or *Clifford Chance*, or any of the others where we have millions and millions and millions pounds going through each other, to turn around to them and say please write off, you know, I need you to write off this fifty thousand bill, and you know you've got so much other work you can catch up, that you can do, right?"

For some clients who would regularly deal with international legal matters, the engagement of a panel law firm with a network of international offices gave rise to "global discounted rates". However, an extended association with a firm can reap financial rewards in indirect ways:

"…really for me as much as the financial benefits flow from the financial discounts…the real benefits come from getting to know us as an organization….you do save a lot of time, trouble and effort, and at the end of the day it is time in particular when you are dealing with external lawyers that costs you money. So if you can cut a chunk of that, I think that is a far more productive way of lowering your level of fees than it is negotiating a 10, 11, 12, 13, 14 per cent discount"

Some clients said that panel appointments were sometimes made for tactical reasons:

"[*Client organization*] have created a panel which has every Magic Circle firm on it in the hope that that conflicts them out of ever acting against them",

whilst others retained a number of firms in order to prevent conflict situations.

Another reason for employing a firm was to take advantage of "freebies" - training events for in-house lawyers and other client staff, and/or secondee appointments from the panel law firm. Both have financial benefits: the former saves the client time and money in providing valuable training for its staff, and the latter provides a labour source which is cheaper than engaging the law firm directly. Respondents frequently expressed how impressed they were by secondees, and their huge work capacity. Although secondees are often trainee or junior lawyers, these individuals clearly fulfill an ambassadorial role for their employers, and deepen the relationship between client and law firm. In-house counsel love them because they work hard, are economic to employ, and often do the work that they "wouldn't touch with a bargepole". Thus, everyone wins: clients get a good deal and law firms create a stronger bond with the client, which may lead to increasing trust and work flow.

2. Client-specific knowledge. Consistent with previous research which has emphasized the importance of "relationship specific investments" (Hilton & Migdal, 2005: 151), clients are keen to develop deep relationships with a limited number of lawyers and law firms in order to ensure that their advisers understand their industry, organization, past history, strategy and *modus operandi*:

"You tend to work with people who know how you work, who understand the company, and take time to understand what we like, how we do it, etc. etc... So you don't want to be changing law firms, what you want to do is to be forming relationships so that it gets seamless after a while".

"Another benefit is that they understand the issues for us from a reputational point of view."

"We had individuals who knew us, knew how we worked, and therefore didn't constantly have to reinvent the wheel in terms of how we would want the job done, risk appetite, all those sorts of issues that you do have to educate a new lawyer on"

This aspect of the client-lawyer relationship was, to some of the interviewees in this study, more important than any fee discounts or pricing arrangements. Indeed, to place too much emphasis on a price-based contractual association would detract from the personal, professional aspects of the client-lawyer relationship:

"I think you would lose the empathy bit and the relationship with some of the firms because you'd always just be somebody who'd bought a legal service for a fee and if you took that away, I mean you wouldn't get the chemistry I think"

By establishing a panel arrangement, it appears that clients take comfort from the contractual agreement forged between them and their firms. This formalization of a long-term association — in effect, a promise to assign work to a law firm — encourages the deepening of professional and social bonds, which in turn fosters the development of client-specific knowledge by lawyers, and trust by clients:

"I need to continue to invest in the relationship with *Linklaters* to ensure that they will invest in me. There's a kind of mutuality in the relationship."

3. Out of the ordinary. Another primary reason for keeping certain firms on hand was to deal with specialist, complex, or logistically difficult legal matters. For example, a number of interviewees in this study were in-house counsel for large financial institutions or investment banks. These individuals explained that they were regularly involved with transactions whose scale, complexity and degree of innovation were such that only the very largest firms - firms within the "Magic Circle" or at its boundaries - were capable of assisting them:

"I would say the vast majority of our work will be with Magic Circle firms, vast, really just absolutely the majority. And why is that? Um, I think it's the reason we began. It's high priced investment banking, that's where the expertise is. Whether it's derivatives, or it's M and A, whether it's leveraged bonds, equities, whatever it is, very much will go to the Magic Circle."

"We use *Slaughter & May* for rinky-dink financing".

The majority of interviewees claimed that panel firms were frequently brought in to assist when their in-house departments were struggling with a heavy workload, rather than to provide legal advice which did not exist internally. However, all interviewees had law firms on their panels to assist with matters which were beyond their own legal or technical capabilities. Firms were chosen because, *inter alia*, they had an international network of offices, were a UK branch of a US law firm; were a US firm; or had good coverage across a range of UK offices.

In addition, every respondent interviewed for this research study had one or more Magic Circle firms on their panels. The reasons given for their appointment included their

specialist legal, technical and logistical capabilities; their international network; the kudos of their name; their impact on the "other side" in a litigious or transactional matter; and, in particular, the credibility of these firms in so-called "bet-the-company" situations:

"You go to *Slaughter & May* when it's life-threatening, it doesn't matter what it costs then."

"…if you get to the stage of a hostile bid, only the Magic Circle firms have really got the in-depth expertise to deal with that."

Thus, as well as being a mechanism for allocating legal work in an efficient manner; panels also take account of extraordinary circumstances. Even though some clients may not have regular contact with Magic Circle firms, they take comfort from the fact that they have a relationship with one or more of these firms - as a panel member - so that when crisis hits, or a high stakes transaction is in progress, they can call on a competent adviser, who knows their business and background. Others use Magic Circle firms regularly, in an economically rational manner for the specialist knowledge they possess, and/or for the socially rational status signals they communicate to others.

4. Inherited relationships. Another factor influencing the maintenance of a panel system are the historic relationships established by clients with one or more law firms. A number of in-house counsel had "inherited" long-standing relationships from their predecessors, or had become linked to a range of law firms through acquisitions and takeovers. However, although some who had inherited law firm relationships claimed to maintain them because of the benefits arising from the continuity and client-specific knowledge residing in these firms, most appeared to be happy to let the relationships continue because it had always been so, and to change it would seem perverse:

"Allen and Overy did the privatization of [*client organization*]'s, *Clifford Chance* are [*client organization]*'s historic lawyers, *Norton Rose* had done the corporate work, *Stephenson Harwood* had done the banking work for [*client organization*]'s London branch…I don't think there was any sort of process. So we…I inherited that and it was okay".

Who's on a panel?

Although the client organizations examined in this study had law firm panels which ranged from 3 to 22 firms, the "typical" panel would be of the following composition:

- one or more Magic Circle firms - for international, complex, financial, or high risk transactional matters;
- three or four national or regional UK firms, or mid-tier London firms, for more straightforward or "commoditized" legal issues such as employment matters or small corporate transactions;
- a US firm with a UK office, for US legal matters; and
- two or three firms who are either niche players with a special expertise in an area relevant to the client, or are "on trial" - given small pieces of work as a test of their technical and service abilities, which might lead to their being given instructions in the future.

The client organizations in this study viewed the inclusion of a Magic Circle firm on their panels as a necessity. Whilst a number of client financial institutions saw their Magic Circle connections as integral to their legal function, other client organizations were reluctant purchasers of Magic Circle services. In-house lawyers have to make decisions about the allocation of legal work to external law firms which are both economically rational, and have face validity to their peers and overseers:

"…it's a little bit like the IBM defence, I mean, your decision will be beyond reproach if you choose a Magic Circle firm…but if you take that to it's logical extreme in every case you would instruct a Magic Circle firm and that would be lunacy because the cost simply does not justify it."

The Magic Circle firms have an expensive oligopoly on complex, high risk legal matters, but are not always an attentive servant:

"*Clifford Chance* have been probably our biggest earner because they do our securitization and some of the tax work, but we don't see them for a bar of soap, and they're next door".

"…*McDermott Will & Emery* will get some pretty talented partner who'll do a good job for us, whereas if we took it to *Clifford Chance* they'd get some lowly guy to do it and you wouldn't get the same…"

As well as retaining niche firms and US firms, in-house counsel often include a small cadre of national, regional, and/or mid-tier London firms on their panels, to deal with day-to-day legal affairs and low to medium risk/value litigation and transactional matters. The attentive service and cost-effectiveness of some of these firms was widely praised:

"So I mean we have *DLA* on, I believe we are their biggest client…We pay them a lot of money every year. We like them, we think they're a great firm, they're not in the Magic Circle, we use them for different things we don't use the Magic Circle for, it works very well."

"And the regional firms, one or two of them, you know, sort of the *Addleshaws*, a firm like *Dibb Lupton*…they have somehow picked up their game because they both sort of, you know, seem to say thank you I've got the mandate I'm really going to go out, and they're all out!"

Clearly, for many clients, these firms are the workhorse legal advisers who deal with their day-to-day problems, whilst the thoroughbred niche firms are only occasionally saddled up, and the champion pedigree Magic Circle firms are only brought out for the most important occasions. Substantial regional/national firms are attractive to cost-sensitive in-house counsel because they represent a good compromise between value for money, and the quality of service and scale of operation they require.

In addition to standard panel advisers, there were quite a few clients who described a kind of "trial basis" relationship with certain law firms, testing them out on small pieces of work in order to assess their suitability for future assignments. These firms were not considered to be members of a panel, but may well become so in the future.

"So we met with them and you know they seemed pleasant enough people and I had obviously known of *Wragges* from my days at *Norton Rose* when they were part of the M5 group of firms, so I would never have written *Wragges* off from a quality perspective, cos I believed, I've seen them and I know they can produce good quality work. We gave them a bit of employment work, it was that time when they came in through the door and it was like a slightly round about way. They were, I think we did appreciate, and I met with their senior partner and we spoke opportunities and all the rest of it. So that's how it goes really."

However, there are a number of client organizations who do not conform to the "typical" panel formation. Whilst many in-house counsel categorize their legal matters, and their external advisers, and attempt to marry them up as efficiently as possible, there are a few who display a loyalty to their Magic Circle advisers which defies consideration of the economic efficiency of the relationship. For these "Magic Circle groupies", only the very best firms will do. The investment bank clients interviewed for this research were inveterate users of Magic Circle firms, because no other firms have the expertise they require:

"There are select things that you would not give the Magic Circle firms. Most of our stuff is at the super high end, and the little bits and bobs kind of get picked up as part of the relationship, and you do try to concentrate your work"

Other clients placed a great deal of significance on the quality of advice, the closeness of relationship, and the associated reputation, of their Magic Circle advisers, above any cost implications:

'…I'd try and do what? Save fifty thousand quid on a bill that's going to be three million? Frankly I'm not interested. I'd rather have advice from people I know and trust and they'll bring the deal in. It's the core reputation I'm worried about here, not fifty thousand quid."

For these clients, the only reason to go to a non-Magic Circle firm would be where there was a conflict of interest; an international issue which required specialist legal representation in an overseas jurisdiction (and even then, they would probably ask the advice of their Magic Circle adviser on who to appoint); or a large amount of low grade work which required competent processing rather then interpretation and advice.

Panel reviews: do panels really change?

The majority of in-house counsel in this study acknowledged that their panels were reviewed in order to assess the best value and service to be gained from panel firms. Most claimed to review their panels on a specific time scale, ranging from quarterly, to every five years. However, the nature of such panel reviews varied considerably. Respondents mentioned the use of a wide range of review tools, including, *inter alia*, the production of tender documents, attendance at interviews, presentations or 'beauty parades' of candidate firms, and widespread consultation within the client firm. According to the analysis undertaken in this study, respondents can be divided into three types according to their attitude to the review process: those who remained loyal to their panel firms and undertook no review; those who demonstrated a relatively large amount of empirical rigour and attention to the review procedure; and those who undertook the review in a largely ceremonial fashion.

1. We are family. A few interviewees were thoroughly wedded to their law firms and saw no reason to change them. One interviewee said that his organization had been instructing *Slaughter & May* since the early 1930s, and *Beechcrofts* since 1910. As he explained:

"I was very anxious that we had that continuity because I think these advisers and certain key other advisers have to be family members in the extended family of [*client organization*], especially for the intellectual professional input to get the job done is vitally important."

Another respondent had kept up a relationship for over thirty years:

"…we've been extremely lucky with *Norton Rose* for probably thirty years - more like forty years. 1976 was the first time they acted for us in Hong Kong…So if somebody delivers to you when you've wanted it, you say well, why kick yourself in the teeth just because of a name?"

Although some of these interviewees did hold beauty parade processes for small or commoditized work matters, their main legal advisers were bulletproof and permanent:

"And I'm always puzzled by people in my position who have these beauty parades for major deals, and I'll talk to the *Slaughter & May* team who are going off to do a, doing a beauty parade and a presentation as to why they should be chosen by somebody. Well very occasionally we have one, not very occasionally, but those parades are often put on by people who, you know, are based in London and have an established…and there's a sort of "run their big deals off of panels and make them compete". Well I never thought that was sensible."

"I don't want to sound complacent and everything here is perfect and nobody…maybe it should be and we're going to have to be more rigorous in terms of finding some money and performance than ever before. But I haven't got any real complaints about our relationships and this is rather strange perhaps but you don't change your solicitor with your shirt, you know."

In addition, the investment bank organizations interviewed for this study were so entrenched in their relationships with Magic Circle firms that relationship reviews were not necessary. There are no serious alternative providers against whom the Magic Circle firms could compete, and the firms were all considered to be "at the top of their profession and much of a muchness". However, these client organizations did engage in beauty parades of a sort, focused almost entirely on price:

"so we'll, you know, get quotes from *A & O*, *Clifford Chance*, *Linklaters*, and see who's the hungriest for the business".

All of these "familial" respondents, when they did review their relationships, engaged in discussions which might take the form of a casual lunch meeting, or an informal telephone conversation, to discuss relationship issues as they arose, each with the relationship partners of their preferred law firms. In terms of reviewing their relationships on economic and service-based criteria, this was virtually non-existent.

2. We do it by the book. By contrast, another group of respondents were meticulous in their review and appointment of panel firms, doing things like gathering copious technical and reputational information about potential firms, drawing up firm specifications and budgets, setting aside whole weeks at a time to interview or parade firms, and using defined criteria to choose amongst the candidate firms. One interviewee explained how he spent 44 hours listening to firm presentations. Another described his process:

"So I give them, if you like, in contracting terms, an inquiry document. And they then attend an interview. We normally conduct them over two days. We interview them all - I tend to chair it - and then after two days I prepare - well, I've prepared - a detailed score sheet. And then we tend to mark them as a whole, well loads of different criteria, and the firms that come out on top, generally speaking, get appointed."

For these client organizations, previous relationships with law firms *do* count in their reckoning, but are not the overriding concern:

"They count in the sense that they probably understand our work better and may come across better in the interviews, but we have changed firms on the panel."

Clients' reasons for such economic rationality are to demonstrate to their board, and to their shareholders, that they have a process which identifies those firms who are the best value, and to legitimize the relationship between themselves and their lawyers, so that there is a sense of propriety and fairness, rather than favouritism, in terms of their external relationships.

3. We just do it. The majority of client organizations in this study were rather unsystematic in their review procedures, and many engaged in only perfunctory, semi-regular meetings with relationship partners to discuss progress, billings, or personnel difficulties. Most saw little benefit in ending a relationship; in fact, where there was any kind of review process at all, the result was likely to be an addition to a panel, rather than a subtraction. A request to an incumbent firm to come and pitch for its panel membership was considered by some interviewees to be upsetting a status quo, or may undermine a personal relationship:

"it wasn't flattering for those on the panel"

"I announced I was doing a beauty parade. They were so shocked they came in to see me and they came in to see me and said, you know, we must have done something wrong. And I said, no you haven't, and I gave them all the reasons I've just given you."

These client organizations appear to combine some aspects of the "familial" firms described above, with those of the "empiricist" panel reviewers. They have established, long-standing relationships with firms they like, and who understand them, which they invariably maintain despite the semblance of the consideration of alternatives during a review process. Whilst these clients will occasionally add firms to their panels, they will rarely remove any.

"Once you've got a law firm that does a good job for you, is familiar with your work, you have to have a powerful reason for changing them. So the beauty parade, typically next time round, I mean it's possible *Cameron McKenna* might go off the list. It's unlikely that *BLP* would go off the list. I think it's nigh on impossible that *Linklaters* would, because we'd all recognize the value that they bring."

Rather than weeding out expensive or poorly performing firms, clients go with "the usual firms", who are assured that their panel position is safe because the client is "not going to tear the whole thing up". It is not a rational process, but one which consists of "tidying up". For many, the review process is just a ceremony rather than an attempt at finding the best firms for the best price:

"…it's a bit like buying a house. Could you buy something better? Probably. Could you ever find it? Don't know. Cue luck. So you're not quite sure what you want."

How to Get On, and Off, a Panel

It is clear from this investigation that the best way to get on, or remain on, a panel is to be either a Magic Circle firm, or to have an historic association with a client. Beyond this, how can a law firm convince a client organization that it should be appointed as a permanent adviser?

Getting to know you. Clearly, the first step in this process is to be noticed by a client. Respondents listed a range of situations in which law firms came to their attention, including by word-of-mouth recommendation, seeing an individual "on the other side" of a transaction, meeting lawyers at conferences, and reading about firms or individuals in the press. Although each of these connections could lead to an invitation to a beauty parade, the overwhelming majority of respondents would only summon those law firms or individuals with whom they had previously had some personal contact. Only those firms with the very best reputations - such as Magic Circle firms - might be invited despite the lack of pre-existing relationship.

However, the existence of a connection appears to be more important than its strength or duration. As previously discussed, some in-house counsel give small pieces of work to non-panel firms in order to test their abilities and, if this is successful, are then prepared to deepen their involvement with these firms. A number of respondents explained that their relationships with mid-sized regional firms, such as *DLA*, *Wragge & Co.*, or *Addleshaws*, had developed because these firms had proved their abilities on small legal matters, impressing them with their competitive pricing and exceptional service:

"…they're smaller and hungrier for us than a *Linklaters* or a *Freshfields* who probably, if they got hungrier, would jump just as high"

"You hear the businesses say we've got a meeting with *Addleshaws*, we're going to give them a small bit of work, we've got a meeting with *DLA* and they're great aren't they? So we're getting some dynamism coming in from the outside firms, which I think is terribly healthy because it is to convince the business that it isn't just Magic Circle".

The findings here indicate that some London-based firms have been wrong-footed by their regional competitors, who have pursued an aggressive, client-centred strategy which is perceived as "proactivity" or "dynamism" by clients. This has resulted in the development of increasing trust in their abilities, leading to an increased flow of work out of the capital to these "new" firms.

How to be a beauty queen. The following quote sums up the flavour of interviewees' responses to the question of what is important when choosing a panel law firm:

"…whether you're buying accountancy services, or you're buying legal services or whatever, you've got to have some empathy with the people. My predecessor, two back, said that he chose law firms on four 'C's. Let me get this right. Competence - they're all about the same, they're all pretty good lawyers. Commerciality - if they weren't commercial we wouldn't use them. A lawyer is a professional that should

think like that and the ones that don't, you pay for them and not a textbook. Cost, sort of. You can negotiate a bit. And then compatibility. And I think those, you know, you can play around with them and you can probably bring in a couple of others, but it wasn't a bad guideline, but the differentiator very often is the last one."

Whilst price can be an important consideration in a decision to appoint a firm, particularly for commoditized work, in-house counsel are primarily interested in the quality of the relationship they have with their external legal advisers. They value empathy, attention, and individual compatibility above everything else. Respondents talked about being persuaded by a "spark" with a particular individual; however, the "spark" is likely to be ignited by a lawyer who is already known to the client. In fact, it is the known lawyer's intimate knowledge of the business and legal concerns of an organization which provides them with the insight and apparent compatibility which is so attractive to the client.

(I can't get no) dissatisfaction. This study found very little evidence of law firms being removed from panels. One interviewee referred to a "bet the bank piece of litigation" undertaken by a Magic Circle firm, which had not gone well and was heading towards legal proceedings between client and firm, and a resultant suspension of relations. Otherwise, clients expressed their general satisfaction with their panel firms, mirroring their reluctance to change their composition during a review process. However, that is not to say that clients did not experience problems with firms. A common complaint was that an associate was performing poorly, or that a matter was not receiving adequate partner attention:

"I have phoned up a partner and said please move this associate off this job. And I'm just about to do the same with another firm now. If they're not up to it I really don't see why I should pay for it."

"…you believe something is being looked at by a particular partner and it gets sloppy. Why? Because it's been passed down to an associate who's then gone on holiday and then it gets passed on to somebody else and suddenly there's a furore about the quality of work."

In almost all cases, interviewees explained that they were able to raise their concerns with relationship partners, who would then deal with the problem, e.g., by removing a particular associate from a matter, or re-applying the attentions of a partner. The value of the relationship to both parties appears to be such that they are concerned to deal quickly with difficulties rather than let them fester or become an excuse to remove a firm.

A rich source of complaint was the Magic Circle firms. They were referred to variously as "complacent", "arrogant", "inattentive", "stodgy", "patchy in terms of associates", "not showing enough energy", and generally showing less interest in mid- to low-value work. In addition, they were regarded with a certain homogeneity, so that although they were an essential element of a panel, their services were interchangeable. Any differentiation was by relationship, rather than expertise.

Since the primary purpose of my investigations was clients' perceptions of Magic Circle firms (in connection with my doctoral thesis), the current analysis may have uncovered a disproportionate number of complaints about Magic Circle firms. However, it was clear

that clients were more willing to put up with perceived complacency from these firms than for others. Magic Circle firms have an oligopolistic position in the British legal market, wherein clients feel the need to employ at least one of them, and many are prevented from employing another because of conflict of interest reasons. A large oil company client, for example, explained that *Freshfields* were a firm they should like to instruct, but they could not because *Exxon Mobil* had already retained them. Since many client organizations felt obliged to retain a Magic Circle firm on their panel, they were resigned to certain failures in service quality. In their own minds, the relationships they had developed with Magic Circle firms would be crucial during critical or complex legal matters in the future:

"It's unlikely that *BLP* will go off the list. I think it's nigh on impossible that *Linklaters* would, because we all recognize the value they bring. If they performed badly over a period of time then I'd probably speak to them, and if it was really bad then we might look at another Magic Circle firm, but I think we'd always retain one, critically for that hostile bid"

What role do reputations and the media play in client decision-making?

The overwhelming finding in respect of this research question is that in-house counsel consider themselves to be sophisticated buyers of legal services, who know their own minds, and trust their own opinions. Clients' trust in their own abilities meant that the reputations of firms - seen as a community-held opinion external to their own - were not of particular importance to them. In addition, firms were viewed as being reasonably similar in their reputations, client bases, etc., and thus it was up to clients to make the fine distinctions between them in terms of quality of advice and service, and their commitment to a relationship. Only the Magic Circle firms were distinguished amongst the top 25 firms in terms of their reputation for client service and legal advice:

"I wouldn't say that reputation per se is high up the list…successful law firms, generally, have got very good reputations, and they've all got, you know, a pretty blue chip client base….But, you know, to be fair to the Magic Circle, I mean the quality - if you get the partners - is extremely high".

This finding — that clients used their own discriminatory powers rather than be overly influenced by external factors — extends to their view of the media. Despite the plethora of legal directories and rankings-obsessed magazines, clients were supremely confident of their own expertise in choosing external legal providers. Many noted how their experience as lawyers in private practice gave them a good knowledge of the industry, which obviated the need to consult a directory or ranking list. A number of them were happy to boast about their abilities in this regard, labeling themselves as "arrogant", having "so much knowledge of the market", and complaining that legal directories and rankings did not tell them anything they did not already know:

"I think sophisticated UK buyers, you know, in the larger companies, the larger clients, have got their own views anyway".

Despite this, there was a fairly broad acknowledgement that legal directories would be useful for finding individuals in areas of the law which were "out of the ordinary" - in which clients had no experience - such as libel actions, or health and safety law. In addition, the directories were seen as a useful resource for overseas firms, and could often

be used to demonstrate the reputation of a preferred firm to an international client. However, the in-house lawyers in this study were particularly keen to engage with firms with whom they already had a relationship, and if this did not yield a contact, they preferred to pick the brains of a colleague, or another in-house lawyer, before consulting a legal directory. Indeed, there was a huge reluctance to connect with any firm who they did not know or trust:

"…actual recommendations between other in-house lawyers is to my money a far better resource than anything you can get out of The Legal 500".

"I'm not sure I'd want to make a call to even a very good firm and say, you know, you don't know me, I'm [*client organization*] and I want you to represent me. That seems not like the sort of thing I'd…I've never done it, I don't think I would ever do that."

In addition, there was widespread cynicism about the legal press and its ability to make useful discriminations between firms. Some respondents referred to the press in general as disreputable "scurrilous rags", or fora for "chit chat", with little credibility and questionable veracity:

"…anything that they print I would take with a pinch of salt because at times they've rubbished most firms, or the major firms anyway."

Nevertheless, there *was* some acknowledgement that the press could have a cumulative influence on counsel's perceptions of firms or individuals, particularly if there was sustained negative or positive coverage over a long time period:

"…if a lot of people were saying they were a good firm, you're bound to be influenced by it, I think that's probably right".

"…if you constantly pick up on bits and pieces you sort of begin to get a feeling that somebody is beginning to emerge"

A press recommendation could "tip the balance" and, in particular, in-house counsel were sensitive to reports of walkouts and problems within their retained law firms. Other respondents referred to the specialist legal press, such as *Global Competition Review* as possessing greater credibility than the general legal publications.

The most scathing criticism of the legal press was reserved for the various award ceremonies hosted by the various legal magazines, such as *The Lawyer*, *Legal Business*, and *Legal Week*. Almost without exception, these were decried as illegitimate or "rigged":

"No, no, it's crap, it's crap, it's crap. Complete crap. Okay, 'Law Firm of the Year'. Oh, give me a break."

"…the editor of The Lawyer is well known for making sure that The Lawyer never award any prize to any firm or in house counsel who hasn't cooperated with her in the year past in, you know, in giving interviews and, you know, I mean it's well known."

DISCUSSION AND CONCLUSIONS

This research study began by asking why and how client organizations select and retain panels of preferred law firms as exclusive suppliers of external legal services, and how influential - if it all - the reputations and media assessments of law firms might be in the process of panel appointment. Research investigating the nature and significance of PSF-client relationships has been sparse, and even less has examined the legal sector, non-North American contexts, or corporate clients. None has looked at how clients select and combine panel firms.

This study found a variety of explanations for the establishment of a panel arrangement, including favourable prices and terms, the cultivation of client-specific knowledge, the development of relationships with prestigious or niche firms in case of specific need, and the formalization of historic associations. The "typical" panel composition included a range of different firms for different legal needs, reflective of these justifications. These findings confirm much of the previous research examining the factors which justify the appointment of single lawyers or law firms. In particular, a formal, long term agreement between a law firm and a client encourages investment in a social and professional relationship by both parties. This leads to the development of social bonds, client specific expertise, law firm specific knowledge, increasing trust, and mutual benefit.

Whilst previous research has found that the price of legal services is only secondary to clients' satisfaction with service quality (e.g., Palihawadana & Barnes, 2005) when considering whether to retain a law firm, this study found that some panel relationships are influenced by price. Indeed, price discounts or "freebies" are considered to be valuable benefits of a panel relationship. There is simply no need to give as much consideration to the need for a good personal relationship between in-house counsel and lawyer in respect of relationships with mid-tier firms providing commoditized legal products, such as low-price employment or conveyancing advice. This type of work is low-risk and requires little contact with the client organization. However, that is not to say that relationships are not important at all. None of the in-house counsel interviewed for this study admitted that the primary reason for employing a particular law firm was price. Empathy and "personal chemistry" are important factors influencing any appointment, echoing the findings of Day & Barksdale (1992). It is proposed that further insights into the nature of panel relationships might be found in longitudinal research, probably ethnographic in design, which may throw further light onto the antecedents, processes and consequences of developing and sustaining client-lawyer relationships.

One of the most interesting findings to emerge from this study is the influence of historic connections between law firms and clients. In the most extreme case, a client had been instructing a law firm for almost 100 years, and even amongst the rest there were many examples of relationships which had lasted for 30 years or more. A number of respondents named panel firms which had been inherited from predecessors, mergers or takeovers, and had been retained. These long term connections demonstrate how important trust and relationship-specific knowledge — firms' knowledge of the personnel, structure, history and aims of the client organization — are to the maintenance

of a relationship. Or perhaps they reflect the risk-averse nature of in-house counsel, or their complacency in terms of reviewing their panel firms against criteria of price and quality? Certainly such long-term associations have the capacity to encourage complacency within law firms in terms of client service and technical product quality. Fees may become uncompetitive, clients may lose sight of what is value for money in terms of fee levels and work product, and if a relationship lawyer moves on, clients may simply accept the change, even if it is to their detriment. It was particularly interesting to note that some in-house counsel were resigned to the institutionalized nature of their inherited relationships, unwilling to upset a status quo which was "good enough".

The most extreme examples of unassailable panel relationships were found amongst those clients who perceived their external legal advisers to be "family", or who were "Magic Circle groupies"; they indicated a high degree of trust and deep personal commitment to their lawyers. These client organizations were those least likely to engage in panel review processes at all, or most likely to operate a ceremonial process which would provide only a cursory assessment of their existing relationships. These firms would also be least likely to remove, replace, or add to their stable of law firms, and therefore would be poor targets for a marketing strategy by law firms.

At the other end of the spectrum were in-house counsel who engaged with a variety of legal advisers (up to 22 at a time), and were fastidious in their panel reviews. These clients were concerned to demonstrate impartiality in the allocation of legal work, but also meet the demands of their boards and senior management for financial accountability and prudence. Although these pragmatic clients clearly appreciate value for money and flexibility in terms of price, service, extras, etc., they may suffer in terms of the time and effort they expend in managing a fragmented workload across a multitude of different firms; the costs incurred in performing regular, lengthy reviews; and the possibility that panel firms may not invest heavily in the relationship given the risk of their removal at the end of a review cycle (which may result in indifferent service and product delivery).

The majority of in-house counsel in this study ran a panel system which is mid-way between the "family" model and the pragmatic, "fussy" model (see Figure 1), but because of the influence of historic relationships, most had an orientation closer to the "family" end of the continuum. Whilst the family model may be reminiscent of the passive, paternalistic portrayals of the solicitor-client relationship as was used by traditional commentators on the professions (reference?), the relationships suggested by the connections in this study appeared to be both fraternal and client-active.

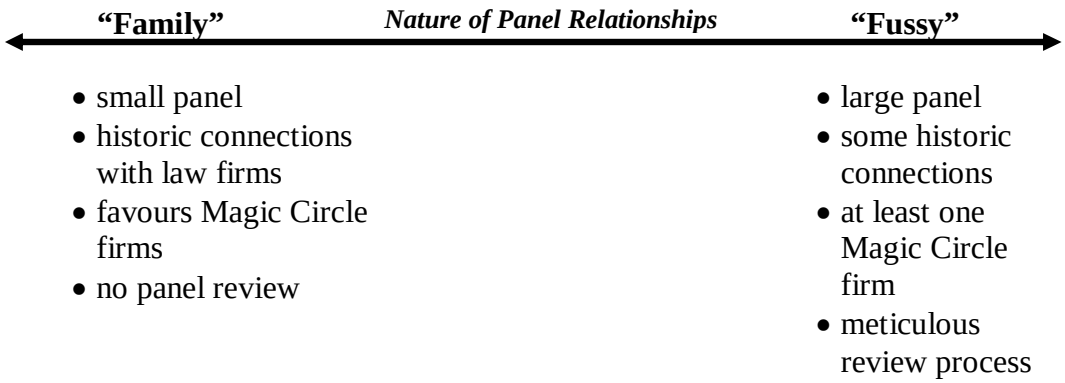

Figure 1: Panel Relationship Continuum

As ex-private practice solicitors, in-house counsel were active participants in most of the legal matters dealt with by their panel firms, and it might be argued that all had acquired expertise in terms of commercial, industry-specific and business specific knowledge that their private practice lawyers did not possess. In-house counsel tend to operate as a project managers or colleagues on a team, rather than as mere consumers of an end product. This finding contradicts the suggestion that clients routinely find it difficult to measure the quality of service provided (Clark, 1993; Nayyar, 1990; Hadfield, 2000), or that there is a distinct asymmetry of information and power existing between the client and the professional (Glückler & Armbrüster, 2003). Whilst this may be the case with clients who are not legally qualified, the involvement of corporate clients — who are themselves professionals — in the execution of projects suggests that they are not lacking in technical assessment ability, nor opportunity. They are both sophisticated users and choosers of their panel law firms.

Clients' faith in their own assessment skills was also demonstrated in this study by their reluctance to take account of secondary cues to the quality of law firm service such as law firm reputations, media assessments, rankings, and awards. Client counsel were confident in their ability to appoint, retain, or remove their favoured firms, frequently rating their abilities to do this as superior to any advice they could obtain from the press, reputational assessments, or legal directories. The only secondary source of information they were prepared to rely on was word-of-mouth recommendations from trusted contacts or, in some circumstances, the reputation of a Magic Circle firm. Confirming the work of Spar (1997) they were reluctant to even contact a firm with whom they had had no previous personal contact.

However, this research did find some evidence of the influence of media assessments and rankings over an extended time period, suggesting that positive or negative reports could chip away at the conscious or unconscious perceptions of in-house counsel and, over time, accumulate to become one of the range of factors they take account of when making appointment or retention decisions (such as they are). Consistent with the work of Anand & Peterson (2000), the British legal press' near obsession with ratings and rankings has encouraged a great deal of labeling and categorization of law firms, supporting sense-making processes and comparisons by clients and others. The ubiquity of the Magic

Circle label and categorization is an example of this, as are other reputational tags and stratification devices such as "Global Quartet", "Silver Circle", "National" and "High Street". These categorizations assist clients in their "horses for courses" strategic matching exercise when constructing panels of firms, identifying groups of specified rivals offering similar products and thus competing in the same market (Porac et al., 1995). The Magic Circle category and similar labels are part of the cognitive geography of the British legal profession, forming a collective industry map in the minds of market participants - a map which is at least partially shared with others in the legal community. White (1981; 1992; 2001) suggests that these shared assumptions and reference frames formed by categorization are a stabilizing influence on a market, becoming commonly accepted and taken for granted, and creating an explicit market nomenclature.

Despite their swagger about their knowledge of the market and their ability to choose appropriate legal advisers, in-house counsel displayed no desire to "sack" or freeze out incumbent panel firms. They might claim to know which firms are best value or who provide the best service, but they are not inclined to change their panels to any great extent. Clients' investment of time, knowledge and management of their panel firms is valuable, as is the personal and emotional commitment they have put into them. Long-term relationships are contextually specific "sunk costs" which cannot be recouped, and are made by both clients and law firms. For most clients in this study, bar the few who took a quantitative approach to their assessment of panel firms, panel reviews were largely a ceremonial à la Meyer & Rowan (1977), legitimating their own role and that of their department, and reinforcing a status quo. Perhaps the time and work required to carry out a thorough review are unavailable or, more likely, they see the social and historic investments they have made in panel firms as more valuable than any economic benefits arising from change.

The influence of the Magic Circle firms was another interesting finding from this research. In particular, clients' need for a panel relationship with at least one of these high status firms was a surprise in light of the fact that a number of respondents were concerned to demonstrate financial accountability for their panel decisions, and there are a number of high quality "full service" law firms in the reputational tier below that of the Magic Circle, whose charge out rates would be more reasonable. The Magic Circle firms clearly occupy a competitive niche which brings them huge advantages in terms of access to clients. They are an essential appointment to any panel because they are perceived to possess an oligopoly on complex, high risk, and difficult financial transactions. In addition, they have acquired a prestigious collection of clients who cherish their historic and enduring relationships with Magic Circle firms, or consult them because they are intoxicated by their superior reputations and/or they wish their appointment decisions to be beyond reproach. These competitive advantages mean that Magic Circle firms can charge premium prices and, to an extent, take liberties with their relationships with client firms: since there are no perceived alternative providers of Magic Circle-type work, Magic Circle firms have a competitive advantage which fuels their profits and growth and reinforces their already almost invincible reputations. The loss of business to boundary firms such as *Herbert Smith, Norton Rose,* and *Lovells,* which is the result of their failure to be included within the Magic Circle categorization, must be huge.

The "Magic Circle groupies" and "family" firms are wedded to Magic Circle firms through history or the particular expertise they possess, and clearly these relationships are a result of clients *wanting* to establish a relationship with these firms. However, a number of the clients in this study spoke of their relationships with Magic Circle firms as based on *need*, rather than *want*. Whether it be for a future hostile bid, or a "bet the company" deal, in-house counsel need a top firm waiting in the wings to assist them. However, as Hilton & Migdal (2005) explain, *client need* is a more precarious competitive situation to be in than *client want*, and may result in acquiescent client behaviours, negative word-of-mouth opinion, and interest in alternative service providers. This research study confirms these findings for some clients: there were a disproportionate number of complaints about Magic Circle firms, particularly in respect of levels of partner attention, high fees, and general complacency in client relationships. Whilst the Magic Circle firms can justifiably charge huge fees for their specialized advice and outputs, and clients can have little complaint about paying a fair price for a so-called "Rolls Royce" service, the issues raised about their client service (or lack of it) are more worrying. Although they may currently enjoy privileged access to blue chip clients without fear of competition from rivals, they should perhaps look to their laurels: the abuse of a monopoly/oligopoly position may come back to haunt them, and may already be impacting their image at a word-of-mouth level (with an impact on recruitment perhaps?). Reputations can be tarnished, the status quo may one day fall, a boundary firm may join the Magic Circle, or an incumbent fall from grace: in any event, the impact of negative reviews can assist firms within the Magic Circle to poach clients from each other.

Despite the disavowals of some of the client organizations in this study, all the respondents had a panel of sorts: a number of law firms retained on at least a semi-permanent basis, to whom repeat legal work was dispatched. The surprise of this finding was that, no matter how large the in-house legal department, all of these client organizations still needed their "hand held" by external legal advisers. One wonders why a cadre of 75 lawyers does not organize itself internally to operate like a law firm and to deal with all of its legal matters without external assistance. Whilst the rationale for establishing a panel system is to reap economic benefits through a cost-effective "horses for courses" matching strategy, the economic benefits of establishing a more robust, experienced legal department may be the better strategy. Perhaps the use of external legal advisers legitimates the in-house department: the behaviour is institutionalized to the extent that although it is neither rational nor efficient to use external law firms, it is an expected, legitimating behaviour, part of the myth and ceremony of in-house lawyering (Meyer & Rowan, 1977).

Another explanation for the (institutionalized) use of external legal advice may be that in-house lawyers seek the advice of their colleagues in private practice because they lack personal or professional legitimacy. A study by Wallace (1995) found that lawyers who work in law firms are more committed to the legal profession than in-house counsel, and I propose the possibility that in-house counsel do not value themselves as professionals to the extent that private practice lawyers do. By associating themselves with "proper"

professionals, in-house lawyers may reinforce their self-identity, or their "image" to their business colleagues.

Perhaps, in-house lawyers do not value themselves as professionals to the extent that private practice lawyers do, and find reassurance and legitimacy from their professional colleagues. An investigation of the factors which might influence professional orientations and commitment in professional and non-professional contexts might be an interesting avenue for further research.

Similarly, it would seem to be the case that some in-house legal departments are small and thus need to send the majority of their legal matters to external law firms. Even taking account of the norms which might dictate the use of private practice lawyers, this may not be the most rational, cost-effective approach. It might be cheaper to employ more in-house lawyers, rather than to pay high rates for external legal advice. It is rather like sending all your clothes to the dry cleaners rather than buying a decent washing machine: it is expensive, and you get a good result, but there are some things you could do yourself. Again, an interesting area of further research might be to determine the point at which it is economic to employ an in-house lawyer rather than instruct a selection of retained law firms.

Managerial Application

Changes in the legal and competitive market have recently adjusted the focus of legal marketing from the initiation to the maintenance of exchange relationships. Lawyers are often reluctant marketers, equating marketing activities with advertising or public relations, and viewing it as an unnecessary intrusion into their profession (O'Malley & Harris, 1999). Morgan (1991) claims that increasing client sophistication in professional spheres has led to an increased emphasis on client service, yet marketing is still poorly developed within the UK legal profession (Newbold, 1991; Morgan, 1991). US practices have established marketing strategies much more readily (MacDonald, 1995).

This paper has uncovered elements of the dynamics of panel composition and retention which may help practice managers, marketing managers, and lawyers develop and maintain more successful relationships with their commercial clients. In addition, researchers within the relationship marketing field may find the legal market a particularly good example in terms of investigating the processes and nature of relationship development. This research finds that law firms are usually linked to a client through a combination of history, luck, and pretty unscientific or ritualistic 'beauty parade' tournaments. However, the key to accessing panels is the development of relationships and relationship building, which develop trust and client specific expertise, and are often found in the connections between individuals. The capabilities and needs of clients are multidimensional and should be carefully assessed by practice managers, marketing managers, and lawyers who seek to develop and maintain more successful relationships with their commercial clients, taking account of the history and nature of clients' current portfolio of law firm relationships.

Law firm marketers might do well to reconsider the worth of their efforts at gaining admission to the panels of "family" firms, or those who favour Magic Circle prestige. Alternatively, they might consider persuading these firms to reassess their historic or reputation-specific relationships in the light of economic or rational arguments, particularly for low risk, low contact work. It seems clear that a number of mid-tier, regional law firms have already pursued a similar strategy. By proving one's worth on such work, personal contact and trust can be established, which are clearly the keys to developing long term relationships to perform higher value work. Whilst lawyers have adopted strategies to encourage social bonding with commercial clients, they could consider adopting strategies that encourage clients to increase their own relationship specific investments as well, which wed the client to the lawyer in a more deeply rooted way. By becoming a panel adviser, lawyers can be confident that unless things go badly wrong, clients find it very difficult to remove them. As for clients themselves, they may benefit from a proper review of their panel firms, both in terms of value for money, and any entrenched complacency which has developed in their long term advisers.

As for Magic Circle firms, they might benefit from adopting strategies which create desire rather then dependency in their clients, and their managers might like to consider the reputational and long term implications of the service-oriented criticisms outlined in this paper.

Limitations

Although this study has uncovered a number of interesting findings, its contributions are restricted by its exploratory nature. In particular, the lack of supportive theoretical frameworks in the literature limits conceptual understanding of the area; the study; the small sample and cross-sectional nature of the study limits generalization and claims of causality; and the study is context specific in terms of industry and culture.

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