

## ASSOCIATION OF CORPORATE COUNSEL

**TITLE:** Redefining Relationships Between In House and External Teams

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**PRESENTED BY:** ACC's International Legal Affairs Committee

**SPONSORED BY:** Eversheds LLP

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**MODERATOR:** Alexandra Wrage, President of TRACE

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**Operator:** Welcome to this ACC webcast.

Alexandra, please go ahead.

**Alexandra Wrage:** Thank you. This is Alexandra Wrage. I am the Vice Chair of the ACC's International Legal Affairs Committee and I work with trace and anti-bribery non-profit and I'd like to welcome you to this webcast, Redefining Relationships Between In-House and External Teams.

Everyone's goal is to have cordial, productive and cost-effective relationships with outside counsel, but many companies are concerned that they fall short of this. We've asked Eversheds, who've been at the forefront of innovation in this area to speak with us today. Eversheds is the ILAC, the International Legal Affairs Committee sponsor, and one of the largest full-service law firms in the world and an industry leader in innovative solutions and providing services online.

Those speakers are joining us from Eversheds, we'll have first Stephen Hopkins, who's a partner with Eversheds and has been since 1991. He's a Senior Partner in the Leeds office, where he's been since July of last year.

Stephen has the lead for Eversheds' corporate social responsibility efforts and has adopted fundamental project management principals, which have been rolled out across the firm at Eversheds.

And we'll hear from Kevin Doolan, who's a member of Eversheds' Management Team. He established the First Client Advisory Board, an interesting idea. The Advisory Board meets twice a year with management and helps shape the firm's strategy and ensure client-centered approaches to issues. All major strategic decisions by the firm are subject to review by the board. So, its clear that Eversheds has taken a creative, think-outside-the-box approach to some of these issues.

And I'm delighted to turn this over now to Kevin and Stephen.

We'll take questions throughout the presentation and address as many of them as we can near the end.

Kevin? Stephen?

**Kevin Doolan:** Thanks very much, Alexandra. Thank you. Kevin Doolan here. Stephen and I, as you've mentioned, are based in London with Eversheds, and primarily we're dealing with clients who have legal needs across Europe, the Middle East and Africa. Many of them American headquarter multinationals. So, in so far as we have been innovative, it's because our American clients have taken us there, I should say.

So, I think we wanted to start just by discussing the issue, it's something that we've heard a lot about from general counsel here in Europe was the conflict really between outside counsel and law firms being under pressure to bill more hours, particularly against a background where associate pay rates have risen dramatically in the war for talent. This is something we've seen over the last couple of years. I would say, pay rises have been running around 25 percent for lawyers.

And then there's a pressure then, general counsel tell us, from law firms saying they need to increase our rates per hour and to bill more hours because of those costs.

We've then seen, particularly over the last six months, a worldwide slow down and the other issue is that general counsel has been asked to show improvements in performance, in spend and to actually introduce KPI measures, not just for what they're doing but also for how they're managing external lawyers. So, I think that's really the background we see at the present time.

And then, the other thing, I just clipped here a couple of relatively recent headlines from legal journals. One of them where – which was a law firm in London which was paying an extra bonus to trainee lawyers if they recorded more than 2,000 hours, and that's against a background whereas I would say, I think in our firm we look for 1,200 hours and there was another article about the pressure on associates in one of the global great law firms where the associates there were saying they felt under pressure to record more and more hours.

So, I think that was really the kind of background as we see it. If anybody disagrees strongly with that, and of course, do just pose it in a little question and we'll seek to deal with that.

Then, wanted to look at the benefit of the hourly rates and – there's a question coming about what are KPIs, I'll pick that up a little bit later, if I may, but they're basically key performance indicators, or measures, so that one might be by what percentage have you improved your legal spend over the last year.

**Stephen Hopkins:** Yes, or it could be a measure of what the external counsel are charging by way of a compound hourly rate. Or what is their hourly rate that they're actually achieving and can you seek to reduce that and that's something that we've been looking at with our clients. Here's one of the key measures for us as well, is how can we see to overall reduce that compound hourly rate as we go forward.

**Kevin Doolan:** So, I wanted firstly to look at the fairly traditional hourly rate method of charging for legal services and I put the word benefits in inverted commas there – it's the – I want – this is really the benefit for the law firm.

When you are an hourly rate, it's been traditional that clients will accept that you only give a guesstimate, if anything, about how much that that piece of work is going to cost. And we asked our advisory board, said, where you are giving these type of estimates, what preventative time are they right. And they said, about 20 percent. So I mean that's pretty poor.

Clearly the risk is 100 percent with the client in terms of the costs of the matter. From the law firm's point of view, the longer the matter takes the better in terms of finance. The more people that can be put on to the case, then the better, because the billing's higher. And the more interesting legal issues we can discover that needs solving then the better. And the result is that

the client is unable to create any kind of budget and the law firm cannot lose because whatever it costs, we just going to send them the bills.

So, that was really the one extreme that's still pretty common. Not unsurprising then, we had a fair bit of pressure from clients to go to the other extreme and either to look for fixed fees or capped fees. And I'm looking at fairly mainstream work here. I think there are different issues, which we can discuss a little later about very routine work, which might be on fixed fees. But I'm looking at fairly mainstream work, which could be quite substantial mergers and acquisitions, large real estate, a reorganization.

And you can see that once you get – if we as a law firm agree a fixed fee or a capped fee with a client, then it switches the other way, the risk is then 100 percent with the law firm. There's a push really to use lower quality people, the law firm can improve its profitability by putting less qualified and less expensive lawyers on the case.

You can find that the best of the lawyers in the firm become a little scarce when a fixed fee job is around because they may doubt whether they're going to recover their time and they have budgets to meet.

There's what I call sew him up syndrome, which is how I explain that if I had to have an operation and I said to a surgeon, I need to have this operations, but I only want you to spend one and a half hours, and whatever you've got to add to one and a half hours, just sew me up, because that's all I'm paying for. Well, a fixed fee puts you in that type of position. How much beyond the fixed fee should the law firm keep working?

And we also have situation where it encouraged pretty bad client behavior in one circumstance, where the business units and a client believed that we had a three-day fixed fee for an area of work which is due with managing contracts. And, on that belief, they actually sent out absolutely everything and because the client had measured this, we found that the amount of legal work doubled. So, it's a little bit, I think, like an all you can eat buffet where people pile their plates high.

So, that type of behavior is the fact of the – it was a huge increase in the amount of legal demand unnecessarily. And, as a result, I think where lawyers have been asked to fix fees or cap fees, you tend to find, and they put quite detailed exclusions and assumptions in place in order to limit their downside risk. And you do get back to thinking well, actually, how fixed is this? Because – how long are the assumptions?

And, I think the other concern we have is there's no link to results, you don't agree with the clients at the beginning, what results you're trying to achieve. So, the kind of fixed fee is the fixed fee no matter what result. We think it will be healthier to have variations around the results.

**Stephen Hopkins:** Yes, and I think that last point is quite significant as long we'll come back to that later. Which is about how do we ensure that we link our delivery of service into the key drivers for the client and what are the commercial benefits that the client is looking for out of a particular transaction or visa litigation. And it isn't always what the external lawyer assumes to be the case. And a lot of external lawyers don't ask the question and certainly not be rewarded on achievements or penalized, to some extent, on not achieving that result.

We'll come back to that a little bit later – later on.

**Kevin Doolan:** OK, so what I've tried to there is set out the two extremes and really the problems that we see arising from those extremes, the hourly rate meaning the law firm has no incentives to be efficient and the – really, the client's interest are quite opposed to the law firms and where there's a fixed fee, the law firm can start to regret it as the costs reach towards and beyond the fixed fee.

And the client has no interest in being efficient because the price has been agreed, so their behavior becomes immaterial.

And therefore, what we said as a law firm, dealing as we are, generally across many countries with clients with quite big projects, what could be done in the middle ground. Was there some meeting point in the middle where we could actually align the interests of the law firm and the clients and give us both the same incentives? And I think we've been doing this probably for about five or six years now. And so the plan is now that we're going to spend the rest of the time talking about some of our experiences.

So, at the time, just to kind of bring this into focus, the time when we were formulating this, some years ago, I was actually having my house painted and I was getting in quotes to have this – the outside of my house painted. And I realized that if painters were lawyers then the first quote I would have got would have been 25,000 pounds, but they would never have seen the house. They would have given me the quote across the phone and said, oh, well it always costs about that.

The second quote I would have got would have been 2,000 pounds per day, but no indication of how many days. So, I would have said, well, how many days is it going to take and they'll say, well, we won't know that until we actually paint it.

And the third quote I would have got would have been offered me a very inventive and innovative blended rate of 230 pounds per hour, but again, there's no way for me to know how much it was going to cost. And it really struck me that in my personal life, there's no way I would accept the type of budgeting that lawyers were used to giving their clients. You actually wouldn't be saying, I do need a proper budget. You need to tell me how much is this going to cost?

So, that was really just to throw that into relief. And we therefore thought that the middle ground was about creating a very firm budget and the elements there, as we show is – it's first the unique scope of the work very fully. You need to actually spend time with the client understanding what's going to be involved in the work and we have very detailed processes for that, which we developed across every area of work so we can find out exactly what's involved in the particular matter.

And we also had to keep a database of closed deals because, I suppose, it's quite interesting, we're a huge law firm, we do hundreds and hundreds and hundreds of different transactions every week. But we weren't keeping all of the records and that's hugely valid information.

Now, with a data base of those factors we actually can then, having put together our quote, we can actually check against the data base and say, well, let's look at the last 20 that we did of this type of project, what did they actually cost so that we can make sure it's grounded in reality? And it enables us to give them a detailed project plan to the clients.

Say right, this is what we're going to do, is a deal strategy sheet, which importantly said, what does the client want us to achieve? And – and we give a very detailed budget. It can be many, many pages long, broken down across each aspect of the matter, giving hours at each grade to carry it out. And then, our task is to deliver it against that plan and that budget. And our promise is that we can't vary the budget unless we agree any changes in advance with you, including the cost of them.

And I think what's been most interesting to me is I trained originally as an M&A lawyer and my – my driver really was to get that deal completed by the day that the client wanted it to be completed. So, if a problem came up, let's say there was none undiscovered pensions issue. Then, we would tend to say, well, we'll get our pensions team onto that; they'll work through the night and they'll sort it out. And surprise surprise, when I then came to look at the final bill, it was higher than I'd estimated because I'd – none of us had posted for that work.

What's been interesting about the discipline of saying we cannot do that, we must talk to you is that when these unexpected problems arise, we go back to the clients and say well, there's a pensions issue, its going to cost \$20,000 to resolve. Then about 50 percent of the time the client either says don't bother, I'll take a risk on it, I'll take a commercial risk, I can see what it is. Or they may say, we've got pensions team in-house; they can handle it, so there's interest in a number of cases, they don't want us to do what a traditional lawyer would have done. Which is simply solving the problem and we'll talk about the bill at the end.

**Stephen Hopkins:** Yes, and I think the – the issues which Kevin has outlined there are even more pronounced when you start bringing in multiple jurisdictions with – particularly in Europe where you have different ways of operating, different cultures, legal systems, clearly and trying to do due diligence across the multiple jurisdictions.

So, being able to have this sort of control, planning and budgeting across multiple jurisdictions and with firms that understand what you're trying to drive for and firms who will tailor some of their work to a clients need is actually very critical if we're going to be able to deliver a budget somewhere near the budget which was originally put forward.

**Kevin Doolan:** I mentioned then, this ability to measure our performance and actually put a number around our performance. Because at the end of every transaction, we'll have a debrief, and I mentioned earlier on we'll have a deal strategy sheet under which the client told us what they were trying to achieve. And we'll then measure well, how well did we do as your lawyers. Give us a number as a 10 on each of those. And that enables us to actually say, well, how well did we do? Are there areas we need to improve upon for the next one? And as we mentioned there, it enables you to actually agree bonuses and penalties based on performance.

Now Steve's going to talk about that in more detail later, but you can see, by having this great clarity and detail at the outset, what are we really trying to achieve for you. it opens up the possibility of them being able to say, well, if you achieve better than that – in other words they might – a client might say, well, I would like to complete this matter by the middle of March. But if you can actually complete it three weeks earlier, that's worth a lot of money to me, so I can agree a bonus. And if it takes longer, then that's going to cost me money. I want you to pay a penalty.

Now, when we started doing this, I know that I had some concern for my partners to say, well, I can't guarantee that we can do it earlier. And I said, it's not about that. It's about saying well, let's say there's efficient incentive there. Perhaps you will pull out the stools to get it done more quickly because you can see a direct benefit to you if you can save the client three weeks. The client benefits and is prepared to share some of that benefit with you.

So, I think the important thing to explain around this budgeting, its not about creating a fixed fee, but it is about having a very intelligent conversation about the scope at the outset and coming up with a realistic budget and one we expect to deliver and one that the client is clearly in control of.

So, I think that then takes us to saying that really, we wanted to move the argument on from saying there's no point in clients arguing about which firm is going to give us the – give them the lowest hourly rate, because if the firm is going to give a slightly hourly – lower hourly rate, it is going to take twice as long to complete the matter. Then that's not so valuable to the client. And it enables the clients to go beyond this.

And I think, what I found very interesting is that then quite often, where we have come out – in with a quotation for that matter, which is higher than a competitor, we'll often still win the work because the client can see what we've covered. And they start to think, well, I know the competitors quoted less than Eversheds, but it's a guess. I don't know what's included. I don't know what's excluded. And clearly, they haven't put the same effort into understanding what the transaction is about.

So that was really our desire there. And we found, that in order then to achieve this, it was about changing the way that we behave. We have a saying in England, I'm not sure whether you have it in America, I'll find out now, which is where you can't teach an old dog new tricks. And so, I asked my secretary to source me a picture of an old dog being taught a new trick and this is it. And basically, we did need to actually go back into our firms and run a huge training exercise because this was about changing the way that we behaved.

It wasn't about creating some great marketing idea. It was about saying, well, if we're going to achieve on a better budget and delivery against that. We firstly need to agree that the partners needed to change and my partner here, Stephen Hopkins ran a big exercise with our M&A lawyers and actually put 150 of them in a room and asked them to quote for a job of work and they found there was quite a variation in the quotes they were producing. So that the partners had to accept that this was something we were not getting very good at.

So how do we get better? Well, it's about training everybody in scoping and planning the work and crating this database of deals and also getting real peer pressure. We circulate within the firm and provide to our clients, statistics on how successful we are in achieving our budget. Actually, that was something that was inserted into our project by our client advisory board. Because when we took this to them and said, this is what we want to do, they said well its fantastic, but what the test is and how many percentage of cases do you actually come in on budget. Because if you do all this wonderful work but it still doesn't get any better then it's been wasted.

So, we then created the peer pressure that we actually measure our partners and how good they are at performing against this. And we gave them comprehensive training in project management right across Europe. Because this wasn't just a question of delivering in one country. We need, it seems to understand that they had to deliver across many countries. And I think, in a very good way, it turns the lawyer running that matter into effectively a buyer on behalf of the client having agreed to the project plan to then buy those services within our firm and deliver them.

And as I said, we create and circulate metrics, measures on the performance and we also use that deal strategy document to create performance measures for our clients, so the clients can say, well, this is your performance in carrying out our work. We use it also in litigation, not just in transactional matters. We have a similar system called RAPID, and we did an audit there recently and showed that the result of this was in 90 percent of litigation cases we were actually achieving the agreed strategy because of the approach we were using.

So, that was really our way of taking things away from the extremes of fixed fees and hourly rates. So, I'm going to pass across to Stephen now, whose going to concentrate on the global issues and add some more details on measures, performance measures.

Stephen?

**Stephen Hopkins:** OK, thanks, Kevin.

Obviously, a lot of what we developed on project management front and coming up with these new behaviors was U.K.-based. But gradually, as we were talking to our major clients, U.S. clients and multinationals. They wanted and there was a desire and demand for this to be replicated across multiple jurisdictions and some 12 months or so ago, we took on board Tyco as a client.

Tyco came up with quite a unique model and they – they instructed us to do all their work across the Emir region, replace 282 law firms in Europe and put it down to one. And they, Tyco, insisted that a number of the disciplines that Kevin has talked about, in terms of project management, and scoping, and budgeting were used on their matters. You can see there, the headline from the

U.K.'s Lawyer Magazine about Tyco and how about one year on that actually we are beginning now to see that the systems and the procedures, the process are working and the control which really was what Tyco wanted in Emir, is starting to take place.

So, the issues that you may face on a multi-jurisdiction issue in Europe, I think we found that an awful lot of general counsel have not got a very strong control of the or when as of what the total legal spend is and that's for many different reasons. And we found this with different multinationals, that different reasons, so it may be that you've got a huge number of firms that you're instructing and trying to get information from those firms is difficult and time consuming.

It could be that firms are instructed directly by local businesses and it doesn't even go through your legal tem, whether in the U.S. or in Europe. The legal spend may not be clear, it may be rolled into a separate project. May not be part of your legal budget. But difficult to identify some of the issues that are coming out, particularly on transactional matters. And, in terms of how much are we spending. Are we spending enough on compliance for example? Have we got any consistency with compliance?

It's very difficult without having the control and the knowledge of what our spend is to actually assess that effectively.

And the other issues, you're trying to roll out projects internationally without many firms getting involved. It's quite difficult to do that on a consistent basis if you roll those out.

Kevin mentioned right at the outset, controlling the spend is going to be an increasing pressure, particularly in the current economic climate. There are continual drive for rate increases by law firms, as Kevin said, and that's – you wont be allowed to do that and we're finding push back of general counsel and rate increases quite rightly because they're under pressure to reduce their budgets and head counts as well.

Procurement, getting involved, we're seeing this more and more that's when we are pitching for work particularly from multinationals, it's a very sophisticated process and procurement came on in with a different angle to many general counsel. General counsel come in, and quite rightly are concerned about delivery of quality advice and the quality of relationships and so on.

Procurement are more data driven and cost driven will compare sort of applies with apples and look at simply hourly rates which I think we all know that, as Kevin said before, the fact you've got a low hourly rate doesn't mean to say that your legal spend will be lower as a consequence.

**Kevin Doolan:** I see also, Stephen, there's a question coming about e-billing and whether that's popular in Europe. I would say it is – it has started to grow in a system such as TimeTrix, Serengeti I think is mentioned on the question. And I think it may have a role to play. Is it a way of getting a grip on legal spending? I think what we think is it's a bit too later and we think that there's a lot more to be gained by having these intelligent conversations about the scope of work and in a sense, if you get the e-billing and it gives you all the – the description of the problem, you can kind of describe the problem in great detail.

But I think, it needs also this approach really, otherwise all you're doing is actually looking in your rearview mirror and seeing the problems of the past? Do you think the same about that, Steve?

**Stephen Hopkins:** Yes.

**Kevin Doolan:** It's got a part to play.

**Stephen Hopkins:** Yes, Serengeti, TimeTrix, the various other e-billing mechanisms is that they do look at the billing process. They automate this billing process and they do give you a quite a lot of

valuable information about the bills that come in and therefore your spend across different jurisdictions.

In terms of trying to control the spend, I think what we are trying to do is to give upfront control, before a matter starts so that general counsel can take a view about the importance of a particular piece of work, about the way the law firm structures it, about what the law firm is really driving to achieve in that piece of work.

So, I think this – we use on a number of our multi-jurisdictional clients e-billing together with the sort of the methodology if you like, that we're imposing right at the start of a particular matter to ensure that the legal counsel – general counsel do feel and do actually have control over the way the spend is used.

So ...

**Kevin Doolan:** One of the other issues we think people – clients are facing is the issue about whether they've got a panel or – to deal with their work or whether they're just going out generally. And we still find a huge variation in this. Stephen mentioned, Tyco, we're using 282 law firms. I've recently been dealing with a major multinational that has 80-plus law firms. And I think there is a huge trend to consolidate. To say, actually, we're not getting the best value there and we've just really listed here what some of those issues are.

If you spread your work too widely, then you're not a major client to any law firm. You're not getting the best rates, or the best lawyers, or even discounts based on the volume of work.

And I think – I can understand why people – why clients go to multiple law firms because the reality is that no one law firm is best at everything and even the mighty Eversheds with its 38 offices in 24 countries and four and a half thousand people, is reality is, we can't be best at everything in every country. And that's, I think – and it's the same for every firm and therefore that's led clients to have multiple firms rather than one.

But I think what that prevents is some of the benefits that we're starting to see from creating measures.

**Stephen Hopkins:** Yes, and I think the model that we would propose that works pretty effectively and we can make this work in terms of relationship and with general counsel is what we call – one term plus, which is you will struggle, I think, for a number of reasons to just rely on one firm, the reasons come in sad and also from a complex point of view, you always going to want to have somebody else in the wings. And probably to market tests on occasionally – on occasions here whether the rates that you're getting or the fixed – the fees that you're getting are actually right.

But having a single firm to run the principal firm does enable you to adopt a system which can control and give you information on your spend and help you deliver KPIs, that key performance indicators, about the spend by country and about your external providers, how much you're spending with each firm in each country, or by business unit and we'd come on for that a little later on.

And, I think the single firm – or the one firm plus will help, because, again, it over – hopefully overcomes by having this relationship with the external firm that you've got a restriction often on headcounts. So, maybe that you build up the knowledge and expertise of that one firm.

The comments, probably if you've got a single firm there which is going to have a reasonable throughput of volume of work, the relationships will build up and the law firm should be prepared to adopt quite a generous approach on the comments to develop that relationship.



So, we've mentioned the one firm plus model, which is principally going to one firm for most of the work and say where the expertise is maybe not there in the country, or whether the conflict. And it's a simple structure and control is readily available because that law firm can measure what is going on. And you are obviously a significant client to that firm and as a large element of your spend going through that firm.

The firm has, or should have, skills to manage other firms. You enjoy the economies of scale, you can access best of breed by the one firm plus. So that if there isn't a specialist antitrust lawyer in a particular country where that one firm hasn't got strong representation, you can go to another firm for that particular piece of advice.

And should give you consistency of approach. If you have one firm organizing your legal spend across 30 or 40 jurisdictions, you should be able to derive a consistency of approach on whether its compliant, roll out, or whether its contractual due diligence. So you get the same format of consistency of service delivery, which you would struggle to get if you had multiple firms, 30 or 40 firms, across a particular jurisdiction.

So how would we go about and how do we go about sort of giving you that control on that single firm model?

Well about three or four slides now just to show you what – how we run this. You would have a single point of control, a client's single point of control. Members of your team would link into that single point of control. But also, what we found is that many businesses want to encourage local businesses to have contact with the law firm, particularly where matters are urgent, where's there's an immediacy, or actually to take some of the pressure and the admin away from the legal team.

Now, that obviously takes away control. So what we've done is where we have contact with a business, and it doesn't come through the general counsel or the in-house team, then we will go back direct to the in-house team via an automated e-mail system and that e-mail will notify that the firm has had an instruction in a country, it could be anywhere in Europe. And that local lawyer will have to provide details of, very briefly, of what the instruction is and also will provide a budget of hours and fees appropriate for that particular instruction.

And it may be that the budget of that stage isn't for the entire matter because we may not have scoped at that point the entire matter, but it will give a budget for the known elements and therefore, allow you and the general counsel to take a decision on is that appropriate, is that the right level of fees, is it the right level of work. Because you can see the budgets come to you and those can be discussed and negotiated.

It may be that that sort of work you'd want done in-house; that it shouldn't go out to an external firm. Or it could be just simply refused to do it, that the business should be doing maybe an HR or a labor law matter itself. Or it could just simply be approved and said, yes, we'll send an e-mail straight back response. And that actually, that triggers then an authority for law firms wherever they may be around Europe to get on with the work.

That can be tracked with a Web-based system. So at any stage you've got a secure password, the general counsel can then just go on line and look at any matter for any of the businesses around Europe. They can look at what the budgets have been and also, what the costs are up to against that particular budget.

And, one key thing here, which comes back to what Kevin said before in our client advisory board. It's all very well having a budget, but lawyers traditionally don't keep to budgets, and there's overruns. So, unless you have some sort of enforcement there, it's not really particularly useful.

And what we've said is that provided that we have got a proper scoping and we've done the work and the planning up front then we will not go over and not charge anything over an approved budget. And if the circumstances change on a particular deal or transaction, piece of litigation, as frequently they will, then we have to come back to the client again and give a budget, a revised budget and that needs to be approved. And only if it's approved will we be able to fill that additional work for that change in scope.

There – I've just sent a screen shot of the sort of system – it's not the entire thing, but the sort of Web-based system we use. Our lawyers fill in the information on that screen about the nature of the matter, the strategy agreed for the litigation side. It may be which business unit it come from, which country it come from, and it's important that our firms fill that in, because as you'll see a little bit later, that's the basis then for management information that we can supply direct to general counsel. In fact, general counsel can pull off themselves from our system, which will cut legal spend by business unit, or as – by country. So it gives you a huge amount of information. But it is important that our lawyers complete that form.

And we say again, that any lawyer across our network that does work without getting approval or filling these forms doesn't get paid and our firms know that, that's the protocol and we've trained them all in the system and they all adopt – adopt this consistent approach.

So, as I've mentioned, you can run reports from that system and we talk to our clients about the sort of reports they will want, but you can spend by business unit, by work time, country.

But also the – one of the things we're starting to do which really, hopefully, does give quite a lot of power and control to our clients is we start to analyze then that information, because what we can track is we can look at the percentage, for example, of partner level work being done or the amount of time that partners or associates are spending on matters and we can track the trend of that. And as you get more familiar with the client and the nature of the work.

So we should be seeing a reduction in the amount of partner level work overall and obviously on individual transactions, if there is a transaction which is very complex or an M&A transaction or an antitrust matter. It may be we want additional partner work. But on certain types of work we should be working with our general counsel client to drive down the overall average hourly rate. Still giving the quality of advice that you need, but actually delivering a key indicator on what's the hourly rate.

And also, spend compared to the size of the business unit. Why in a particular country is spend higher than another one? Is the training better in one area; is your local labor law team? It may be the HR unit and a business unit is very, very efficient, whereas in another country it's not efficient. So, you can start focusing your resource and your training on some of those areas.

And, we have now, with a number of clients, started to put in place strategic plans based on hard data, looking at the management information on things like HR spend, a particularly – there's labor law claims in certain countries, frequent. But going in and training the HR team on grievance procedures or disciplinary procedures has a dramatic impact, or can have a dramatic impact on the number of claims. And being able to track the reduction in spend is a great way of going back to the business and demonstrating real value to you as a general counsel team, your legal team, and for use as well.

We also can record on our system the reasons for a particular litigation so the causation of a contract dispute or a contractual issue. And again, looking for trends in the litigation. So if there is a particular problem with contract claims over a clause, maybe the clause has not been drafted correctly, or the sales people are actually not going about the formation of contracts in quite the right way. You can identify that. And you can then train and look at reducing the – and from our point of view this is good.

Because we're adding value as a law firm, but we are reducing spend, but not necessarily looking at hourly rates or rates for doing that. And that's why we call this sort of a different sort of behavior. It isn't traditional law firms, well let's increase the hourly rate or put more hours in.

And we have, actually, just by getting these sort of disciplines through with a client to client relationship, managed to reduce the overall spend of a client by something like 30 percent in a single year.

I just thought I'd give you a couple examples of sort of management information that we're able to pull out from the – the data that we have. You can see there that that's analysis of costs against new matter. And we very much look at trends on some of the larger value of things and trying to explain why things are happening. So, there, this would be typical of us taking on maybe a new client. We're getting to know and understand the matters, so you can see there's maybe some intensive work to start off with. But gradually then driving down the costs.

And, I think this is helpful in terms of projecting spend, when you've got to put your forecast in for your next budget. Using this sort of data analysis to produce what – I won't say an accurate budget, because that tends to be a contradiction in terms. But at least you've got a hard set of data to project forward and for next year.

There you can see compound hourly rates. Compound hourly rate just means average hourly rate based across sort of the entire spend. So simply spend divided by the number of hours. And again, one thing we can be measured on, what is that hourly rate and are we driving efficiencies as we get to know and understand the client.

And this mapping is quite an interesting one. This we call a heat map – and its analysis of spend by country against a graph of legal risk and business complexity.

Now, on the left hand axis, you can see there, that's the legal risk of a particular country based on the corruption perception index, which is a measure, which is available to all businesses. And at the bottom axis, you can see business complexity, which is revenue against facilities and employees. So just the size of the business. And this helps show the bigger the circles, the bigger the spend is. So you can map actually as to where you should be applying your internal resource, possibly.

So, there you can see South Africa is quite a high risk – it's a reasonable amount of spend, but that is a high-risk business, should you be putting more spend there. U.K., low-risk business, low complexity. Why have you got so much spend there? A reasonable-sized business. But it may be that you can see here that there is a big spend, or even a small spend, actually, in a high-risk country, which you think, from a compliance point of view, that is a problem for us. So you can plan – start to plan your resource around this sort of mapping.

So, as Kevin mentioned before, there are issues with each of those types of fee arrangements, the fixed fee, the cap fee, and even the blended rate. But the old adage, you do get what you measure and also what you reward. And having the ability to analyze and to measure your spend, I think, does give you the power then to drive certain behaviors and measure behaviors of lawyers.

I don't think there's a single solution as to what should we use. Is it a fixed fee? Is it a blended rate or so on? Because as Kevin mentioned before, there are issues with each of those measures.

But, what we are finding is that where you put together a combination of measures, then you can start to drive the right behaviors. So, if you use a blended rate for all your lawyers, and we've done this with one client, we have a blended rate right across Europe and 40 or 50 jurisdictions for a certain sort of work. Now, a blended rate in itself is fine, but it does encourage more hours

to be spent. But we also then have tied in a bonus for hitting a target number of hours so that we agree with the client what the number of hours during a – on a particular matter is. And if we hit that, then there is a bonus.

So, again, driving right behavior that we don't put down inappropriate number of hours. We deliver a blended rate so that combination works pretty well.

But a fixed fee, with the bonus on to that, that's factious. Again, as Kevin mentioned before, behavior there, well it's in the law firm's interest to drive down that work to the lowest level. So that can effect client satisfaction. Is the quality right? Is the service right?

So, linking that with a bonus on client satisfaction would, again, seem to drive the right behaviors and on a capped fee, linking that in to a successful outcome.

So, this combination of things, which you can put in place, very simply, for reasons simply, seems to work and drive the right behaviors. So that's the point, you really do achieve what you measure and reward. I think and we're now starting to put in place a system that enables you to see that. To give you the control so you can measure what your spend is and you can actually analyze where your own spend is and what your external lawyers are doing.

And it should drive the right behaviors. It enables management to performance of your performance and it can, actually, be a very powerful tool in demonstrating the value certainly that we as an external law firm can add to a company. But also, I think it can give you the information and ammunition to demonstrate internally the value that you're adding. So, can you show a reduction in overall spend or hourly rate or increased coverage for the same spend. And in particular, the areas maybe of highest risk or compliance issues.

And it will help, I think certainly, in forecasting budgeting at matter at business unit or corporate level. Again, getting fixed monthly, quarterly, or even monthly information it should enable you to extrapolate what your spend is going to be in any particular year by business unit, by country, or however actually you want to split that down to your particular business.

That's, I think, all I want to say about control of measurements and how we drive the right behaviors.

Kevin, can you say something on projects and what we do?

**Kevin Doolan:** Yes. Yes, I think, Alexandra, just to keep an eye on the time – I was going to spend a few minutes on this and we'll have some time for questions if the people have got further questions.

**Alexandra Wrage:** Good. I think that makes sense. Thank you.

**Kevin Doolan:** So, I'm just going to nip this quite quickly. But one of the things we're often asked by clients is to say what added value can you bring to us as a law firm. So I want to talk about some of the projects that we've run.

Litigation review is actually a project we did across multiple jurisdictions. I think there is an Anglo-American approach to litigation which is extremely commercial, which is all about not running the case to its bitter end, but saying, where's the balance of commerciality. But that really doesn't exist in most other jurisdictions. And so, for example, one client we actually did an analysis right across 30 countries for them and found that really cases were being run in a very traditional, old fashioned way.

Very much along the lines of once they started they would get to the end, no matter what. And in one case that Steve was involved in, they were actually spending a lot more money on running

cases, defining fines in a particular area than the actual fines themselves. And we just were able to develop more sophisticated strategy around it.

**Stephen Hopkins:** Just on that, I think we were able to analyze cases because we saw these going through on a regular basis and when we analyzed them we realized that the cases we succeeded in were cases where the internal procedures had been followed quite rigidly.

So, what we put in place – you can expect, was a – just a matrix for ensuring that where – before we issued litigation, we checked that the internal procedures had been complied with, and if they had been, we fought the case, if they hadn't we paid the fine straight away because we knew, from our information that ((inaudible)) of running that litigation would be more than the fine itself and that led to the client saving considerable amounts of money on those administrative cases.

**Kevin Doolan:** And the, I think, just to nip through the other projects, developing key performance indicators, this is to say I think this is something I find a lot of general counsel being asked to – by their colleagues and by their board, KPIs around in-house service delivery and external, the type of things that are coming out.

I have a separate note on this, which was – came out of a session that our advisory board ran for a day on this. So, if anybody's particularly interested in generating KPIs, then just send me an e-mail and I will send them a copy of the note and hopefully they may think of extra KPIs and add them to the note and they will get larger and larger. But I think – we've always struggled, I think, as a profession to put numbers around performance. But I think there are now increasing number of ideas coming forward about how you actually can create those numbers and who year on year performance.

A good example I came across with a general counsel was that she had gone around and calculated how much the business was effectively giving away each year by having to settle contractual claims where the business is not followed the proper procedures and had good contractual protection.

So, she added up that sum, showed that it was actually considerably more than the business was spending on the legal team and set herself a project to reduce it by 25 percent in the following year. So, I thought a good example of a really hard KPI that people wanted to achieve.

The other type of thing is that we would run is what we call efficiency workshops, which is where we get all of the people involved, the business unit, the in-house team, and ourselves together in a room for a day or two and actually break this apart and say well, how can we actually simplify, standardize, use standard forms and actually reduce the costs because there is less work.

Online training again to reduce costs, face to face training very expensive and of course no clearer audit trail. So in areas where you need to track compliance online training has been a huge benefit to clients and saves a lot of money. We have, I think, something like 10,000 users every month logging on and using this type of training.

And I mentioned the document automation projects and helping the clients to develop their own precious libraries.

So, really that takes me through – where we're heading of course, there's an actual photo of paradise which is where you'll end up if we get this absolutely right. But note, of course, your own experience may vary. So, I think that's all that Steve and I wanted to say. So, otherwise, if anybody wants to chop in with any questions.

**Alexandra Wrage:** Thank you so much. That's really interesting, peer commitment to exploring creative alternatives to the billable hour. And very welcome to in-house counsel.

We don't have – I don't think have any questions – pardon me, pending right now. But I had one question that was given to me separately. And this – many of your suggestions seem to work very well for M&A or other deal work. But there's concern, I think, when you're working on compliance issues and specifically on investigations that some sort of advanced estimate would create a disincentive to pursue an investigation all the way to its – its bitter end. And that – in that situation it might be more difficult of the interests of the two parties to converge.

**Kevin Doolan:** Yes, I think – that's interesting because I think, as you say, you want a thorough investigation. I think – certainly, if a client says to us, I want this to be wholly open ended then we'll listen to the client and we would behave in that way.

But I think, one of the benefits we can bring is if you're coming to us as experts, then we must have done a number of these investigations before and therefore, at least we can have an intelligent conversation with you to say well, this is what we expect it to cost, this is how many people we expect to be involved, and I know it may not be absolutely typical, but at least it gives a feel.

Now, if you say, I don't want any estimate because I'm worried that will close it down, then of course, that's how we can behave. But generally, I think clients appreciate the fact that we're saying, well, we've done a lot of these before and actually, just about six months ago, we had a client dawn raided and we put together an estimate at the very beginning, when four of your factories have been subject to a dawn raid by investigators, you could say its difficult to day. But actually, we put together an estimate and we came within about five percent by the end.

So, I think it also gives a bit of confidence that we have done this before. So, this is a – but I agree, the more you get into the absolute top slice of work, I think the less clients are driven by numbers. I don't know whether that's your experience as well, Alexandra.

**Alexandra Wrage:** Yes, that's a good point and actually leads into – the first half of that leads into the next question, which is how do you get the data on this if you're new? I mean what data is required to launch a program like this, and the question specifically is, can you extract data from existing systems as a starting point?

**Stephen Hopkins:** This is Stephen. It's difficult because the system you can get out, I suppose, of any system what you put in. And I think, a number of billing systems do have data on the bills that come in. If those have been entered. So, people have mentioned Serengeti already. And you can extract spend data from those systems.

But what we're talking about here is something which is pretty I think, unique to Eversheds because we've got the network around Europe, Middle East and Africa. We've trained firms on our particular system to operate with certain methodologies in terms of cost estimating, budgeting and scoping, which is not particularly usual in the U.K. or the U.S., let alone in all the jurisdictions across Europe. So, you're unlikely to be able to find that system in particular. But I think, on some of the billing systems and many firms will have elite in place.

Sometimes we'll be able to give you some limited spend data. But what they cant give you is the control upfront on a particular matter, when its opened, when your budget, which – and I think and well, we thought it was very important actually. Because it is much better to have a conversation at that stage about no, the team you've got is too senior, or the – now, you're looking at the wrong aspects and we don't want to spend that.

Now, having that conversation at that point is a reasonably cordial and a partnership type conversation. By the time you get to the bill and its three times the original estimate or budget, then that is a very different sort of conversation and we prefer to have these conversations up front because they're far more productive.

**Alexandra Wrage:** OK. I think we're probably out of time then. I believe that in past you've continued to answer questions online and, I'm sorry, I'm going to offer you up to do that perhaps for just a moment.

But, with that, I'm going to thank our speakers today.

Thank you both, Kevin Doolan and Stephen Hopkins of Eversheds. Really a very interesting presentation – and remind everybody to please take just a few moments to complete the webcast evaluation form online to help us ensure that the webcasts are meeting your needs.

So thank you.

**Stephen Hopkins:** OK. Thanks for listening in.

**Kevin Doolan:** Thank you.

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