Legal Knowledge Management: Insights and Practice

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Driving knowledge management: From reaction to engagement

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MOST OF the last 30 or so years during which knowledge management has developed into a discrete law firm function could be characterised as a period during which piecemeal copying was the norm. Typically, new ways of dealing with knowledge have been adopted by the largest firms and then smaller firms take similar measures later on. The result is that there is huge consistency across the largest firms in their general approach to knowledge. (Any variation will be in the details.) Since 2008, the legal sector has been under enormous pressure, which is slowly increasing diversity amongst law firms. That diversity should have an impact on knowledge management, but that requires clarity of understanding exactly what place KM has within the firm and who should drive it. Over time (and between firms), this has shifted from a subservient place reacting to demand and opportunity to a more valued service, aligned with firms’ goals. The next stage is for real strategic engagement with knowledge management.

A brief history
The primary knowledge activities within a law firm have not changed for generations. Lawyers have long recognised the value of precedent or standard documents as the starting point for advising clients. Likewise, in the absence of the firm’s own documentation, lawyers depend on access to publicly available resources to ensure that the content of that advice is accurate. Before technology became pervasive, precedents were drafted and collected manually. They would be made available in the firm’s library together with the books, journals, statutes, and case-law that the firm acquired from legal publishers. There would also be some form of informal knowledge sharing (as we might call it now), as the firm itself would have been much smaller and (paradoxically) more formally structured – part of the responsibility of partnership would have been to be the ‘fount of all knowledge’.

As firms grew, and technology became more pervasive, firms started to invest in people and systems to do the things that had previously been done as part of other jobs, or manually. The prevalence of physical books was undermined by online legal databases from the early 1980s. The first professional support lawyers (PSLs) were appointed in Magic Circle firms less than a decade later. This was the beginning of a cycle of development that has only faltered in the past few years. Technology makes it possible to access, more quickly and accurately, a wider collection of material than is possible otherwise. It also allows more information to be created within the firm. This surfeit of riches requires different skills than previously, to the point that specialised personnel need to be recruited. Those people then create more resources (precedents, guidance documents, practice notes, etc.) that improve the quality of the
work done, but need additional technology (for storage, search, and retrieval) for the firm to feel the maximum benefit. And so the cycle continues.

As firms developed their own KM capability, suppliers saw opportunities for themselves. New content providers and existing legal publishers looked to increase the depth and breadth of resources available to firms, and technology vendors developed their database and search tools into ‘knowledge management systems’.

On the demand side, partners saw (or heard from potential recruits) that other firms had invested in knowledge services and systems. Fearing a loss of competitive edge they expected the firm to catch up by making similar purchases. Once many firms had made a significant commitment to knowledge (whether by employing PSLs, by buying systems, or both), clients started (by implication or explicitly) to require some form of knowledge support from their firms.

By the mid-2000s, one could confidently assert that there was a fairly stable model for KM in law firms. This was borne out by the publication of two books on the topic: Gretta Rusanow’s Knowledge Management and the Smarter Lawyer (2003) and Matthew Parsons’s Effective Knowledge Management for Law Firms (2004). (It should be noted that there are significant differences between the UK and the US in approaches to legal KM, for reasons that are beyond the scope of this discussion. The consistency within each jurisdiction is roughly equivalent, however.)

Who is driving law firm KM?
This summary history of KM in law firms does not describe how the KM function is managed and led. There can be significant variation. For some, it is an aspect of IT provision, whereas others might locate it alongside HR. Some firms have appointed dedicated KM leaders, whilst others look to one or more partners to perform that function, or roll it into another business services role. The scope of KM leadership can also vary significantly. At a basic level it might be a purely internal and operational role, encompassing a variety of activities – including harnessing resources and directing people, setting policies, influencing behaviour, and culture. Beyond that, there may be a responsibility for setting strategy for knowledge management within the firm. Whatever the scope of their role, very few KM leaders have been able to act without reference to significant pressures from elsewhere. Those pressures can be said to drive KM across the sector, so it is important to recognise and understand them.

So why did law firms KM develop as described in the previous section? The causes are interlinked:

- Economic or organisational change: The increasing complexity of legal practice (either the size of the firm, the client base, or volume of work) makes it harder for lawyers to dedicate time to knowledge activities and also makes those activities more important;
- Technology: Wider use of technology in legal practice starts to conceal the work being done (pre-document management is hidden in emails and document folders). The technology also offers a solution to this problem in improved document management and in knowledge databases and enterprise search;
- People: The growth in knowledge requirements triggered the creation of the PSL role, initially for existing fee-earners wanting to change the way they worked. The existence of PSLs within a firm enabled more knowledge activities...
to be done by fewer people, driving more PSL recruitment as well as new technology adoption;

- Market pressure: Law firms follow their competitors’ KM initiatives, and clients assume that firms can provide knowledge support (either from their PSLs or by using technology); and
- Suppliers: The economic and technology drivers for law firms are similar for publishers and technology vendors. They can then present a ‘ready-made’ solution to firms.

In almost every case, knowledge activities have been a reaction to a situation or opportunity, rather than developments planned strategically in advance. This is not unique to KM work – law firms rarely thought strategically until the last decade or so. It does mean, though, that firms’ knowledge activities have been shaped to a significant extent by the interests of their suppliers, their competitors, and their people (PSLs and fee-earners). Client demand at this stage is minimal and proceeds from an assumption that the other interests have worked to ensure homogeneity across the largest law firms.

The leader of a reactive KM function is likely to focus almost exclusively on routine operational and management issues. This will extend to making choices about approaches, systems, or tools, but only when necessary. The better KM leaders will spot the limitations of this approach for the firm and for clients, and will develop a more forward-looking strategic (or at least tactical) approach to developing knowledge for the firm. Where there is a wider strategy for the firm, the KM strategy should align with it.

Disruption

It is fair to say that, with a few exceptions, the legal sector itself was fairly well-settled in the mid-2000s. Whilst firms might have differed in terms of their geographical spread and the expertise at their disposal, most of the largest firms worked to a very similar business model and goals. The years since 2008 have changed the assumption that there is a predominant way of running a legal business. This disruption is particularly strong in England and Wales, where there has been major regulatory change alongside economic upheaval and technological innovation.

The major recession following the nationalisation of Northern Rock in the UK and the bankruptcy of Lehman Brothers in the US inevitably affected law firms. Unlike previous recessions, the impact was not a simple reduction in fee income, which could be managed by a corresponding reduction in costs. This time, partly because of the depth of the recession and partly because of their greater sophistication in buying legal services, clients multiplied the cost pressure on firms by making it clear that legal services should be provided more effectively and at a lower price.

One of the reasons for clients becoming more active in seeking cost savings is that the pace of technological change has increased in all sectors. Most businesses have been able to save costs through some form of automation or similar technology-driven efficiencies. At the same time, consumer access to technology has reached a point where traditional business models have needed to adapt to meet new types of consumer demand. Law firms have been slow to adopt new delivery models (especially compared to banks, whose online banking services now handle significant numbers of transactions, or insurance companies which now sell more
consumer policies online than through brokers). They have also been slow to make progress with automation.

So, since 2008, law firms have faced: an unfavourable general economic climate; direct pressure from clients to reduce fees; and raised expectations from clients and staff that technology could be used better. Outside England and Wales, this combination is disruptive. In England and Wales, settled law firms are also faced with fresh competition from new types of business that can offer legal services without the burden of tradition.

A more strategic approach?

How do firms react to this disruption, and what is the effect on knowledge activities?

It is still possible to treat this upheaval as almost irrelevant — to continue to practise law as before, serving clients in the same way with little change. This could work for a very small number of firms, but luck is probably the only factor determining which those will be. The fate of the rest will be to fail by not changing quickly or radically enough, or succeeding by making real business change. Almost by definition, such change cannot be doing the same as everyone else in a reactive fashion. Instead, it needs to be driven by clear strategic goals. Firms will need to answer for themselves questions such as: ‘Which clients should we act for?’, ‘What kind of work should we do for them?’, ‘How should we organise ourselves?’, ‘How should we work?’ and so on.

Crucially, the outcome of improved strategic analysis across the legal sector will probably be increased diversity amongst law firms. This can be demonstrated mathematically. Assume that there are just four possible responses for each of the four questions posed above. That would provide 256 possible combinations of answers (4 x 4 x 4 x 4). In reality, there will inevitably be more than four questions to answer and many more than four options in each case. The combinations of choices made by firms will create different businesses operating in very different ways.

Whilst some of the differences that come about as a result of this process will be small, so that standard systems might still work as before, it is not safe for suppliers to assume that the market they are selling into is as homogenous as it has been until now. The corollary of that assertion is that purchasers of systems and services need to be cautious of offerings that claim (implicitly or otherwise) to provide a knowledge management solution. Legal technology vendors should therefore be much less influential in driving knowledge management in law firms than they have been in the past.

Whilst diversity will reduce the influence of suppliers, technology vendors have another challenge. Just as firms are becoming more diverse, so are the systems they use. Until now, law firm IT has been characterised by monolithic systems: practice management, CRM, DMS, know-how, etc. The pace of change in technology will erode some of those monoliths. We have started to see this in the knowledge sphere with the introduction of social tools. This will only accelerate. One outcome of this is that firms will start to seek ‘best of breed’ products in the wider IT marketplace, rather than choosing from products tailored for law firms.

Increased diversity amongst firms will perhaps also diminish the extent to which firms look to their competitors for inspiration (or to copy). As differences between firms become much more tangible, it will be clearer that simply transplanting ideas from one firm to another will not work.
Naturally, partners and others still need to seek inspiration somewhere, and it is likely to come from clients. This might have two facets. In the first place, a more strategic approach necessarily requires examination and clarification of what firms do for clients. Clarity about this will in turn make it clearer what knowledge and insight is needed to deliver that service. A more client-focused strategy will also allow clients to express more clearly what knowledge support they would like for themselves, rather than making assumptions about what is available.

If law firms become much better at strategy, where does knowledge management fit in that process? Implicit in the discussion so far is an assumption that a new strategic focus will become the main driver defining knowledge activities. For those leading knowledge management, however, merely aligning KM strategy with the firm’s may not be enough. A firm built on better use of knowledge would involve the knowledge experts in creating the strategy itself.

**Engaged KM**

The historic overview of knowledge management above described a function defined by reaction – largely to external forces. Even before 2008, some firms had seen their KM strategies better aligned to the firm’s strategy – driven not by change elsewhere, but by clearly defined business goals. The next step is to an engaged KM function, which participates in (and drives aspects of) the development of the firm’s strategy. The focus for KM changes as a result. Rather than being merely a way of getting better advice to clients, it is used to ask and answer strategic questions for the firm – producing a better strategy (and improved performance) as a result. The responsibility for making the case for this change rests with law firm knowledge leaders.

What should firms be asking of their knowledge leaders? Even if we only consider the questions arising from the application of technology to legal practice, there are many questions that KM leaders can help to answer. For example: ‘Which aspects of our work could be automated?’ and ‘How should we automate?’ Historically those questions might have been answered by vendors. But, as firms need to differentiate themselves from each other the responses need to be better informed by an understanding of the way knowledge is used already. In addition, firms choosing different organisational models or new approaches to client delivery will need their KM leader to consider the knowledge consequences of those choices. The outcome of that consideration will then be incorporated into the strategy. When KM is engaged with strategy, the future knowledge environment will need to be defined alongside the business model that will deliver it. KM will help to drive the firm.