

Guide to setting up an in-house legal department



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As the first or sole in-house counsel for an organisation, you'll undoubtedly face a unique set of challenges.

Whether you've come from private practice or another in-house role, being the first and only solicitor in an organisation can be as exciting as it is daunting.

What it certainly offers, is a great opportunity to create the legal department that you want to run, not bound by existing cultural or operational issues.

Setting and managing expectations

If your new organisation has never employed an in-house lawyer before, their expectations of you might not be clear.

The first step is to determine why your organisation hired you. Did something go wrong for them? Does the organisation have an immediate legal concern? Are they looking to curb a high external legal spend? Is there a specific project in the pipeline where internal legal input is required?

Whatever the reason for the hire, try to understand where your senior management is coming from and their rationale for creating your role.

One of biggest challenges can be matching the organisation's expectations of taking on an in-house lawyer, with your expectations of being one. Some common general expectations of the role are:

- Reacting to legal issues as they arise
- Proactively identifying, highlighting and advising senior management on legal issues related to the business and future strategy of the organisation
- Ensuring compliance with legal, regulatory and ethical standards
- Acting as a moral compass for the organisation
- Brand and reputation protection
- Protecting the organisation from litigation

- Managing and protecting contractual arrangements
- Understanding the risk appetite of the organisation
- Identifying and managing risk
- Acting as a sounding board in key strategy decisions
- Managing relationships with external counsel
- Managing other external stakeholder relationships – e.g. with a regulator.

As well as identifying the expectations of your new employer, you may also be grappling with some common misconceptions around your role, including that in-house lawyers are:

- A barrier to getting business done, resulting in a reluctance to get legal input at an early stage
- Able to provide personal legal advice to board members, staff members or elected officials (see our *'Who is your client?'* guidelines for more details on this)
- Expert in all areas of the law and can advise on these with equal proficiency (see our website for Practice Rule B1.10 on competence)
- To be consulted only when something has 'gone wrong', excluding them from inputting into business or strategy decisions.

Part of your initial bedding-in period may involve exploring these expectations and addressing any misconceptions in more detail, so that both you and your employer can agree on mutually acceptable parameters for the role. Practical steps you can consider include surveying your internal clients about needs and expectations, starting with senior management colleagues.

Once you have consensus on your remit, a simple mission statement could be a useful tool to provide you with a framework and your colleagues with a clear understanding of the role and priorities of the legal department.

However, you should stop short of writing a set of rules and regulations. Stipulating what you will and won't or can and can't do, may act as a barrier to your colleagues coming to you for input and advice. Instead you can create a protocol for dealing with work that, due to lack of capacity or expertise, needs external legal input.



Understanding your organisation

Perhaps the biggest and most important task as a new in-house counsel is understanding your organisation. This has two main facets:

1. The sector you are now working in

Good industry knowledge is paramount for understanding an organisation's legal needs. This includes having knowledge of competitors or related bodies; understanding the regulatory environment within which the business operates; and monitoring any major threats to or challenges for the sector. This can be achieved through following trade magazines or industry news alerts, attending sector specific conferences and events, linking up with colleagues across the organisation regularly and interacting with in-house solicitors who work in similar areas.

2. Your organisation's strategy, operations and culture

Having an intimate knowledge of an organisation's strategy, operations and the cultural environment in which these are set is also of critical importance. An organisation's corporate culture is deeply reflective of how the company's senior management thinks and acts, and therefore how legal advice will be received and translated into workable business practices. To help you obtain a good grasp of the business:

- **Connect with colleagues across the organisation** – talk to department heads to understand how their unit functions, what their

major goals are and what their legal needs might be

- **Observe operations.** You may be able to gain some important insights simply by visiting and walking around major hubs of activity for your organisation
- **Find out what regular meetings take place.** If you can, start with attending the most relevant. Bear in mind that the most informative meetings may not be with senior management. Consider which of the more operational meetings it would be useful for you to be at
- **Review** existing files and paperwork, particularly in relation to any ongoing legal matters
- **Ask questions** about your colleagues' experiences of taking legal advice to date
- **Read** corporate documents, filings, strategy papers and risk registers.

Marketing the legal function

Another challenge for newly appointed in-house counsel can be raising awareness of the legal team and its role.

Communication is key. Find ways to highlight the benefits of working with the legal department and the range of services you can offer. You've got to work hard to build relationships and trust, but this can largely be achieved through simply talking to your new colleagues. If you thought you'd left business development behind, think again: networking is just as important in-house.

Some other ways to get your message across include:

- Written communication with colleagues publicising your role and explaining how and why to contact you
- Make use of existing internal communication channels, such as your organisation's intranet if it has one
- Hosting training sessions to educate staff on topics of particular importance. These could be

informal events, such as over a lunch break, or mandatory seminars that form part of colleagues' regular internal training programme

- Joining appropriate colleague forums and meetings to gain greater visibility
- Hosting 'legal clinics' where client departments get to raise legal issues they might be encountering.

Adding value

As well as the day-to-day reactive legal advice that you can provide, there are a number of ways you can proactively create an indispensable legal function:

Governance – through developing an intimate understanding of an organisation’s history, culture, needs and values, you’ll be uniquely placed to advise senior management on corporate governance structures and procedures and suggest improvements to these.

Risk management – identifying and understanding potential legal risks for your organisation. Legal risks include: the risk of a claim being made against the organisation; the risk of failing to protect assets owned or managed by

the organisation; the risk of a change in the law; and the risk of failing to manage the benefits or obligations arising under a contract. In-house counsel also has a key role in relation to crisis management, with the ability to anticipate and resolve problems before they escalate.

Codifying organisational policies – your new employer may have a range of policies, created over many years by different colleagues and departments. Reviewing internal policies and identifying anything which is missing from an existing suite could be a good way of standardising behaviours and ensuring better corporate compliance across the organisation, potentially reducing

liability. Types of policies may include code of conduct and ethical guidance; document retention; contract review; and HR procedures.

Creating knowledge capital – developing a system to capture and disseminate legal wisdom is an important tool for creating a more effective and efficient legal department. You can support your internal clients by allowing for an element of ‘self-serve’, for example: creating templates for straightforward contractual needs; identifying frequently asked questions and preparing appropriate responses; making previous pieces of legal research available; and creating a suite of checklists and protocols for common transactional requirements.

Measuring value through KPIs

Key performance indicators (KPIs) are useful for both defining goals and measuring performance against those goals.

Generally perceived as a cost-centre, showcasing the value of a legal department and setting meaningful KPIs can be difficult. Your organisation will likely have over-arching KPIs,

however, you should try to introduce your own measurements, before these are imposed on you and are potentially a poor fit. Traditional KPIs for the legal team focus on external legal spend, but you should think more broadly than this. Use KPIs to demonstrate the overall efficiency of the internal legal function and how legal has managed risk for the business.

Metrics

The following are a range of objective metrics that in-house teams may wish to use as a performance measurement:

- Service levels
- Impact
- Internal client satisfaction surveys
- Cost
- Activity levels
- Involvement in major cases or projects and successful outcomes.

Instructing external counsel



Managing partnerships with external counsel will likely become a significant part of your new role, especially in the early days when you might be most reliant on this resource. Your colleagues may be instructing a variety of firms on a whole range of issues. Although existing relationships are important and there should be a body of experience that you can rely on, ultimately the relationship with external counsel should be controlled by the in-house legal function, so it has to work for you. Some challenges that you might face include:

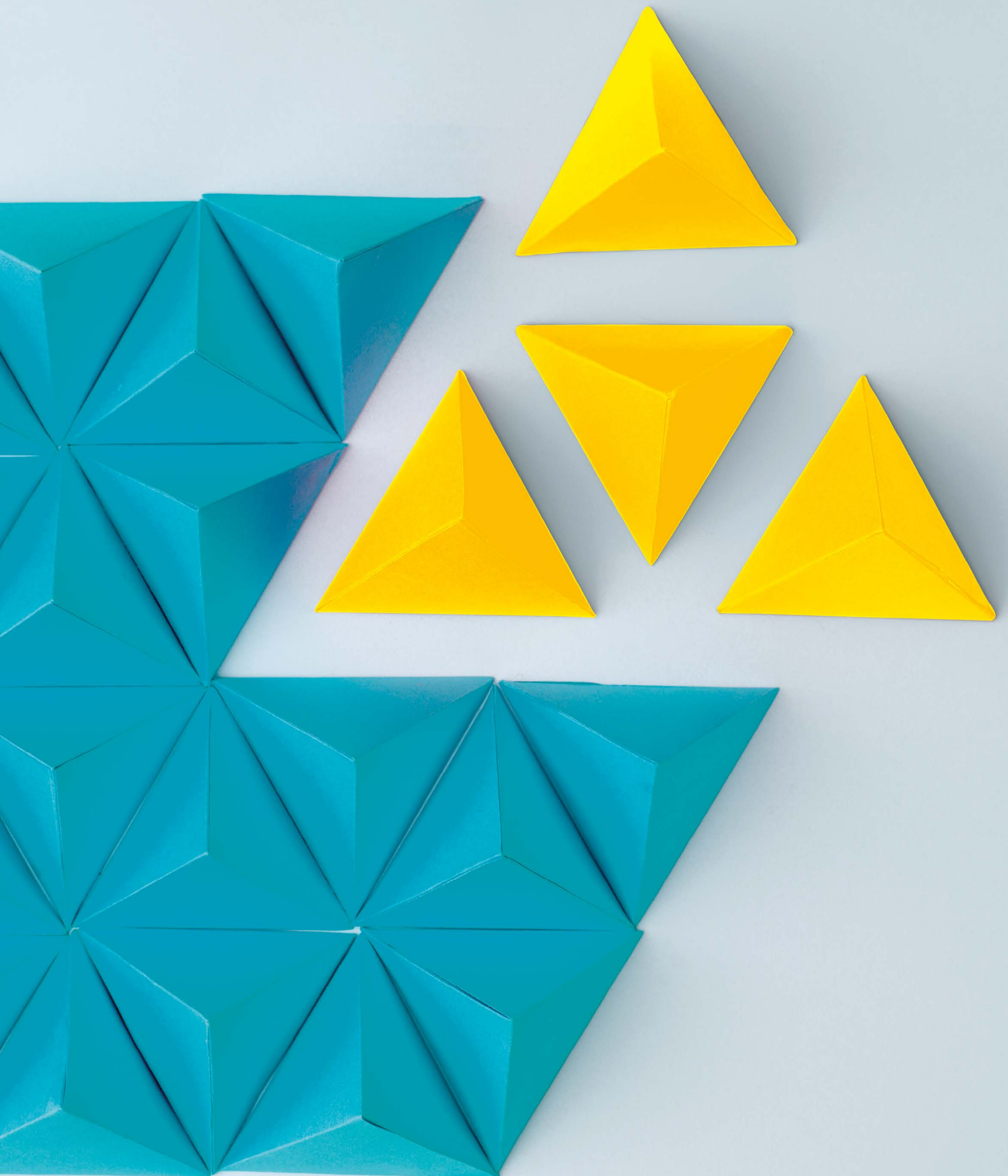
Understanding which law firms are being used by different colleagues or departments. Make it an early priority to understand who is instructing whom and why. You may find that there is a disconnect across the organisation in terms of which firms are being used for similar matters and the volume of legal work being generated. Taking steps to consolidate outsourcing of legal work could result in significant cost savings and the ability to leverage more from your relationships, for example the opportunity to offer a secondment to a solicitor from your partner firm.

Determining which matters should be handled internally and those which need to be outsourced. This is particularly difficult for a first in-house lawyer as the organisation's expectations may be that they have hired you to deal with all legal matters. Remember, according to your professional rules you can only act in matters where you are competent to do so. If your background is commercial property, proceed with caution when that employment tribunal case lands on your desk.

Discouraging colleagues from seeking advice from external counsel without first speaking to you. You should become the gatekeeper for the majority of legal matters in your organisation. Even if you lack the capacity or expertise to deal with a particular thing internally, you will likely have the ability to get the best from external legal providers by packaging the request for advice appropriately, providing all the necessary information, asking the right questions and capping legal costs.

Assessing external legal costs/budget. This will be essential if you want to expand the legal team and show cost savings. Building a clear picture of how much the organisation is spending and where the majority of costs are incurred, could lead to you making a strong business case for increased headcount in the legal team.

Introducing or improving existing tender or procurement processes. There may already be a procurement team in place to support this. Either way, you should develop a set of parameters that fits in with your organisation's culture and ethos. For example, priorities may not be solely about keeping costs low, but also ensuring panel firms match particular diversity or sustainability goals.



Finding new ways of working

Losing the familiar support networks and range of legal colleagues of a law firm environment or large in-house team can be daunting. As sole in-house counsel, you may feel pressure to advise on every legal matter that comes across your desk. However, remember your obligations under the Practice Rules and, in particular, that you should only act in matters where you are competent to do so. Use your existing networks and external law firms to fill in the gaps in your legal expertise.

You may also be used to well-established case management and other technology systems. The volume and variety of tech products on the market can be overwhelming. However, you should first understand your organisation's existing systems: make the most of these and adapt them for your needs where possible. If you do have any budget to invest in technology, some areas you may wish to focus on include document management and document

drafting; research support tools; and process management. Getting to grips with what will actually work for you may take time and require an element of trial and error, so be flexible and don't become too set on a particular way of working early on.

Lastly, be mindful of building a legal function equipped for the future: think about potential growth, you may not always be on your own!

Your practising certificate

You may have come from an environment where your relationship with the Law Society was largely handled by an HR colleague or another internal resource. If you are the first in-house counsel, you might now be wondering what you need to do to keep your membership up to date. The answer is very simple!

Once the details of your in-house move have been finalised, email our Registrars team with the following information:

- The full name and postal address of your new employer
- Your new contact information (most importantly, your email address)
- Your start date.

Our team will ask you to complete some details on behalf of your employer, confirming it is exempt from obligations related to the Society's Accounts Rules and Client Protection Fund.

More information on the exemption criteria is available in the membership and fees section of our website. Once the Registrars team is satisfied that the exemption applies, your employer will be set up as a new organisation in our system.

CONTACT

The Registrars team is there to support and guide you. If in doubt, email them at registrar@lawscot.org.uk or call them on 0131 471 8367.

Things to remember:

You can amend your contact information at any time yourself by logging in to the members area of our website.

You need to renew your practising certificate annually. We will send an email, prompting you to do this. Our guidance around practising certificate renewal can be found on our website.

CPD

The CPD requirements for an in-house solicitor are no different from a solicitor in private practice. However, where you may have benefitted from a suite of CPD training in your previous role, the onus will likely now be on you to ensure you fulfil your CPD requirements. We run

events throughout the year focusing on both practice areas and skills. Some of our CPD is tailored specifically for our in-house members, including our in-house annual conference in June, our in-house best practice course which we hold twice each year and our suite of online CPD.

✉ CONTACT

For more information contact the CPD team email cpd@lawscot.org.uk or call 0131 476 8201.

Support

We offer various support services for members. Generally in-house lawyers are very willing to support each other and there are various networks which exist to provide such support. Contact us for more details of existing networks that may be of interest to you.

We'd also encourage new in-house solicitors to consider becoming part of the Society's mentoring scheme. It's never too late to be mentored. There's no specific point in your career when you should have a mentor or look for guidance, it varies for everyone and our mentoring scheme is open to you whatever stage you're at. There's also no single reason why you might apply to be mentored, everyone has different goals.

Making that transition from private practice to in-house might be the first time in your career that you feel you'd benefit from mentoring support.

The In-house Lawyers Committee represents, supports and promotes the interests and status of solicitors working in-house in Scotland and beyond.

The Society is a member of In-house Counsel Worldwide (ICW), a global network of association bodies for in-house lawyers. ICW has developed a set of universal competencies for in-house counsel, which is a useful tool for understanding some of the attributes, skills and knowledge that successful in-house counsel needs.

✉ CONTACT

We offer various support services for members. Please contact:

Our Head of Engagement for In-house Lawyers as the dedicated support for in-house solicitors email inhouse@lawscot.org.uk or call 0131 476 8132.

Professional Practice team for all practice and ethical queries email profprac@lawscot.org.uk or call 0131 226 8896.



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The Lexis®PSL In-house Advisor team has a wealth of in-house expertise and works with leading lawyers and experts to ensure that the practice area focuses on your needs.



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