

# SERVICE DELIVERY REVIEW PRIMER

## Outside Counsel Service Delivery Review

Most clients do not pay sufficient attention to how legal work gets done. You are rightly concerned with who is doing the work and what you pay for it. But **how legal services are delivered** gets mostly lip service despite the fact that the bulk of external spend flows to relatively stable relationships subject to high switching costs and limited, intermittent price renegotiation.

With people and price in place, it is **process** that offers the most levers to drive continuous improvement, especially in the context of long-term supplier relationships. Instead of focusing on discounts and write-downs, address process with your primary providers. The following six steps will help you to do this.

Each step can be executed independently and produce positive results—i.e., change behavior. But the approach is synergistic.

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## 1. Measure

Well-organized data should inform decision-making. Clients should therefore use key performance indicators (KPI) for their law firms.

**Quantitative metrics** can focus on service-delivery issues like cycle times, staffing, and workflow efficiency. Metrics can speak to process concerns like billing hygiene and performance against budget. They can be proxies for the health of the business relationship—e.g., spend trends, relative spend, and matters awarded versus opportunity. Metrics can also track other priorities like diversity.

**Qualitative data** like the *Net Promoter Score* can be vital information. Internal stakeholders can also be surveyed about their firms' expertise, efficiency, execution, responsiveness, replaceability, business acumen, etc. to capture what the quantitative data cannot, while bringing some discipline and rigor to subjective judgments through the use of Likert scales, forced ranking etc.

Both quantitative and qualitative metrics have their limits. However, together, they can produce excellent insights.

- ✓ *Although KPIs are at their most powerful when shared (to create feedback loops), they can be used internally to aid decision-making on issues like retention, panel consolidation, and rate-increase requests. KPIs increase in usefulness over time as trends become apparent (see step 6 Repeat).*

## Sample KPIs

(This is a menu. It is not intended to be prescriptive.)

### Quantitative KPIs

- Spend
- Relative Spend
- Spend per Matter
- Relative Spend per Matter
- Number of Matters
- Relative Number of Matters
- Matters vs. Eligible
- Budgets Submitted
- Budgets Submitted vs. Required
- Budget Timeliness
- Budget Accuracy
- Budget Adjustment Frequency
- Invoice Timeliness
- Invoice Adjustments
- Guideline Compliance
- Timekeepers per Matter
- Timekeeper Composition
- Timekeeper Turnover
- Cycle Times
- Change Orders
- Success Fees/Holdbacks
- Rates
- Relative Rates
- Diversity
  - overall diversity
    - staff
    - associate
    - partner
    - exec/comp committee
  - client-team diversity (i.e. who is responsible for how much of client's work; both hours and dollars)
  - originations diversity (i.e., who gets credit for generating client's work)
  - successor diversity (i.e., who will inherit client's book)

### Qualitative KPIs

- Net Promoter Score
- Understands Objective/Expectations
- Legal Expertise
- Efficient/Process Management
- Responsiveness/Communication
- Predictable Cost/Budgeting Skills
- Results Delivered/Execution
- Replaceability/Embeddedness
- Alignment/Our-Business Acumen
- Shared Values
- Quality of Advice/Work Product
- Transparency/Information Sharing
- Innovation/Creativity
- Pro-active
- Attention to Detail
- Collaboration
- Flexibility
- Concision
- Ease of Use
- Billing Hygiene
- Staffing Efficiency
- Improvement/Progress (over time)
- Cost Effectiveness
- Cost Consciousness
- Actionable Guidance
- Diversity (customer touch points)

## 2. Ask

Much of external legal service delivery is opaque by default. To change this, ask firms to supplement your KPIs with their own measurements of cycle times, staffing, workflow efficiency, billing hygiene, performance against budget, etc.

Also dig beneath the surface to get a glimpse at how your work is being done: Ask questions about project management, continuous improvement, training, analytics, knowledge management, innovation, compensation, budgeting, and a host of other topics that are all pieces of the service-delivery puzzle.

Avoid confusion and complication, ask questions that emphasize objective measurement, seek concrete deliverables, and elicit falsifiable statements (see Appendix for sample questions).

- ✓ *The simple act of asking firms for information signals that you value the response. If you ask your firms questions to which they do not have good answers, they will be motivated to change behavior in order to have better answers the next time you ask, which is precisely why you should let them know you will ask again (see step 6 Repeat).*

### 3. Inspect

This is the least commonly practiced step listed. While clients pay large sums on the external production of legal content, few perform onsite reviews of service delivery.

The basic concept is simple: You use billing data to determine who is producing what work. Then you have the people doing the work show you their production methods (“you regularly bill for x, y, z, please walk me through your process”). You can use their written responses (see step 2 Ask) to guide your inquiry. In a way that written responses to questions will never reveal, you are able to observe their process, their protocols, and the integration of technology into their workflow. What is obscured by distance and flowery language becomes obvious up close. This engenders conversations about concrete process improvements (see step 4 Discuss) that would not occur absent the onsite inspection.

The person tasked with the onsite service delivery review should be very familiar with legal process. That is, the person must be able to identify inefficiencies and recommend superior alternatives. This person can be law department staff or a professional outside consultant.

- ✓ *The transparency and accountability manifest in an onsite inspection creates immediate incentives to change behavior, especially if the inspection results will be revisited (i.e., the inspection will be repeated) within a reasonable timeframe (see step 6 Repeat).*

## 4. Discuss

Law firms will modify behavior if they know they are measured, asked incisive questions, or are subject to inspection. But they will have a hard time deciding what to change and how to change without explicit client feedback. Without ongoing client feedback (see step 6 Repeat), firms will have no way of determining if their improvement initiatives are successful.

If you look hard enough, you will find places where your firms underperform your expectations. This is normal. No organization operating at scale withstands intense scrutiny unblemished. Suppress the urge to play a game of “gotcha” and grab temporary gains from rate concessions or chargebacks. Instead, engage in a real conversation in the spirit of collaboration and co-prosperity. Talk about shared goals, return on investment (ROI), concrete improvement initiatives, definitions of success, target operating models, etc.

Be sure to make it a true dialogue. Your firms have insights into your personnel, process, protocols, procedures, and politics. They should have suggestions for how you can improve, especially about how you can better integrate your external providers into your legal value chain. They are unlikely to share these insights without a permission structure and an environment that rewards active, honest engagement.

- ✓ *Structured dialogue is superior. Being armed with measurements, answers to questions asked, and inspection results will make for a more fruitful, data-driven discussion. But there is still value in sitting down and taking the time to discuss service delivery: what’s going right, what’s going wrong, and what can be done better. This is especially true if the conversation concludes with concrete action items and a schedule to reconvene to assess progress (see Repeat).*

## 5. Act

The more you change your behavior, the more your law firms will respond. Inspection and discussion is a new behavior, but words have limits without a clear connection to money: Firms that continually perform poorly should see less work and lower realizations. Firms that perform well should see more work (i.e., ROI) and higher realizations. Importantly, inform your firms of the reason that you send less or more work their way.

Most law firms do not know they have been fired, the phone just stops ringing. Moreover, client disengagement typically happens either so gradually or so suddenly that firms do not always notice. When they finally realize the client is gone, they come up with a variety of justifications—matter type dried up, new associate general counsel with different relationships—that rarely implicate their own failings. The firms therefore see no reason to change behavior.

This ignorance affects law departments because, when they happen at all, transitions are usually a long time coming—i.e., we are stuck with low performers for periods. Transitions also introduce risk and uncertainty. There are genuine advantages to incumbency. Switching costs are high. Ramping up new providers is resource intensive. And there is little guarantee a new firm will behave any differently operating in the same feedback-free environment.

- ✓ *Complacency is the ugly underbelly of precedent. Changes in behavior on our part indicate to our firms that the stagnation will not reign. That said, changes in your behavior will have more impact if your reasoning and expectations are explained. Impact is amplified by clear communication, follow through, and sustained attention (see step 6 Repeat).*

## 6. Repeat

Legal service delivery requires sustained, though not constant, attention. Demands, priorities, resources, and technology are in a perpetual state of flux. You need to regularly recalibrate yourself and your external providers. The alternative to a systematic approach is not to avoid the change imperative but to be forced into an unrelenting series of fire drills. Rotating from one ‘crisis’ to the next keeps the engine running, but is a suboptimal way to improve.

The core idea of a service delivery review is that through measurement, questions, and inspections, you will identify areas where your firms can improve. Through discussion, you will collaborate with your firms to identify priority areas and initiate improvement initiatives. Through repetition, you will monitor progress. As gains are realized, you will move on to new initiatives—i.e., weave continuous improvement into the fabric of the relationship. Through action, you will reinforce positive behavior and indicate your intolerance for complacency.

Without this kind of engagement and reinforcement, it is difficult for your firms to discern what you want. And even if you tell them, it is unlikely they will believe you if you already have a poor track record of follow through. It is similarly problematic to evaluate your firms in a vacuum—i.e., without any frame of reference. Repeat interactions on the same subjects using the same metrics allows you to observe progress, or lack thereof.

As mentioned before, repetition is a key component of changing behavior in your external providers. Annual performance reviews—supplemented by after-action assessments or quarterly updates with primary providers—are an excellent habit, particularly when supported by measurement and onsite inspections. Not only can you make progress with each individual provider, you can identify innovation and propagate best practices across your supply chain.

There is a cost, however: Performance reviews, measurements, and inspections take time. Different levels of oversight are appropriate for different types of relationships. The frequency of feedback can be anywhere from never to daily. The degree of feedback can be any amount from none to substantial. Oversight resources will need to be allocated based on availability and impact.

- ✓ *You are what you repeatedly do and you get what you reward. You need to think about what behaviors you are incentivizing and reinforcing, not what you believe you want and not what you say you want.*

## Conclusion

You should be primarily concerned with value: What business outcome at what net cost. But value often defies direct measurement. So we focus on proxies like people (domain expertise) and price (discounts). These are fine, but have diminishing returns. Process is the underutilized lever: How the work gets done.

You can try to govern by decree in vague terms that law firms be more effective, efficient, innovative, cost-conscious, etc. But clients have been doing that for decades. The results are uninspiring.

Instead, you should take a more hands-on approach to weaving continuous improvement into the fabric of your deep supplier relationships. You should engage in sustained, structured, and data-driven dialogue about legal service delivery. At the very least, you should always be able to answer this fundamental question: *How are your primary providers measurably improving delivery of legal services to you?*

## APPENDIX

This is a sample cover letter and a menu of potential questions. The questions overlap a fair amount. Asking them all simultaneously would be excessive. Instead, build over time: One to five is a good start. You and your primary providers should have one central question that dominates for discrete periods—i.e., until sufficient progress has been made.

This rotating priority initiative can be supplemented by a set of standard questions for which only minor, regular updates are required—i.e., no material change in process, but, rather, a sustained monitoring of metrics. As priority initiatives are completed, they move into the standard-question category (for monitoring) and are replaced by a new priority. The objective is to weave continuous improvement into the fabric of the relationship and make the firm sticky (as an institution rather than simply as the current workplace of particular individuals).

### Template (to be used with your outside counsel)

*[Organization] is looking to establish a sustained rapport with our primary providers on the topic of legal service delivery. The questions that follow focus on how you leverage expertise through process and technology. The questions are deliberately broad and open ended.*

*However, we prefer metrics: Be concrete and specific. Vague reference to your commitment, vision, efforts, or investments in a specific area is not helpful unless accompanied by identifiable, describable changes in behavior and measurable improvements in service delivery.*

*For example, you may deploy document automation; referencing your document-automation system may be appropriate in one or more response, but such a discussion should be informed by statistics on usage and update frequency with concrete examples of where document automation has been utilized on work product for [organization].*

*As another example, you may have a knowledge management system. The frequency of access and updates to repositories with the associated number of hours credited for knowledge-management activity could be combined with concrete examples of when/how the system has been used to expedite providing [organization] with answers.*

*Finally, while an initiative may be truly innovative, that in and of itself does not mean it is valuable to [organization]. An automated private placement document generation system iterated near perfection is worthwhile accomplishment but of little practical use to [organization] if you only support us on employment litigation.*

*You are strongly encouraged to supplement your answers with examples, templates, and screenshots, where appropriate. If you have written articles on a topic, or had them written about you, those are also welcome as supplements.*

For more background access the **ACC Guide “Unless You Ask”** by Casey Flaherty:  
<http://www.buyinglegal.com/FC2F79/assets/files/Documents/ACC%20Unless%20you%20Ask.pdf>

## Menu of Potential Questions

- ✓ **Concrete Improvements:** *How have you measurably improved delivery of legal services to [organization] in the last year? Using metrics wherever possible, please describe the process improvement initiatives, progress to date, and the initiatives' target end state.*
- ✓ **Measurement:** *What are the quantitative and qualitative metrics by which the firm measures itself with respect to quality, cost, and speed of client service delivery? What are the metrics by which the firm believes it should be measured by clients, specifically [organization]? Explain and provide the KPIs (key performance indicators) that the firm already utilizes internally and with clients. Identify and share KPIs that indicate how the firm has improved over time.*
- ✓ **Data Strategy:** *What data do you track? How do you analyze that data? How do you put that analysis to use in service of clients like [organization]? What are your data-centric predictive capabilities? How do you characterize and price risk? [Note: this question is not about cyber security nor e-Discovery, two valid but separate topics of inquiry]*
- ✓ **Process/Project Management:** *Do you have a systematic method for delivering legal services? Have you standardized your approach to waste elimination, continuous improvement, and project management? Please provide real-world applications of design thinking, process mapping, checklists, decision trees, Lean, Agile, Six Sigma etc. There are many ways to bring creativity and rigor to legal service delivery. Which have you pursued and what are the tangible, tractable benefits for a client like [organization]?*
- ✓ **Knowledge Management:** *How do you systematically reuse work product to lower costs and improve quality (e.g., brief banks, clause banks, wiki-like research repositories)? How do you identify and tap discrete internal expertise (e.g., locate and incorporate the few people experienced with a particular statute, judge, regulation, or regulator)?*  
  
*Explain your processes and protocols for creating, tracking, and leveraging institutional knowledge. How do you identify knowledge capital, organize it for use, and minimize its loss from personnel turnover? How do your efforts in this regard measurably benefit clients like [organization]?*
- ✓ **Technology:** *How do you integrate technology into the delivery of legal services to clients like [organization]? How has technology measurably improved your performance? Which recent technology investment have made the biggest, measurable impact?*

*How does the firm ensure that its lawyers and staff are taking full advantage of the basic technology tools at their disposal (e.g., competence-based learning curricula and micro-certifications)?*

- ✓ **Budgeting:** *Does the firm create budgets for all matters? Does the firm track performance against matter budgets it does create? What is the process/data/analysis for creating the budgets? How does the firm perform against its initial budgets? How does the firm provide transparency for clients like [organization] into budget creation and performance against budget?*

*Budget templates would be appreciated.*

- ✓ **Innovation:** *How does the firm define innovation? How does the firm identify innovation? How does the firm encourage innovation? How does the firm reward innovation? How does the firm measure innovation? How does the firm scale innovation? How does the firm share innovation with clients?*

*Supporting examples of recent internal innovations at the firm would be appreciated.*

- ✓ **Allied Professionals:** *Allied professionals can make a substantial contribution to the delivery of legal services. They can also play a coordinating and integrating function between law departments and law firms. We are looking for avenues to connect our legal operations team to your allied professionals (e.g., pricing directors, project managers, knowledge professionals). Identify the key allied professionals with whom our team can/should interface. Explain when/how allied professionals become directly involved in your delivery of legal services to [organization].*

- ✓ **Lessons Learned:** *The most cost-effective solution to legal issues is to not have legal issues in the first place. [Organization] is committed to prevention. From after-action assessments to training to process redesign, explain how you work with clients to assist with eliminating risk or minimizing impact where risk is inherent. This includes both organization-level changes to prevent problems from arising and law-department-specific improvements to better handle unavoidable, repeat matter types.*

- ✓ **Early Resolution:** *What are your strategies and approach to early case assessment and resolution? What protocols and approaches have you developed and formalized? What statistics can you share about the speed and success of deliberate, systematic efforts to achieve early resolution?*

- ✓ **Additional Value Services:** *How can you deliver value to [organization] beyond handling discrete legal matters? Examples of additional value services you might offer*

*[organization] as part of a broad, deep relationship are Secondments, advice hotlines, updates, alerts, use of allied professionals, CLE training, and company trainings.*

*Explain which additional value services you might provide to [organization]. For resource-intensive services (e.g., no-cost or low-cost Secondments), please set out the terms under which services would be made available (e.g., a client-credit system or volume minimum).*

- ✓ **Integrated Staffing/Multi-Sourcing/Supply-Chain Management:** *With the growth of in-house teams and the use of alternative legal service providers, the approaches to legal service delivery have never been more diverse. Diverse resources, however, need to be integrated and managed. Explain your experience and relationship with alternative legal service providers and other non-traditional staffing models. What can the firm offer [organization] in this regard?*
- ✓ **Compensation:** *We get what we pay for. If we pay for hours, more hours will be produced. It is one thing for a firm to shift some of its fees away from the traditional billable-hour framework. It is something else entirely for a firm to shift its compensation structure away from the traditional billable-hour framework. We would be interested to know how you compensate your personnel (partners, associates, staff) to reward value to the clients like [organization] rather than hours billed.*
- ✓ **Billing Hygiene:** *What are the firm's policies re contemporaneous time entry? What are the firm's statistics about the velocity of time entry (e.g., average delta between date of work performed and date of time entered)? Does the firm use any sort of automation in creating or analyzing time entries? Does the firm provide clients with real-time access to time-entry data?*

*On average, what is the percentage of time that is written down before invoices are sent to clients? On average, what percentage of the billed activity are clients adjusting down before payment?*
- ✓ **Firm Defined:** *The foregoing questions are comprehensive but not exhaustive. If there is some area related to value billing, process, prevention, service delivery, innovation, etc. where you excel but was not responsive to a previous question, feel free to share it here.*