

# Crucial competencies for in-house employment lawyers

*Kirstie Allison offers a personal perspective on working in house and some suggestions on how to perform the role effectively*



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**'Managing workload successfully and making efficient use of the business's resources are essential skills for in-house employment lawyers.'**

**T**he role of an in-house employment law specialist is a multi-faceted and challenging one, but performing it effectively can mean you are regarded not just as a competent lawyer but also a valued partner to the business. Through my experiences of working in several in-house positions at a broad spectrum of organisations as part of Lewissilkinhouse, Lewis Silkin's flexible resourcing service, I have formed views about some of the key competencies and techniques.

This article will focus on two areas I consider to be of critical importance. The first is resource management and how to approach decisions about whether to refer matters to external lawyers or keep them in house. Secondly, I will offer some tips on how to ensure the smooth running of legal projects as part of a team that may include stakeholders from other parts of the business.

## **Effective resource management**

Managing workload successfully and making efficient use of the business's resources are essential skills for in-house employment lawyers, who are continuously required to assess whether work is best carried out internally or outsourced.

In fact, there are normally a variety of options, including referring work to external solicitors or barristers (or both), allocating tasks to other areas of the business (such as human resources) or elsewhere within the legal department, or simply carrying out the work oneself. Making the best decisions on such matters – what I call 'right-sourcing' – can have a very significant impact on in-house lawyers' effectiveness in their role.

Naturally, the approach to resource allocation will vary between different organisations, but these are some of the factors that generally influence how I deal with this issue:

- The number of employment lawyers in the team. When I am the sole employment lawyer, my fluctuating personal capacity necessarily has a major influence on my decision.
- The size and experience of the HR department. There is a close relationship between the proficiency of the HR team and the demands on external counsel's time. The more capable my HR colleagues are, the more time I have to deal with complex matters rather than outsource them.
- The company's approach to litigation. Where it is clear from the outset that a matter will 'run', it may be worth instructing external solicitors at an early stage. The value of a claim (or potential claim) will also dictate whether it is worth sending the matter outside.
- The legal budget and where this is held. Some business areas may expect the legal team to deal with all matters internally and are reluctant to incur additional costs on external counsel. Conversely, other internal stakeholders may demand a 'big name' law firm to review their matter. It can sometimes be difficult to balance these conflicting demands so that a matter is dealt with appropriately.



**Work for external referral**

In light of the above, I tend to refer the following types of work externally (while always retaining overall management, so that I can determine when an in-house legal or HR colleague is better placed to take a task forward or inform strategy):

claims of low value not expected to go to trial, it may be cost effective to instruct a barrister directly. If so, the in-house lawyer will most likely be required to undertake administrative aspects, such as preparing bundles and issuing correspondence.

or legal risks are high: it can help the business decide whether a controversial or costly course of action is the best option in the circumstances.

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- Multi-jurisdictional projects. In this situation, it is likely that a local opinion (often more than one) will be required to inform the business properly of the options available.

- A second opinion in complex matters. This may be appropriate and useful where the commercial

- Matters where significant technical or administrative resources are required. Examples of this include disclosure and responding to a data subject access request, where thousands of emails may need to be processed and reviewed. It is often more time- and cost-efficient for external lawyers, with access to document discovery platforms and paralegals dedicated to a specific task, to take such projects forward.

- Niche matters which are not wholly employment-related but fall outside the other in-house lawyers' remit. An example of this might be civil litigation in the context of an employee's departure. Instructing a suitable external lawyer helps provide both a comprehensive picture of the legal position and

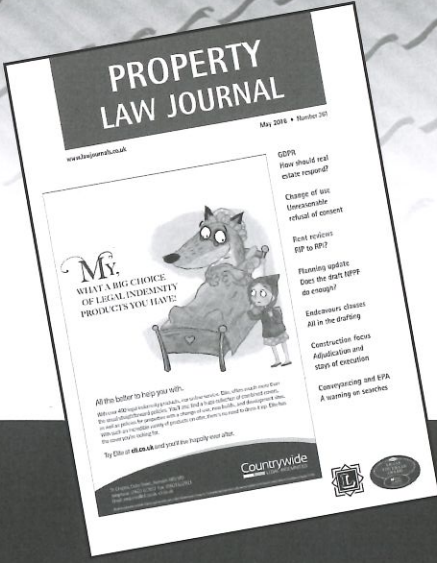
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the in-depth advice necessary to deal with such specialist disputes.

- Overflow work, when the in-house team is operating at full capacity. It can be extremely helpful to build up a strong relationship with one or more 'go to' external providers who know the business well and can be called upon to provide support at short notice.

### Tasks to keep in house

In contrast, very broadly speaking, I aim to keep the following types of work in house:

- Pre-action work, such as negotiating with Acas or the lawyers of potential claimants. Where the claim will be low value, or likely to go away fairly early on, it may not be worth outsourcing. I may also already know or have to hand the relevant background to the matter, making it easier to handle the response internally. There may also be an ongoing internal process, such as a grievance.
- Day-to-day advice, for example handling disciplinary matters, redundancies and TUPE. This is particularly appropriate where regular face-to-face meetings are required. In addition, where the HR team is familiar with the individual or individuals in question – or I am personally – it may be possible to reach a more realistic risk assessment of a particular course of action than an external lawyer looking at the facts in isolation.
- Policy or contract reviews. These benefit from a deep understanding of the business's culture and how it operates, its commercial objectives and the 'house style'.
- Sense-checking the relevant legal risks associated with certain decisions.
- Simple matters, such as reviewing standard letters. This is usually most cost-efficient when handled by HR.

### Running in-house projects smoothly

In many of the scenarios outlined so far, the in-house lawyer will have

relative autonomy and authority to make decisions. Often, however, they are required to work as a member of an inter-disciplinary project team within the organisation including, for example, representatives from risk or compliance, HR, and marketing or communications. Sometimes, the in-house lawyer will

- Consider the relative importance of and potential exposure resulting from the various tasks that need to be completed and decide on how to prioritise and apportion resources based on those considerations. Factor in the project's cultural implications and sensitivities.

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be project manager and other times they will not – what is the best way to contribute in these situations?

- If you are the project manager, seek to ensure that all team members are aware of the reasons for the project and its context and significance for the organisation. If you are not, ensure you are clear about your role in the project.
- Create and circulate a project plan that captures all relevant issues, tasks and risks. Keep the timeline in mind throughout the project, but remember it should be a dynamic document that may need to evolve as matters unfold.
- Prepare a spreadsheet to track the tasks, who is undertaking them and the dates by which they need to be completed. Record progress against each task so it is clear what is outstanding and what the immediate priorities are.
- Consider whether any documents (including the project plan) are privileged and should be marked as such. Make sure that the non-legal members of the team have a basic understanding of the rules of privilege and their importance.
- Put appropriate information barriers in place where necessary and do not allow proximity to colleagues to cloud your independence or professionalism.
- Understand the personalities and dynamics within the project team. Who is the key decision-maker, how responsive are they, what is the approval process, is external legal advice required? Decision-making processes can sometimes be lengthy and convoluted, involving many different people across different functions and countries. Gather this information early and get to know who you need to keep updated about the project.
- Where possible, assume control and operate as the driving force. For example, set up weekly catch-up meetings to track progress. Sometimes, the in-house team has the size and capacity to conduct all its employment litigation in-house. But this is rare, and it is normal to outsource at least some litigation given the resources required in successfully running a claim. Set deadlines, exchange information and chase people up where necessary.
- Adopt a positive attitude and keep your sense of humour. This will help galvanise colleagues and maintain team spirit during times of pressure.

One final comment: the opinions expressed in this article are my own and I do not pretend to have any kind of 'right' approach to the challenges facing in-house employment lawyers. I would very much welcome observations and ideas about alternative strategies. ■