

# CAN PROFIT, VALUE AND DIVERSITY ALIGN WHEN INSTRUCTING EXTERNAL LAWYERS?

Why powerful data transparency can  
push the change the industry needs



## INTRODUCTION

Nearly two-thirds of companies don't think they get value for money from their law firms, according to a survey of more than 400 small, medium-sized and large organisations. This may be a consequence of what is, even among the biggest companies, an unscientific approach to appointing external lawyers: who you know and who's close at hand often seem to be the prevailing criteria. What's more, the survey also shows that although companies may have policies on diversity and inclusion (D&I), they rarely extend them to their external lawyer appointments – despite a growing body of evidence that diverse teams are more creative, innovative and profitable.

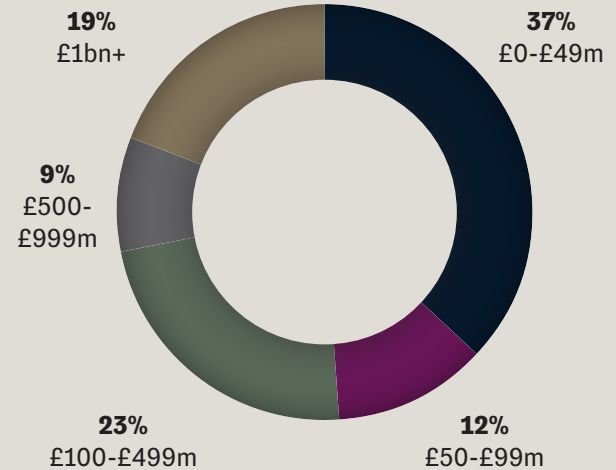


**Instructing external counsel can still be very analogue and unscientific, with little rigour or data to justify selection”**

These findings are the result of a collaboration between *Supply Management Insider* and organisation Tap the Market™, the external lawyers automation platform disrupting the traditional approach to appointing external lawyers by transparently allowing clients to select law firms based on easily comparable key criteria (including expertise, assumptions and fees), and law firms to properly showcase their expertise.

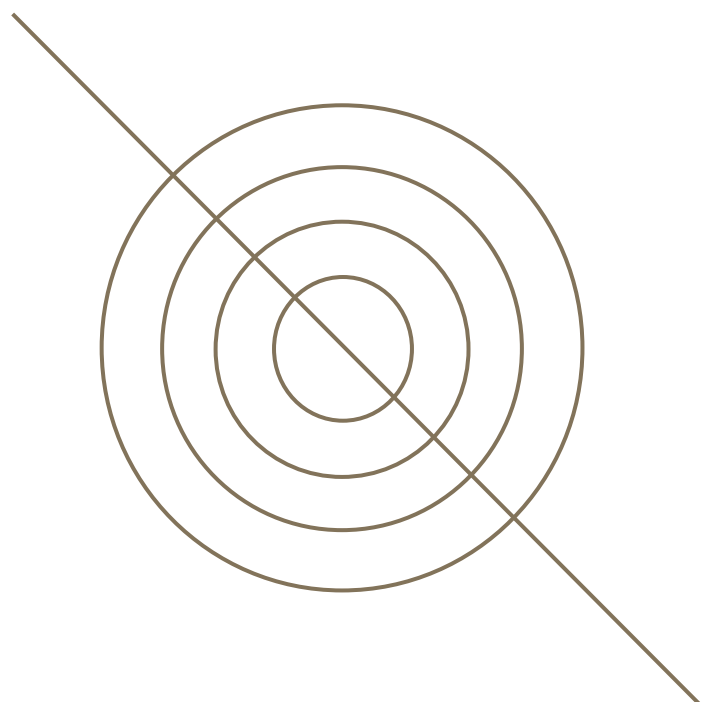
Founder Tim Jenkins has experience from both sides of the legal fence: he has been a general counsel for large companies and a partner in an international law firm. “Instructing external counsel can still be

## Company turnover



Total responses : 294

very analogue and unscientific, with little rigour or data to justify selection,” he says. He commissioned research among members of The Chartered Institute of Purchasing and Supply (CIPS) to try to establish how big a problem this is.



**THE FINDINGS: COST OVER QUALITY**

The research suggests that just 15% of respondents utilise technology when selecting and appointing external lawyers. It is therefore unsurprising, believes Jenkins, that 19% of companies say they don't get value from their external lawyers.

Overall, only 34% of companies believe they get value from their external lawyers, but the bigger the company, the less likely this is to be the case: just 28% of companies with sales of more than £1bn felt they got value, compared with 38% of companies with sales up to £49m. This may be because bigger companies are better at quantifying the value than smaller companies, or, conversely, it may be that they are less rigorous in measuring value and/or rely more on 'tried and trusted' partners.

These findings resonate with Dr Silvia Hodges Silverstein, CEO of Buying Legal Council, an

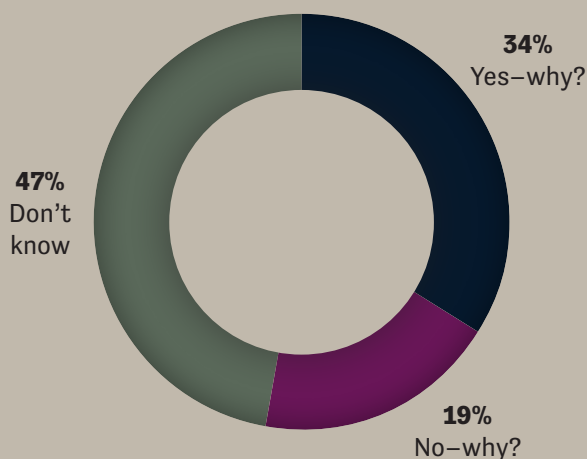


**Strategic value co-creation with legal services suppliers will hopefully be the next step in the evolution of legal procurement”**

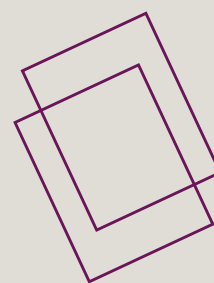
international trade organisation for people who buy legal services. The survey findings are, she says, “very much in line with our own findings”.

But the fault doesn't lie only with the buying side, notes Dr Silverstein: “Law firms and other legal services providers need to work hard to create value for their clients. Strategic value co-creation with legal services suppliers will hopefully be the next step in the evolution of legal procurement.” >>

**Do you think your company gets true value (as you define it) from your external lawyers?**



Total respondents : 433



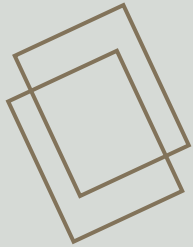
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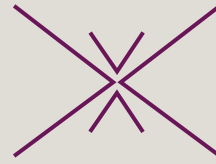
... compared with **38%** of companies with sales up to **£49m**



More than

**90%**

of respondents stressed the importance of relevant experience to the issue at hand



Cost is the dominant factor: around

**85%**

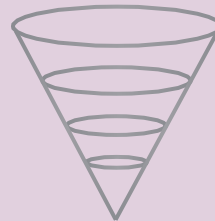
stress how important it is to them



Around

**75%**

stressed the importance of cultural fit



More than

**60%**

judge it important or very important that they've used the same lawyers before

<< But, at the moment, the survey findings indicate that rather than trying to ensure they get a firm with the right expertise, of the right quality, at the right time and at the right cost, companies instead use a number of criteria that seem outdated in today's environment. More than 90% of respondents stressed the importance of relevant experience to the issue at hand, and around 75% stressed the importance of cultural fit. And location is important or very important to more than 50%, with more than 60% judging it important or very important that they've used the same lawyers before. But cost is the dominant factor: around 85% stress how important this is to them.



**Organisations that rely only on firms they know, or firms that are local, risk missing out on greater or more relevant expertise"**

Jenkins points out that in our increasingly global, tech-enabled world, the location of legal advisers should be less important than it's ever been, and he suggests that organisations that rely only on firms they know, or firms that are local, risk missing out on greater or more relevant expertise. What's more, he adds, failing to maximise the potential of law firm panels can breed complacency and diminish the value the firms on those panels deliver.

Even before the Covid-19 crisis, in-house legal departments were under growing pressure from CEOs and CFOs to justify their value to the organisation, as well as the value they derive from their external lawyers. This pressure has become more intense as the pandemic has bitten.

Research from Buying Legal Council found that 68% of respondents were cutting all 'non-essential' legal costs, while 58% were pushing 'non-urgent' work to a later date or looking for an extension of payment terms (from 30 days to 60 or even 90 days). >>

<< So while things do look set to change, both the Buying Legal Council and SMI/Tap the Market™ survey results indicate, worryingly, that the focus is likely to be overwhelmingly on cost, not quality. More than half of the organisations surveyed (53%) said they intend to reduce their legal spend this year, with over half of these (57%) planning to achieve savings through technology-led efficiency improvements. Nearly 30% will seek discounts from their existing lawyers, and around 42% expect to use alternative legal providers rather than traditional law firms.

Notably, though, it seems that client companies expect the technology-led efficiency gains to come from the external lawyers themselves. Some 56% of respondents said it was very important or important that the legal firms they hire use legal technology to drive efficiencies.

Companies appear to be missing a trick. The survey results point to a divide between efficiency and effectiveness. Efficiency is about 'doing things right', whereas effectiveness is about 'doing the right things'. It's a crucial difference. No organisation would deliberately focus on doing the wrong things better – yet it seems that this is what many are, in fact, doing. What's more, the overriding focus on cost reductions, as highlighted in the survey, poses risks to the quality of the advice procured.

Does your company intend to reduce its legal spend in 2020?



Total respondents : 431

Nearly **30%** will seek discounts from their existing lawyers and...

... around **42%** expect to use alternative legal providers rather than traditional law firms

Some **56%** said it was important or very important that the legal firms they hire use legal technology to drive efficiencies





### IT'S ABOUT GOOD VALUE, NOT JUST A GOOD PRICE

"The way we procure legal services doesn't need to be a race to the bottom on fees, which could later have an impact on the quality of the service delivery," says Jenkins. "We could just as easily focus on value instead – essentially, getting the right expertise at the right price – and doing the right things is more likely to deliver that value. One of the important 'right' things clients can do is ensure they are receiving timely, quality advice from their selected external lawyers." As he points out, harnessing the technology and transparency that are central to the Tap the Market™ platform makes it easier than ever for in-house teams to ensure they are getting good value, rather than just a good price.

One of the epiphanies organisations have experienced during the Covid-19 lockdown is that remote working is a lot easier and more successful than many had previously believed. Dave Coplin,

author of *Business Reimagined*, and founder of consultancy The Envisioners, is astonished that it has taken the current pandemic to force us out of a work pattern that was established when people congregated in mills or factories. But he is concerned that organisations have tended to use technology to improve efficiency, rather than effectiveness: "The focus has to switch, because you can be really efficient and deliver poor outcomes," he says.

The continuing need for social distancing even after the first wave of the Covid-19 crisis has passed means that virtual communication and collaboration, both within teams and with teams from partner organisations, is likely to be 'business as usual' for the foreseeable future. And, to Coplin's delight, many people and organisations are finding that instead of this feeling like a compromise, it carries clear benefits. >>

<< Stephen Hopkins, head of global client development at law firm Eversheds Sutherland, says that attitudes have changed over recent months. “I have had a conversation in the very recent past with a client who believes that working from home has improved the interaction with the law firm,” he says. “It is easier to get hold of people. There are more time slots to fix meetings, time zones seem easier to manage and general productivity seems to have improved.”

If companies are becoming adept at using technology to facilitate remote working, could they not use it to facilitate a more effective process for appointing external lawyers too? After all, selecting and appointing external lawyers in the traditional analogue fashion is time-consuming and bureaucratic – aside from the fact that the survey findings suggest that the results (in terms of the value delivered) are often disappointing.

Hopkins certainly anticipates a faster shift towards a more strategic use of technology. The profession has adopted efficient tech-enabled solutions over

the past 10 years – and not only to deliver efficiency gains, he notes. “But Covid-19 and lockdown will accelerate the day-to-day use of other technologies.”

Tap the Market™ helps transform the way organisations secure relevant expertise, quickly, at the right price, in a transparent and accountable fashion, not just locally but globally too. Through the automation of instructions and the introduction of instant competition within an existing panel, or by using its experience (and other client recommendations) to identify and source new lawyers, the secure, independent, online platform makes the selection, appointment and ongoing management of external lawyers both efficient and effective. Clients can quickly identify the appropriate expertise, and easily compare multiple proposals on a range of key criteria (injecting healthy competition into the selection process), based on just one set of instructions. The platform combines market expertise, sophisticated technology and transparent processes, minimising administration and maximising value for clients. >>



<< Another benefit of the platform over the traditional approach is the easily accessible data it generates. Jenkins explains: “The platform collates all the data, and can generate reports by both clients and law firms. This again contributes to transparency, gives lawyers benchmark information, and, for the client company, represents good governance and provides justification for the choice of lawyers, fees paid and value gained to present to the CEO or CFO, building their trust and confidence in both the in-house and external legal teams.”



**Supplier diversity is still considered by procurement as one of those add-ons, a feel-good exercise, something that is driven by compliance, resulting in positive discrimination”**



external lawyers. The view of one survey respondent – “The diversity issue refers mainly to recruitment for staff and not for lawyers or consultancies,” – seems to reflect a common approach. Mayank Shah, founder and CEO of MSDUK, the UK’s leading supplier diversity advocacy network, suggests the problem is generic: “Supplier diversity is still considered by procurement as one of those add-ons, a feel-good exercise, something that is driven by compliance, resulting in positive discrimination.”

However, D&I is not only enshrined in law – notably the Equality Act 2010 – but carries strong business benefits. The subtitle of a recent report from CIPS and MSDUK, *Supplier Diversity: Unlocking innovation, driving competitiveness and enhancing reputation*, sums up the business case. The report cites research from The Hackett Group in the US that “companies which focus heavily on supplier diversity generate 133% greater return on their buying operations”.

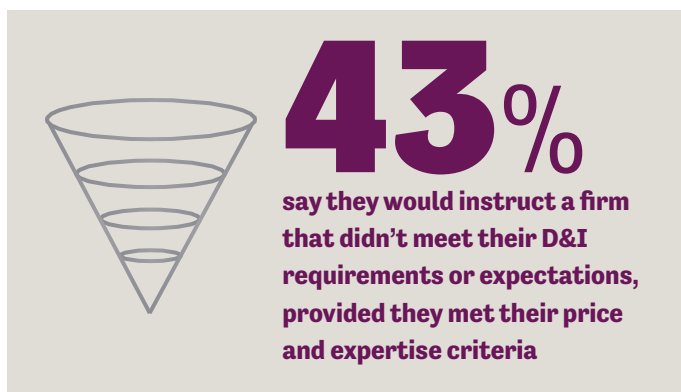
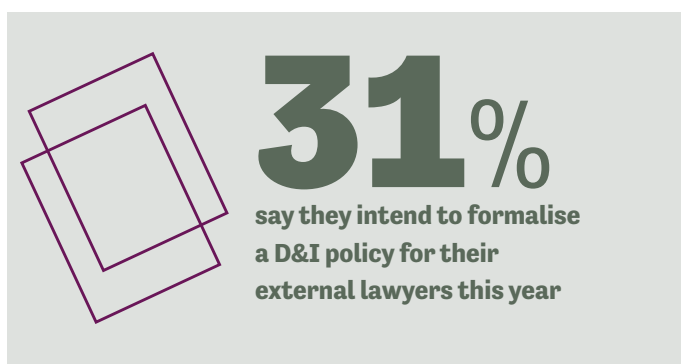
And while in-house teams can be confident that the external lawyers they hire will meet the quality threshold implicit in Tap the Market™’s legal ‘ecosystem’, the external lawyers too can be confident that the client will judge their proposal on its merits – expertise, track record, fee model, and the like – for every instruction. The inevitable result is constructive and mutually beneficial relationships.

Another significant finding of the survey is that whether or not companies have D&I policies themselves, many don’t extend these criteria to their

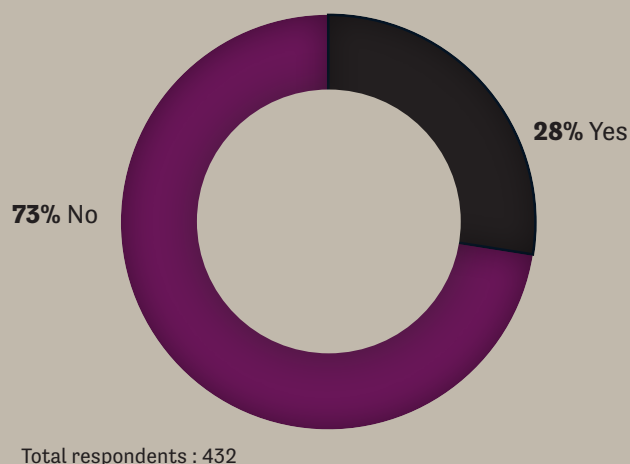


**D&I SHOULD BE EVERY FIRM'S PRIORITY**

Just 28% of respondents set D&I requirements for their external lawyers, though 31% said they did intend to formalise a D&I policy for their external lawyers this year. And over half of this group said they wouldn't instruct a firm that didn't meet their D&I requirements— even if the firm met their price, expertise and other criteria. However, there is still a significant proportion (43%) who say they would instruct a firm that didn't meet their D&I requirements or expectations, provided they met



their price and expertise criteria. One of the most interesting comments on the D&I issue was this one: “[A lack of diversity] is unlikely to occur because we utilise larger law firms who have strong HR frameworks.” In fact, it would be misguided to take for granted that even the largest law firms have a strong record on D&I, as Amandeep Khasriya,

**Does your company set any diversity and inclusion requirements for your external lawyers?**

a senior associate at London-based law firm Moore Barlow, and a committee member of the Law Society's Women Lawyers Division, explains.

“Lack of D&I is a big issue in the legal profession, which remains very ‘traditional,’” she says. The most recent figures from the Law Society show that in the year to July 31st 2019 63% of new admissions to the profession were women, 49% of private practitioners were women, but just 31% of partners were women. Solicitors are not required to disclose their ethnicity to the Solicitors Regulation Authority (SRA) but, of those who did, 16% of private practitioners (whose ethnicity is known) were from a BAME background and 12% of partners (whose ethnicity is known) were from a BAME background. >>

“

Enlightened clients increasingly want to work with enlightened law firms, and are keen to work with those firms to increase their diversity”

<< The arguments for D&I have been well rehearsed. Aside from the moral case for giving everyone equal opportunities, research and experience show that diverse teams, which better reflect the client/customer base and society as a whole, are more creative and innovative, and bring a wealth of different resources and viewpoints, leading to better decision-making – as crucial in law as any profession. What’s more, diverse teams are often more profitable: according to Khasriya, the SRA found that a 10% increase in gender diversity in senior leadership can correlate to a profit rise of around 3.5%.

Both clients and law firms could raise their game – and, as the evidence suggests, their profits – by increasing their focus on diversity. A respondent to the survey said that “diversity would give a law firm an edge.” Enlightened clients increasingly want to work with enlightened law firms, and are keen to work with those firms to increase their diversity.

But enlightened law firms are sometimes frustrated with the lip service some clients pay to D&I,

A **10%** increase in gender diversity in senior leadership can correlate to a profit rise of around **3.5%**

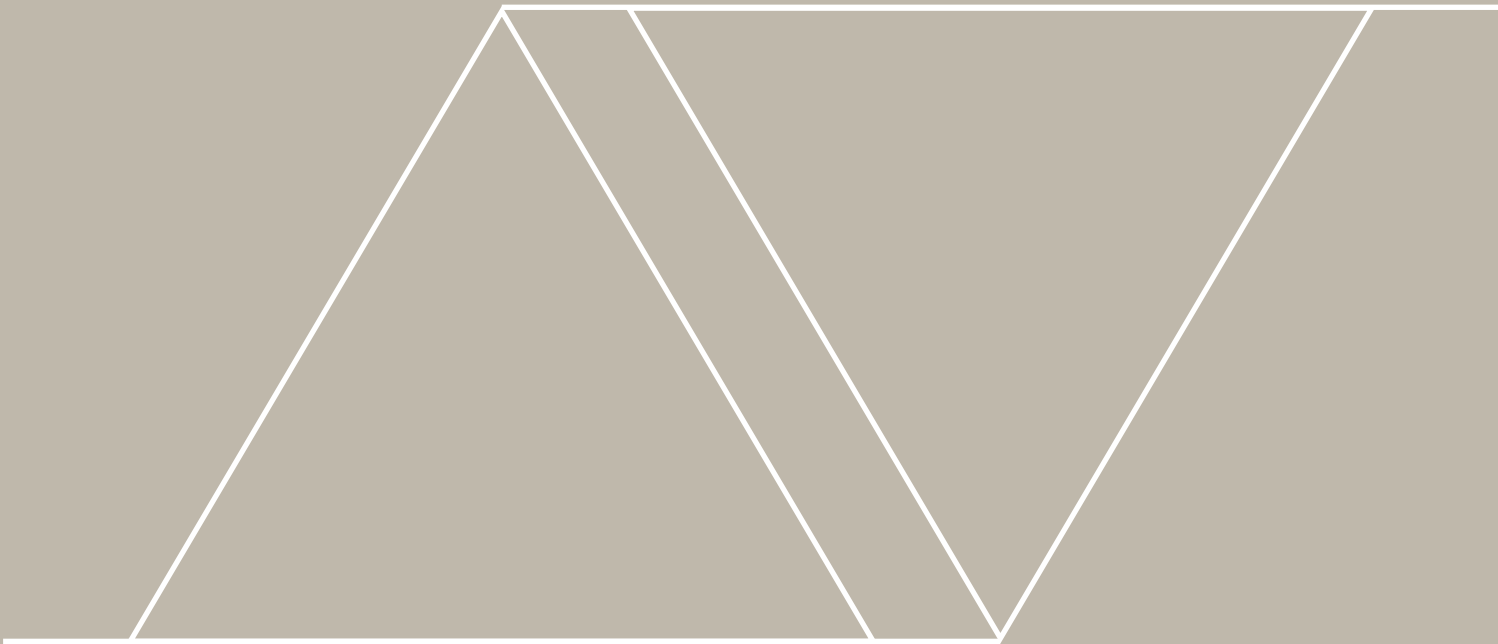
as Hopkins at Eversheds Sutherland observes. “I detect an increasing frustration from those firms who are investing in D&I in all sorts of ways, to produce better performing teams which a strong D&I approach delivers, to find that mandates are consistently given to (often incumbent) firms with little track record on D&I,” he says. >>

<< But where law firms don't have such well-developed D&I, Khasriya believes that if in-house legal and procurement professionals not only stipulated that external hires must commit to greater diversity, but also then worked with them to achieve such goals, this could have a significant effect. "General counsels, in-house lawyers and procurement teams are in game-changing positions because they can call the shots," she concludes.

The Tap the Market™ platform is the perfect collaborative forum to match enlightened law firms and enlightened clients together in order to drive positive change. The platform enables clients to add D&I aspects to their selection criteria and can also generate D&I reports from the data it gathers as easily as it creates financial and economic reports.

The platform is as accessible by the procurement team as it is the in-house legal team: streamlined, straightforward and transparent, it affords the opportunity for both sides to work together to improve the efficiency and effectiveness of their relationships with their external lawyers – and to demonstrate the rigour of their decision-making to the top team. Quality, value for money, reputational benefits and more open trusting relationships are implicit in this approach.

Matthew Yates, General Counsel, Premier Inn and Restaurants, concludes: "The SMI/Tap the Market™ research draws out some very important considerations on what is a changing market in the provision of legal services, with ever more scrutiny on what and how we procure legal services and on how we demonstrate value to our internal stakeholders."



**Tap the Market™ is an independent, transparent platform making the instruction of external lawyers globally a more efficient, scientific and data-driven process.**

**Using our legal ecosystem, you get market expertise underpinned by technology you can trust for an efficient, simple solution to instructing external lawyers.**

**Find the right lawyer, at the right price for every instruction.**

**Maximise the potential of existing law firms and panels and/or benefit from new legal expertise sourced for you.**

**Go to [www.tapthemarket.com](http://www.tapthemarket.com) to book your demo and explore the platform today.**

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# Tap the Market™

