

Modern Lawyer

Ideas for Legal Leaders

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Bridging the expectation gap between law firms and their clients

Robert Millard



Bridging the expectation gap

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There's a significant gap in what most law firms deliver in terms of client needs and services and the problem for law firms in how to bridge this gap. Many law firm partners currently even fail to recognise that the gap exists. However, without understanding this expectation gap and working collaboratively with clients to close it, many legal service providers will face long-term issues.



between law firms and their clients

Long before the outbreak of Covid-19, in-house legal counsel complained of a growing expectation divide between what they and their external legal service providers (in good faith) perceived their legal needs to be. In the words of a general counsel, it might have been described thus:

If you were to ask our relationship partner at [insert name of law firm] whether she or he understands our needs and priorities, the answer would be a “yes, of course”. And that would be a sincere, honest response. The problem is – what our relationship partners perceive to be our needs, and what we believe them to be, are very different things.

Has the Covid-19 pandemic widened this gap? What do law firms need to do in order to bridge the divide? How is it even possible, in such a deeply client-centric profession as the law, for such expectation gaps to exist between lawyers and their clients in the first place?

A range of philosophies and methodologies being implemented in the legal profession (eg, legal design, design thinking, Six Sigma, Lean) might suggest that this focus on client needs is new. It is not. The total quality management (TQM)

movement that emerged across multiple industries more than half-a-century ago (with its roots much further back than that) has ‘customer focus’ as its primary foundational principle. Quality, in TQM terms, is defined by the consumer of the product or service – not by the producer.

The TQM definition is also not absolute when it comes to professional services. Like a doctor with bad news for his patient, objective legal reality is independent of what the client might prefer it to be. A real tension can exist between the expert knowledge that the lawyer has, underpinning the advice that she renders to her client, and what her client wants to hear. The advent of in-house legal teams means that the ‘knowledge-asymmetry’¹ that used to characterise lawyer/client relationships is sometimes diluted. However, a great many business clients do not have such in-house capabilities, so this ‘knowledge asymmetry’ remains an important consideration in exploring the expectation gap.

But is the substance of the legal advice the root cause of the gap, or is it in the ‘client experience’ of the service as it is rendered? To return to the doctor metaphor, is it the lawyer’s diagnosis and prescribed

treatment that is at variance with client expectations, or her ‘bedside manner?’ Like doctors, lawyers are typically engaged because they have some expertise that the client does not possess – and the more complex the expertise, the more difficult it is for the client to evaluate the quality of the service or advice delivered.² Anecdotal evidence from multiple conversations with in-house lawyers would suggest the answer is usually ‘both’, to which needs to be added concerns about transparency, efficiency, cost and better combining legal and other business perspectives into integrated solutions that address business challenges more directly.

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The *State of the Legal Market* report published by the Center on Ethics and the Legal Profession at the Georgetown University Law Center and Thomson Reuters Institute³ is always a good bellwether of current trends in the legal sector. The 2021 report is no exception. It suggests that the expectation gap is widening and that, combined with a serious economic downturn, social activism and political uncertainty (in the United States and elsewhere) pressures on client in-house teams are becoming even more severe. The report suggests that 2021 will prove to be a ‘tipping point’ for the legal profession and that law firm partners will need to significantly change their behaviours. To quote from the report:

The stumbling block to real change has most often been law firm partners themselves, who have resisted trying new approaches for a variety of reasons. Arguably, the Covid-19 pandemic has exacerbated and accelerated all of these trends – and even added some new ones.

If this description of the state of affairs is accurate then the implications for law firms that fail to bridge the gap are more dire than they were a year to 18 months ago. 2020 was a banner year for many law firms, despite the pandemic. 2021 is expected to see good demand for legal services continue as economies recover from the contraction that it caused. Law firms have quickly embraced digital remote working, first as a crisis management measure and now as part of the journey towards what some call a ‘new normal’. But will that journey see the expectation gap that clients described before the pandemic grow narrower, or wider? Is the ‘burning platform’ for change hot enough to induce it? With more effective leadership, can one drive even transformational change without burning platforms?⁴

Change of the scope and scale needed to definitively bridge the gap is no trivial matter. It needs to be addressed in a thoughtful, systematic way. The changes will most likely be opposed, perhaps heavily, especially when they impact the way in which the firm is organised, performance is measured and rewarded or, even more fundamentally, how the firm defines itself in terms of its purpose and values. Niccolò Machiavelli described this more than 500 years ago, when he wrote:

*There is nothing more difficult to carry out, nor more doubtful of success, nor more dangerous to handle, than to initiate a new order of things. For the reformer has enemies in all those who profit by the old order, and only lukewarm defenders amongst all those who could profit by the new order. This lukewarmness arises from the incredulity of mankind who do not truly believe in anything new until they have had actual experience with it.*⁵

Put differently, partners generally find it easy to see how proposed fundamental change will threaten things that have worked well in the past and they will find it far more difficult to foresee how the change will yield new benefits in the future.

Exploring this notion that creating the organisational ability to ‘bridge the gap’ lies at the very core of competitive advantage, is the primary purpose of this article. Part of this addresses the principle, so obvious as to be trite, that service providers which deliver what their clients want are

likely to be favoured by those clients. At a deeper level, it aligns also with one of the core foundational concepts of strategy theory, namely Jay Barney's four-question framework asked of a resource or capability to determine its competitive potential.⁶

The questions concern:

- *Value* – does the resource or capability deliver value by exploiting a significant opportunity or neutralising a threat?
- *Rarity* – is it rare in the market, because if all service providers have access then no single firm can derive unusual advantage from the resource or capability?
- *Imitability* – can rivals easily imitate the resource or capability, or achieve the same effect by different means, because if so then advantage can only be transient?
- *Organisation* – does the firm have the ability to exploit the resource or capability?

Clearly, the ability to tailor a firm's services more closely to client needs is of value. It enhances client satisfaction and the longevity of the relationship and creates the opportunity for greater profit. Happier clients also make for happier partners and employees. Where clients and law firms work together to co-create solutions to bridge the gap then those solutions can meet all Barney's four requirements, making them very difficult for rivals to imitate.

Barriers to creating the change required in order to bridge the expectation gap appear to concentrate in three areas:

- failure to understand or acknowledge that such a gap even exists;
- when it is acknowledged, and solutions conceptually identified, failure to develop those conceptual solutions into ones that can be implemented; and
- even when a firm starts to move in the right direction, failure to move far enough to produce meaningful results – or even to regress.

Identifying the gap

In their 2002 book *Leading Strategic Change*, Stewart Black and Hal Gregersen⁷ describe their gap-

bridging process, pointing out that the first steps are to detect that the gap exists in the first place and to understand what needs to change. Often, they say, the roots of the gap lie in a change in client needs. That which was previously 'right' (high quality) becomes 'wrong' (poor quality) – remembering that quality in this respect is defined through the eyes of the firm's clients.

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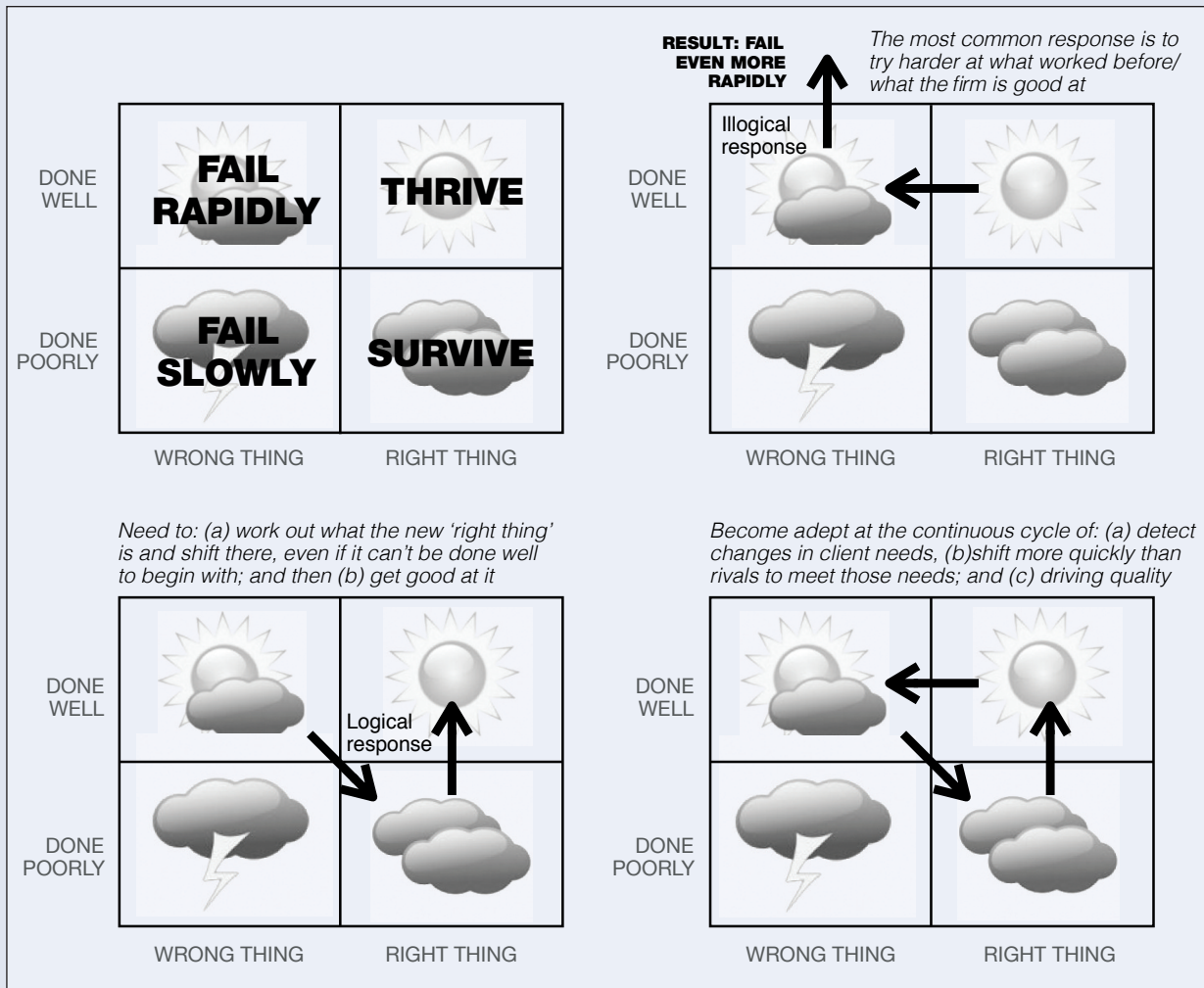
opportunity for greater profit.

They illustrate this by explaining the difference between 'doing things right' and 'doing the right thing'. That success comes from doing the right thing and doing it well is so obvious as to be trite. That is, to be in the upper right quadrant of Black and Gregersen's matrix (see Figure 1). Doing the 'right thing' and doing it poorly means that clients will find the firm less attractive so – instead of thriving – the firm will merely survive. Doing the 'wrong thing' poorly sets a firm into a slow decline. Doing the 'wrong thing' really well accelerates that decline.

But what if things change and the 'right thing' becomes the 'wrong thing?' If the firm already has the resources and competencies to shift their focus in order to align with that new reality, and the change can be made without triggering the responses that Machiavelli observed, then there is no issue. If, however, the changes are likely to be uncomfortable or contentious, then things get more complicated.

The most common response in such a case is to deny the need for change. It is to try harder at what worked before which, by Black and Gregersen's logic, simply accelerates the decline yet further. Demand

Figure 1: When client needs change, firms can win competitive advantage by moving more quickly than rivals to align their services with that new need. (Adapted from Black and Gregersen, 2002.)



for services seldom disappears precipitously. It is usually a gradual process – at least to begin with. Clients may not have a clear view of which other service providers are better placed to meet their new needs, so instructions might not immediately cease. The greater the level of success that a firm has achieved in the past, the more difficult it can be to accept that the ‘rules have changed’. Conventional thinking about disruptive innovation is that the more established market leaders are in their positions, the more difficult it is to reconfigure when challenger firms emerge with value propositions that clients find more compelling. Thus, one frequently hears GCs say that the firms that serve them best and are the most innovative are challenger firms rather than the market leaders.

The danger, when needs shift and what was the right thing becomes the wrong thing, is frequently deceptive. The longer a firm puts off shifting to the ‘new right thing’, the more it risks sacrificing competitive advantage to rivals who are more perceptive and agile. That is not to say that a firm should immediately abandon a long-successful service line, delivery channels, area of practice or any other component of their value proposition if demand still remains for it and adequate performance can be achieved from them. That is necessary only if sustaining it prevents migration to a ‘new way’. In other cases, the migration can be gradually tailed off as demand decreases and it becomes more difficult to extract acceptable returns on what it costs to deliver the work.

A principle that is well accepted outside of professional services, but less so within legal services, is that this gap needs to be identified and solutions need to be sought collaboratively with customers. So, in our context, collaboratively between external legal advisers and in-house client legal teams and perhaps even wider client executive teams. This is especially true if the focus is on expectation gaps related to client experience, rather than substantive legal solutions.

Designing the bridge

Research into success and failure among start-ups⁸ by Shailendra Vyakarnum and Uday Phadke at the University of Cambridge's Judge Business School shows that three failure 'chasms' exist along the journey from worthwhile innovative idea to fully scaled-up solution. These are from:

- 'bright idea' to working prototype/'minimum viable product'/'proof of concept';
- such early-stage concepts to fully formed solutions with viable business plan and an actionable scale-up implementation plan;
- approved, fully formed solution to implementation at scale.

Designing the bridge involves two of the three chasms. The first, developing a conceptual solution or set of alternative solutions, which can be a detailed and compelling description of the solution rather than the form of model that some creative solution-finding processes try to produce. Again, this is a process best undertaken collaboratively or failing that at least iteratively and consultatively between law firm and clients. The more complex the problem being addressed, and the more sophisticated the client, the more important this is.

Having agreed the viability and value of the concept, the next step is to develop it into a pitch-worthy solution that can be presented to the firm's leadership, providing enough information to make a sensible business decision possible. This stage requires a fundamentally different set of competencies and perhaps even a different team. It involves specifying and proving the solution's technical viability, its commerciality and the business case – including the level of investment

required and the expected return on that investment. It involves considering the implications of implementing at scale, including likely pitfalls and challenges and how these might be overcome. Most importantly, it requires a clear articulation of what the solution will add to the firm's value proposition to its clients, viewed of course from the clients' perspectives.

Fully 75% of innovations fail at this second chasm.

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Building the bridge

Received wisdom holds that most (50–90%) of strategic plans fail. This perception has had a dramatic impact on strategic thinking over the years – but might well be outdated.⁹ Vyakarnum and Phadke's research, by contrast, shows that most innovations that are properly thought through, commercially tested and properly resourced usually do succeed in crossing the third chasm and being implemented at scale. Laura Empson's work¹⁰ shows how a strong understanding of the power dynamics in law firms is essential for effecting change generally, as the earlier reference to Machiavelli reinforces.

A particular challenge, returning to Black and Gregersen's 2x2 matrix, is that at least in the early stages the new way of doing things might not meet the firm's standards for excellence. Some initiatives will inevitably fail, wholly or partially, and the firm's culture might not be well adapted to failure. Nothing chases partners away from pursuing new ideas more than if those ideas not delivering at an organisational level have a direct impact on them at an individual level. As has been referenced several

times – strong, empathetic leadership is key. Where a new approach is highly experimental, co-creating the solution with clients who will benefit can also reduce risk for the firm.

As the world emerges from the Covid-19 pandemic

and client interactions return at least partially to face-to-face, we can assume that the expectation gap will return to the forefront of client concerns. Now is the time for both law firms and in-house teams to discuss how best to bridge this gap, together.



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- 1 BR Løwendahl, *Strategic Management of Professional Services Firms*, Copenhagen Business School Press, 1997, p35.
- 2 *Ibid*, p36.
- 3 Thomson Reuters Institute, *2021 Report on the State of the Legal Market: An “inflection point” for law firms*, www.legalexecutiveinstitute.com/state-of-the-legal-market-2021/.
- 4 Harvard Management Update, “Leading Change Without a Burning Platform”, 29 February 2008, <https://hbr.org/2008/02/leading-change-without-a-burni.html>.
- 5 Niccolò Machiavelli (1469–1527), *The Prince* (originally published 1532), Harmondsworth, England; New York, NY: Penguin Books, 1981.
- 6 JB Barney, “Firm resources and sustained competitive advantage”, *Journal of Management*, 1991, 17(1), 99.
- 7 JS Black and HB Gregersen, *Leading Strategic Change: Breaking through the brain barrier*, Upper Saddle River, NJ, Pearson, 2002.
- 8 S Vyakarnam and U Phadke, *The Scale-up Manual: Handbook for Innovators, Teams and Firms*, London, World Scientific, 2018.
- 9 JF Cândido and SP Santos, “Strategy implementation: What is the failure rate?”, *Journal of Management & Organization*, 2015, 21(2), 237–262
- 10 L Empson, “Leadership, Power, and Politics in Law Firms”, in Rebecca Normand-Hochman (ed), *Leadership for Lawyers*, International Bar Association, 2015.

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