

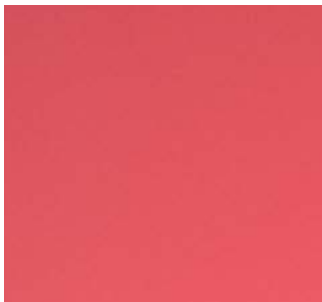
The GC (Re)Defined debate

Digital disruption and the
role of in-house lawyers



MORRISON

FOERSTER



Beyond the cookie cutter

The In-House Lawyer teamed up with Morrison & Foerster to ask GCs about digital disruption and the role of in-house lawyers

Mark McAteer



What is it like to work as a lawyer in the fast-paced, risk-laden, tech-driven 'disruptive' company? How do general counsel find the right level of resource in a company where legal is viewed as anathema to impatient entrepreneurs? When is a lawyer not a lawyer?

These are the questions we put to senior in-house figures we gathered from a broad range of early-stage or fast-moving, disruptive companies in our round table in association with Morrison & Foerster.

Alistair Maughan, Morrison & Foerster: Do you face different problems from non-disruptive GCs? Are they materially different?

Anna Cosgrave, Graze: My role is more of a legal risk analyst as opposed to a traditional lawyer. The founders took huge risks to make it work but as the business began to grow and professionalise, they saw the value in bringing in a lawyer to help lead the thinking around legal risk. The most exciting thing about the role has been approaching issues with more than one hat on – we need to think like business people and not as pure lawyers. This skill doesn't always come naturally to lawyers who've only spent time in private practice.

Francesca Porter, Onfido: The buzzword is commercial awareness. It is something that is different in every organisation. Being commercially aware and then discharging your obligations as a lawyer in a start-up that is trying to create new space and disruption in an industry is a harder balance to strike than being in a big company, where you can just say: 'What are our competitors doing?' There may be no direct competitors; this is a completely new market space.

Mark McAteer, The In-House Lawyer: *One of the challenges that comes to mind for you is challenging the perception of what a lawyer is. To what extent do you agree with that?*



‘Waiting to be asked to do something is just not going to happen. You just have to get on and do it, and take whatever authority you need to protect the company.’

Dean Nash, Monzo

Alice Hou, Citymapper: A lot. I worked at a large multinational for a long time as legal director, and that was about presenting options. Now I find the decision point is when to give someone options and a recommendation versus when to just decide: ‘Here are the issues that are in my purview; we need to act fast and I am going to decide this.’

Anna Cosgrave: Due to our size, we have a relatively informal recommendation process when it comes to internal legal decisions. Speed is often key, therefore various options are often presented in a succinct format with a clear recommendation on next steps. I enjoy being about to guide the decision-making process – although I know I need to be able to stand behind my decisions, and expect a robust level of questioning.

Alice Hou: There are some issues that I do not even bring up anymore to the business. They do not want to know the options. They say: ‘Can you just do this?’

Jenifer Swallow, TransferWise: It is the nature of pace: ‘This needs to be done. It is done.’

Anna Cosgrave: If you gain their trust over time, then they have confidence that you are going to make the right decisions. They trust your strategic view, where it could go, and the risks as well. They know you will understand their general risk appetite and make decisions based on that. I find things have changed a lot since when I started, when I was picking up on points that would have no material impact on the business. Now, the management team understand that I will be

careful when I need to be careful but that I won’t waste time on issues that are very low risk.

Mark McAteer: *Is your role not so much being led and asked to do stuff by the C-suite as upward managing and taking initiative?*

Dean Nash, Monzo: Waiting to be asked to do something is just not going to happen, because the executive team do not know it needs to happen. You just have to get on and do it, and take whatever authority you need to protect the company.

You also have to be careful about being a consigliere to the executive team. Ultimately, the executive team – certainly in a private company with a board of directors – are not your client. That comes into sharp focus in an organisation like a bank, where there are very strict rules around corporate governance. Just being the consigliere or problem solver to the executive team has to be balanced with the fact that you are also there to protect the best interests of your client, which is the company. That can be really difficult to get right.

Rob Miller, Deliveroo: If the company is founder-led and founder-built, odds are they want a lawyer, if and when they are hired, to have an amount of experience; even to help coach, perhaps; and to guide them through the inevitable harder moments, crisis moments, or even a war moment.

Amy Wallace, Onfido: It is about rolling your sleeves up and doing things that other people do not want to do, and it might not necessarily be legal tasks. I have been at Onfido for coming up to three months,

‘It is about rolling your sleeves up and doing things that other people do not really want to do, and it might not necessarily be legal tasks.’

Amy Wallace, Onfido



and I have just been forming my new squads. There is the company policy squad: great. There is the patent squad. There is the privacy stakeholder squad. None of those things the founders particularly need to be involved in, but I have said to just come to the kick-off meeting and after that, I will handle it. Their response is: ‘Great. Go for it.’ That really helps.

Sam Ross, WorldRemit: Do you think sometimes founders predominantly have experience of external lawyers who may be seen to be an additional admin layer, adding unnecessary complexity to things, so actually building a relationship with an internal lawyer is an entirely new process where you really have to show the difference between those two types of lawyers? I do.

Lucy Vernall, Funding Circle: They soon realise the differences. When they get the first lawyer, they think: ‘This is going to be awful. The board has told me I have to have a lawyer.’ Actually, you come in and you do all these things we have talked about, and probably much more – come up with solutions and bring experience to new challenges and more difficult times; they do not see much of the legal stuff. It is a bit of a shock to them: ‘You are quite useful, aren’t you?’

Penny Dudley, Bupa: At least there must have been a few vindicating moments in going through this process that you are in now. Things you have talked about in the past as being potentially challenging have now proved to in fact be challenging. Sometimes, until you get to that, it is hard for people see the importance of disclosing a certain issue.

Sam Ross: I had an experience recently where somebody said, ‘Why do we have a lawyer in the room?’ I was in the room at the time. There is a persuading element to it as well to prove your worth and value. There are probably plenty of conversations I have not yet got into. I see it as a challenge, personally, to get into those conversations and be invited in. You cannot force your way into them. There are other stakeholders with styles who would push and barge into the meeting room, but I certainly would not do that. I would wait to be asked.

Jenifer Swallow: Penny, you were talking earlier about different size and different growth stage organisations, and the ability to put people in a box more easily when it is a later-stage company?

Penny Dudley: You can in lots of ways. It does come back to the capability of the individual involved. Obviously if you have a lot more people and a lot bigger cost codes, you need to understand what each of these people are doing. The opportunity here is to get that generalist skill that is going to prepare anyone to be a GC of a company at any stage in its growth. It comes back to that generalist point and that capability to affect the situation.

Mark McAteer: *Alistair and Gemma, from the perspective of partners in private practice, how have you seen the DNA of the GC change over the last ten years?*

Alistair Maughan: In disruptive companies, it is less about keeping the lights on and more about directing the way the business is going to be, reacting faster, and making sure the business can go to market faster. It



‘The need for general, strategic input is much higher the smaller your company. That has been the biggest change joining a disruptive company: there is a lot of discussion that is not legal.’

Alice Hou, Citymapper

is being more reactive, and also making certain the rest of the team – if there is a team, and a lot of you may not necessarily have a team – are bought into it, particularly for the younger lawyers who have probably trained in private practice, making certain they quickly switch into the right mentality for working in-house.

GCs have always had to balance the need to support and maintain the relationship with the board, but they are also leading other people within the organisation. GCs in disruptive companies can be pulled faster and harder in different directions. Trying to instil a flexible, can-do mentality is the biggest switch that we have seen as external lawyers engaging with general counsel. That affects how we get our people to understand what general counsel and in-house lawyers are about.

Gemma Anderson, Morrison & Foerster: The range of functions and issues that you have to cover, particularly in companies like yours, being potentially much broader, and the urgency with which you are dealing with things, is noticeable. In the data and technology-driven and society that we live in, you are having to react to issues a lot more quickly than you did ten years ago.

Alistair Maughan: External law firms can understand the speed and the need for direct advice. I suspect we do not appreciate all the different things that in-house lawyers do. That is why it is a good thing for the younger people in our teams to spend some time on secondment in-house, because they come away appreciating all of the different directions you are pulled in.

Mark McAteer: *Is there a trend to aspire to leadership roles outside of the law? From what we have been discussing already, that is what differentiates you already from the traditional lawyer role.*

Sam Ross: I had lunch with our chief marketing officer a few weeks ago, and he said: ‘Do you think of yourself as just a lawyer or a CEO? What direction is your career going in?’ It’s an interesting question to consider. I had lunch with another GC today who said that he was looking for a non-GC role. Director of corporate development is an obvious one; I see some people who have that double role. But then we have just been talking about how the GC role itself is growing wider and wider.

Amy Wallace: The GC role is amazing. I love it. I am not sure that it is just a lawyer category anymore.

Rob Miller: Not at all. It is almost more an exec team member who has a legal background, to be frank. In the exec team, I often speak about business matters and not legal matters, and that is why you are there. Otherwise, it is not worth being in the room.

Alice Hou: The need for general, strategic input is much higher the smaller your company. The smaller you are, the more you are still in the mode of trying to survive and thrive and grow. As you mature as a company, everyone’s role specialises. That has been probably the biggest change joining a disruptive company: there is a lot of discussion that is not legal.

“ I hired some people, and eventually – it must have been gradual – "Ask Sam" became "Ask legal." That needed to happen. ”

Sam Ross, WorldRemit



Angelique de Lafontaine, Bupa: That filters through to every level of the legal community. I see that coming from a bigger legal team. To succeed as a lawyer in-house, regardless of where you are, you need to be strategic. One thing we are talking about is career pathways. It is not just the corporate stuff; it could be comms and affairs. You are everything to everyone, and in effect you could go anywhere, because you have been in the middle of lots of those conversations.

Mark McAteer: *In terms of having actual resource to do the legal work, and building a team, is that one of the most significant challenges?*

Alice Hou: Yes. I have never cadged so many favours which, on a serious note, is another reason why the Disruptive GC Network is so valuable. That becomes a resource too.

Francesca Porter: When our previous GC decided to leave the company, Onfido considered whether I should continue as head of legal without another GC hire. They questioned whether this would have any impact on revenue in the short term, but the problem was that I was busy in operations and I had no time to do the strategy, to help shape the legal team and the company because of the volume of contract flow.

Sam Ross: The company has grown from 200 to 600 since I joined, and at some point people started talking about going to legal. I cannot remember what day it was, but I hired some people, and eventually – it

must have been gradual – ‘Ask Sam’ became ‘Ask legal.’ That needed to happen, obviously, because of the growth in the size of the company. Luckily I was allowed to have control in terms of what roles I thought I needed and when. Some of them took longer than others, but from where I can see now – because all of the team are at maximum capacity – it seems to have worked out well. Otherwise, we would be in a pickle now, and I’m sure there are teams out there in start-ups that are in a real pickle because they have under-hired or mis-hired.

Mark McAteer: *How difficult is it to find the individuals with the correct skills you need?*

Dean Nash: Members of my legal team have all come from very non-traditional, often bizarre backgrounds. I often joke to them that their CVs would not get a second look in a large organisation, but at a place like Monzo they are fantastic. Is it hard to hire these people? The kind of people we like to hire are drawn to fast-growth companies, so my experience has been that you get great CVs. What you are generally looking for in a fast-growth company is someone who is going to shift the needle; a cultural add who just adds stuff well beyond legal.

Alice Hou: For me, and I think for a lot of us, we call it mission fit. One of the exciting things about being at a fast-growth company is you are setting out to change something because you really believe in that. It is not just joining a bank or it is not just joining an app; it is: ‘We are going to revolutionise transportation.’ That is an important element for any of our hires and anyone in our company. Legal certainly is no exception.



‘ Our management team, typically, need legal issues to be presented and solved in relatively short order but to a high standard. ’

Anna Cosgrave, Graze

Jenifer Swallow: The other thing that is important is this sense of equality that lawyers can hold in the room. There are some lawyers who lawyer in a slightly more intellectually superior way than others. In these types of environments, everybody is an equal; everybody has an equal contribution, and the lawyer is maybe the least likely to come up with the answer, but they can facilitate the answer. Being able to have that humility to be very equal has been fundamental. Culture fit, high emotional intelligence, but also this sense of, ‘We are all one’ has been really important.

Rob Miller: That is a key point as all these companies are cool, sexy companies that lawyers will want to join. There are lawyers who love the pressure and long hours and things like that in a quick-moving company. There are others who really cannot handle it. Hiring I look at as the key part of my role. It builds the team. If I hire a bad egg, it has an impact on the whole business. Knowing who has the right cultural fit and the attributes to thrive in a company that is high growth and pressurised, especially where our legal issues are never black and white, and who likes to work in ambiguity, is not always easy.

Mark McAteer: *Does the same apply in using external resources? Are you looking for a similar kind of attitude? Are you getting it?*

Anna Cosgrave: Our management team, typically, need legal issues to be presented and solved in relatively short order but to a high standard.

Occasionally, I sense that external resources have a wrong view as to how serious we operate internally. We are not all about beanbags and flip flops, although sometimes we are!

Sam Ross: I feel like I have been playing Tinder with law firms for two-and-a-half years. I have been going from one partner that I know, because I was in a previous job, to another, trying to negotiate fixed fees and expecting this amazing loyalty to come for nothing. It is not. That is fair enough, because they are trying to run the business and do the smart thing by their practice. 2019 is going to be a time for more rigour around that, trying to create a proper process managing expectations of the law firms, and probably getting much better results in return.

Dean Nash: We made an earlier point about the role of the GC being to help map out organisational change. The external counsel that do really well in support of Monzo are the people who help you map out that organisational change as well. Rather than, ‘I have a question; give me an answer’, they are highly contextual as to where you are as a company and where you are going.

A good example was a firm that came to us and said, ‘We have done a bunch of research and seen that there are a lot of trade marks and assets we would expect you to have protected but you have not. Here is a slide deck that you can present to your ExCo laying out the business case for protecting them. If they sign it off, can we do the

‘ If we do not put the effort in to make sure external counsel understand the business, then quite often you get advice that you do not really need. ’

Lucy Vernall, Funding Circle



work?’ I said, ‘Absolutely. Thank you for this.’ A lot of firms will say, ‘Let us know when you need our help’ but I say, ‘No, you tell me when I need your help.’

Jenifer Swallow: One of the things I absolutely love is to be able to pick up the phone and have a blue-sky thinking conversation with somebody. It is almost like coaching, but it is from the perspective of understanding the business. Maybe it is also for us to reflect on – and it sounds like you have been doing this, Sam – around how good a client are we? Am I just expecting everything for nothing? How well have I onboarded this firm?

Lucy Vernall: If we do not put the effort in to make sure they understand, then often you do not get it back and get advice that you do not really need or is not future-looking. You have to put the effort in to make sure that they will understand the business. If somebody comes and says, ‘I have been thinking about you. I have been looking at this industry. Have you thought about this?’, I will give them a chance every time, because it does not happen very often.

Sam Ross: A lot of firms are trying to do this crude bet: ‘You go in there early, then you might get the IPO.’ That is not going to work very often.

mark.mcateer@legalease.co.uk

The panellists

- Anna Cosgrave, Graze
- Angelique de Lafontaine, Bupa
- Penny Dudley, Bupa
- Alice Hou, Citymapper
- Rob Miller, Deliveroo
- Dean Nash, Monzo
- Francesca Porter, Onfido
- Sam Ross, WorldRemit
- Jenifer Swallow, TransferWise
- Lucy Vernall, Funding Circle
- Amy Wallace, Onfido

- Gemma Anderson, Morrison & Foerster
- Alistair Maughan, Morrison & Foerster
- Mark McAteer, *The In-House Lawyer*