

TAKING THE “P” OUT OF LPO

A new breed of LPO providers want to take the “process” out of legal process outsourcing. Could the outsourcing of sophisticated work be next on the agenda?

Somewhere over the past 18 months, “LPO” has become “LSO”. The phrase “legal process outsourcing” may have seemed a comfortable enough description for companies such as CPA Global, Pangea3 or Exigent in the first blush of their initial flirtation with the Magic Circle, but there are many who now feel that LPO is becoming a somewhat misleading term. These days the modern firm is looking to outsource more than just document discovery – and LPO providers are evolving in response.

The growth of traditional LPO

While outsourcing is not a new concept, a point of critical mass appeared to have been reached in 2009. Rio Tinto’s decision to outsource work to India was followed by a string of law firm decisions of a similar ilk, including the first Magic Circle foray into outsourcing, by Allen & Overy. Other major firms reported to be involved in outsourcing in one form or another included Clifford Chance, Eversheds, Hogan Lovells and Pinsent Masons.

However, there have been recent reports that firms are losing enthusiasm for offshore outsourcing and are instead preferring to investigate onshore models. Quality issues – perceived or otherwise – are said to be key to this pattern. In Australia, law firms are shy about disclosing their use of LPO providers and it is difficult to assess the extent to which the concept has penetrated the market.

Certainly the presence of major providers such as CPA Global and

Pangea3 suggests that there is a market for their services. A small number of firms such as Herbert Geer and Swaab Attorneys are on the record as having used outsourcing for support services.

Expanding the LPO concept

Much of the focus of the LPO debate has been on the LPO-law firm relationship. The Rio Tinto outsourcing, however, demonstrates that GCs and in-house teams can deal with LPO providers directly – and not just for the outsourcing of process work.

While the market traditionally associates LPO providers with low-end work, there is a new breed of provider focussed on resourcing higher-end matters. ALB has previously noted the rise of Perth and Melbourne-based firm Balance Legal, which specialises in providing lawyer secondments to in-house teams. Typical clients may be smaller companies who do not have any in-house legal capacity, or larger corporates who happen to be experiencing a spike in workflow.

A competitor to Balance in this space is another recent market entrant, Bespoke Law, which markets itself as a “virtual law firm.” To the extent that both firms provide lawyers on secondment, it may be more accurate to describe this process as “insourcing” rather than “outsourcing” as the lawyers in question usually work onsite with the client.

What distinguishes these services from a typical law firm secondment is cost – as entities like Bespoke Law and Balance are not encumbered by the typical law firm overheads. Bespoke

director Jeremy Szwider said that he estimated that a Bespoke Law secondment would offer a 30-50% saving for clients over a similar secondment from a law firm. He also said that Bespoke was able to provide senior experience, up to and including the GC level.

“We have a host of very senior lawyers who are skilled at being in-house lawyers, as opposed to being private practice lawyers,” he said. This model is an example of why the “P” is beginning to disappear from “LPO”. “I personally try to differentiate Bespoke from the traditional LPO – I refer to it as legal service outsourcing,” said Szwider.

“I don’t really like the “P” in LPO, but for whatever reason the acronym has stuck.”

Outsourcing to law firms

Balance Legal managing director Ken Jagger maintains that his service is intended to supplement rather than displace law firms or in-house teams. That may well be the case, but if businesses such as Balance and Bespoke continue to grow, they must surely do so eventually at the expense of the traditional law firm.

Outsourcing presents opportunities as well as threats for law firms – or at least those in Australia and New Zealand. Magic Circle firms may be reluctant to send sophisticated work to India or South Africa for predictable reasons relating to quality and reputation, but they can avoid these problems and still take advantage of a lower cost base by sending work to Australia or New Zealand, where the top firms enjoy a strong international reputation.

Could Australian and NZ firms become the next outsourcing hub for sophisticated work from the UK and US? In ALB’s New Zealand report earlier this year, Minter Ellison Rudd Watts’ Mark Weenink expressed enthusiasm for this concept and said that he had already received encouraging expressions of interest. Other NZ managing partners were more lukewarm on the idea. But in the longer term, Australia and New Zealand just might be the compromise outsourcing solution for which the northern hemisphere has been searching. **ALB**

"We have a host of very senior lawyers who are skilled at being in-house lawyers, as opposed to being private practice lawyers"

JEREMY SZWIDER, BESPOKE LAW

LEGAL PROCESS OUTSOURCING: FOUR VARIATIONS

Traditional LPO

Firms outsource basic work to LPO providers offshore

1 This is the most commonly understood version of legal service outsourcing where "low value" process work is sent offshore by law firms. Some of the better-known examples to date have been Allen & Overy's partnership with Integreon to outsource some document review functions to teams in Mumbai and New York, and Clifford Chance's wholly-owned Indian subsidiary which performs document review and IT support work.

Offshoring moves onshore

Firms outsource basic work to LPO providers in their home jurisdiction

2 In order to avoid any negative perception associated with sending work offshore, LPOs also offer the option of performing the work in the client's home jurisdiction. For example, Integreon has an operations centre in Bristol which is said to have a 30% lower cost base than London. Clearly the cost savings for firms will not be as great as offshoring – and nor are the profit margins as satisfying for the LPO provider.

"LPO" becomes "LSO"

Firms outsource more advanced legal work to external providers

3 The acronym "LPO" may have stuck, but the "process" part of the equation has become increasingly anachronistic as firms begin to flirt with the idea of outsourcing more skilled work. The phrase "legal service outsourcing" or LSO has now been introduced as a more inclusive term. Last year Pinsent Masons became the first firm to send work requiring qualified lawyers offshore, when it teamed up with Exigent in South Africa. While sending work to a developing country will clearly remain controversial, quality issues are less likely to arise if work is outsourced to Australian and New Zealand law firms, some of whom have already sensed an opportunity. New Zealand firms are leading the way in this regard, with Minter Ellison Rudd Watts, in particular, promoting its credentials to the Magic Circle. With a strong base of skilled lawyers, many of whom have UK experience, Australian and NZ firms are well placed to undertake sophisticated work at reduced cost on behalf of northern hemisphere firms or clients.

Client-led outsourcing

Clients take matters into their own hands

4 Clients can cut law firms out of the action and deal directly with LPO providers to outsource work. The best-known example was perhaps Rio Tinto's agreement last year to outsource legal work to a team of 15 Indian-based lawyers sourced by LSO provider CPA Global. The deal was orchestrated by Rio managing attorney Leah Cooper, who subsequently went on to take up a full-time advisory role with CPA Global.

UPDATE >>>

Employment Law

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Queensland first: Mining employee sentenced to imprisonment for breach of safety and health laws

In a Queensland first, a mine worker has been sentenced to eight months imprisonment for failing to comply with his safety obligations under mining occupational health and safety laws, resulting in the death of a fellow employee.

In January 2008, a mine worker was crushed to death after being caught between a Toyota Landcruiser and a basket attached to the front of a Volvo L120D loader (loader). The defendant was operating the loader at the time of the accident. Both the defendant and the deceased were employees of a mine contractor. The SSE, the Operator and the Contractor were not charged.

Prosecution

The Department of Employment, Economic Development and Innovation commenced a prosecution against the defendant alleging that he failed to discharge his safety and health obligations under the *Mining and Quarrying Safety and Health Act 1999*.

The incident was caused by the defendant's lack of attention, failure to keep a proper look out for other workers, judgement, and inability to apply sufficient braking mechanisms in time.

The danger of the situation had been made known to the defendant during his training.

Training and experience

The defendant was certified to operate the loader forty five days before the incident. Townsville Industrial Magistrate's Court accepted that the defendant was therefore fairly inexperienced.

Decision

The Court found the defendant guilty of breaching his safety obligations under the Act, resulting in death.

In determining the appropriate penalty, the Court considered mitigating factors including the defendant's remorse, and lack of significant history.

In addition to the eight months imprisonment, the defendant was also ordered to pay the Court \$6,625 for the Department's professional costs and \$6,812.70 for investigation costs.

Key messages for employers

Queensland is the only Australian jurisdiction in which people have been sentenced to jail for safety breaches.

Employers need to ensure they have a robust health and safety management system, regardless of your industry. Reality needs to match what's contained in the documents.

Employers need to be able to demonstrate that employees are trained in and understand the system. If employers can show that, they are in a defensible position if something goes wrong. It also minimises the possibility of things going wrong.

If an employee breaches the safety system, employers should not hesitate to take swift and severe action. This includes considering discipline and termination. Courts view such breaches seriously, and so should employers.



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