

## Moving in-house – a guide for the private practice lawyer

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- Introduction
- Definition of terms
- The reason behind why a C&I department might want to hire you
- The rise and rise of the in-house lawyer
- The relatively limited impact of the 2008/9 recession on in-house legal departments
- Reasons for moving in-house
  - (i) Lifestyle
  - (ii) Difficulty of obtaining law firm partnership
  - (iii) Proximity to business, promotion and breadth of work
- The timing of your move
- The type of legal department you should move to
  - (i) An overview of C&I departments in England & Wales
  - (ii) How the Legal Department is valued by the business
  - (iii) Compensation and remuneration
- How to make the move
  - (i) The limitations of a recruitment consultant
  - (ii) Multiple strategies
- The drawbacks of working in-house
- Summary

## Introduction

This article is aimed at you if you are a qualified lawyer currently working in private practice and considering moving in-house into a commercial (as opposed to governmental, trade union or regulatory) organisation in the UK. I hope to answer the basic: why, when, where, and how questions, together with highlighting the methodology used by in-house organisations to determine your compensation and ongoing value. Beyond this I hope to touch on the changing nature of the in-house legal department and some of the political ramifications (and opportunities) which arise from this. Finally, for those of you not irrevocably committed to making the move, I highlight some of the potential drawbacks, both financial and in terms of your marketability, of which you should be aware.

## A definition of terms

Recruiters and most in-house lawyers will generally delineate commercial in-house organisations as being either: “Commerce & Industry” or “Financial Services”. However, because The Law Society bands both of these sectors together under the term “Commerce & Industry” (“C&I”), I use the terms “in-house” and “C&I” interchangeably throughout to refer to both.

## The reason behind why a C&I department might want to hire you

Traditionally the role of the in-house lawyer was primarily to save costs and the equation most Financial Directors would undertake was simply to compare the cost of necessary external legal spend (on law firms) with the projected compensation of an in-house lawyer - if the former was greater than the latter then there was a *prima facie* case for hiring. Of course commercial lawyers will always argue that they save costs; depending on the organisation, a well drafted contract can save hundreds of millions of pounds (although the heroic quality of the drafting may never be tested in court if the contract is truly watertight).

Happily for you, over the past twenty years there has been a move away from these simple cost saving criteria and it is increasingly recognised by more sophisticated organisations that the real purpose of an in-house lawyer is to:

- (i) speed up management decision making processes;
- (ii) increase management options and, most importantly;
- (iii) reduce legal risk.

Ironically once in-house, if you are good, you will often significantly increase law firm legal spend because, by fully understanding the business, you may discover ticking time bombs (in the form of illegal practices) which require outside legal assistance to remedy.

### **The rise and rise of the in-house lawyer**

In view of the above, the recruitment of qualified lawyers in-house has grown exponentially over the last 10 years and it will continue to do so. Between 1999 and 2009 the proportion of qualified solicitors with practising certificates employed in-house within C&I grew by 59%<sup>{1}</sup>.

The elevated demand for in-house lawyers will continue for the foreseeable future regardless of what happens with the UK economy or with the number of lawyers in law firms. There are two main reasons for this:

- (i) increasing regulation, in particular large set-piece governance legislation such as: The Companies Act (2006), The Bribery Act (2010) or, in the United States, The Sarbanes-Oxely Act, has demanded that companies review their legal risk;
- (ii) In the UK, regulators, who for many years had teeth but were often not using them to bite, are now enforcing legislation and imposing severe sanctions on companies and, crucially, individual directors.

Of the above, it is the sanctions, both civil and criminal, imposed on individual directors and officers of the company which has most closely focused the minds of management on the hiring and retention of quality in-house legal personnel.

### **The relatively limited impact of the 2008/9 recession on in-house legal departments**

At the time of writing (August 2010) the world economy has only recently started to emerge from a severe global recession from which lawyers were no less immune than anyone else; indeed as many as 10,000 (8%) of all practising lawyers in the UK were estimated to have lost their jobs during the downturn<sup>{2}</sup>. In 2009 commercial law firms generally reduced lawyer headcount by 10%<sup>{3}</sup> as they deleveraged to reduce costs, however, as in previous downturns, the in-house dynamic was somewhat more complex for lawyers. It is fair to say that, like virtually all business recruitment, in-house legal recruitment froze in the quarter following the Lehman Brothers' collapse in September 2008. Nevertheless, by the end of the first quarter of 2009 in-house legal recruitment had recovered to levels approaching pre-recession. Further, whereas hundreds of C&I legal departments in England & Wales did freeze or reduce headcount, hundreds more increased legal numbers in an effort to save costs by undertaking work in-house (rather than outsourcing to law firms).

## Reasons for moving in-house

### **(i) Lifestyle:**

By definition, if you are reading this article then you probably already know why you are considering moving in-house. The chances are that there are a number of factors influencing your decision but one of them is almost certainly a desire for a more balanced lifestyle<sup>{4}</sup>. Over the last 10 years it has become increasingly common to find transactional lawyers in City law firms billing upwards of 1,800 hours per annum. Moreover, when you take into account mandatory training, client pitch downtime, marketing and written off billings (not to mention the odd toilet stop) this can translate into periodic 14 hour days. If you then factor-in the, sometimes not infrequent, need to cancel holidays and weekends at short notice it is not surprising that so many of you look for alternatives, especially when you know that these pressures are only likely to increase with partnership.

Whilst in-house lawyers will often state that they work more intensely than private practice colleagues, nearly all will agree that their workflow is more regular and that they work fewer hours in total<sup>{5}</sup>. Moreover, in my experience it is very rare for them to have to cancel holidays or work weekends on a regular basis.

### **(ii) Difficulty of obtaining law firm partnership**

In the past if you were male, very bright, worked hard, kept your clients happy and avoided making any of your colleagues violently sick, there was rebuttable presumption that you would make partner at your firm. Over the past 10 years it has become exponentially more difficult for you to achieve this as commercial firms have significantly reduced the proportion of equity partners to assistants in order to increase profitability<sup>{6}</sup>. So whether it is because partnership has become so unattainable, or because the work/ life balance of commercial law firm partners has become so undesirable, an increasing number of you state that you no longer wish to become partners at your firm <sup>{7}</sup>.

### **(iii) Proximity to business, promotion and breadth of work**

In addition to lifestyle, the other factors most commonly cited by lawyers wishing to move in-house are: a desire to move closer to the business, opportunities for early promotion and a chance to broaden and sometimes improve your workload. In my experience there are one or two of you who are partially motivated by a sense of megalomania, or desire to exact vengeance on law firm partners for past wrongdoings. If even part of you feels this, be very, very careful – partners are often asked for opinions or references in relation to individuals for plum in-house roles many years down the track.

## **The timing of your move**

So having established that there are compelling “push” and “pull” factors for you to move in-house, the next question is when in your legal career should you make the move? To some extent this decision will be pre-determined by the roles on offer. The vast bulk of positions in C&I are for mid-range lawyers (or lawyers with 2-6 years’ post qualified experience [“PQE”]). For lawyers with less than two years’ PQE prepared to wait, there will be positions. However, because most Heads of Legal view a period of post qualified practice in a law firm as helpful or even invaluable, without this you may very well reduce your future marketability. As a rule of thumb, it is probably best for you to gain a couple of years’ experience in private practice before making the move.

For lawyers of more than 6 years’ PQE, there are relatively fewer roles around commensurate with your experience and, although you may be prepared to compromise on this by taking a more junior role, the issue in these circumstances often becomes one of “fit” within the compensation and departmental structure of the organisation. Head of Legal and General Counsel roles are of course the holy grail of in-house positions but in larger organisations these will usually require you to have had previous in-house experience beyond an extended secondment. Sole counsel roles with the title “Head of Legal” arise fairly frequently and are usually open to law firm lawyers. Nevertheless, they tend to be highly sought after and, depending on the time of year, you will often be competing with jilted senior associates prepared to severely compromise to secure the position.

## **The type of legal department to move to**

To some extent this question is largely determined by what it is you are trying to achieve: If improved lifestyle, sociable team mates and regular hours are your overwhelming drivers then your ideal departmental structure is likely to be different to that of someone who wishes for early promotion and maximum compensation. Before making a choice it may be helpful to look at in-house departments in a little more detail.

### ***(i) An overview of C&I departments in England & Wales***

Including subsidiaries, there are over 3,500 C&I legal departments in England & Wales. The bulk of these are located in the South East of England. C&I departments vary considerably in size and, although some large organisations will have upwards of 50 qualified lawyers, more typically departments remain small; just under a quarter consist of one individual lawyer and nearly 70% have five or fewer legal personnel<sup>{8}</sup>. Because of their relatively small size, most teams are flat in structure below Head of Department. This means that, in the absence of senior-level departures, real organic promotion opportunities tend to be limited.

**(ii) How the Legal Department is valued**

In law firms, lawyers are the business, they are the engine room which drives the firm's profits. Once in-house, even though lawyers can often more than pay for themselves (see above), they are nearly always viewed as a cost. This can have a significant psychological impact on you. If the departmental head is unable to "prove" your value to the business, as above, it will generally make your department a much less edifying place to work. Happily there are an increasing number of Heads of Legal who have determined what it is that the company wants from its legal team and then set relevant measurable goals for the department and individual lawyers. If properly managed the result is an elevated profile and value proposition for the department and inevitably much more internal respect and trust for its constituent lawyers. Of course even if such a system is put in place it needs a Head of Department with the time and drive to actively work it – this can be very hard to find. Consequently, I suggest that, during your interview process, you try and determine if the department is one which subscribes to this ethos.

**(iii) Compensation and remuneration**

Unfortunately, with the exception of investment banking and one or two (usually financial) industry sectors, even blue-chip C&I companies generally pay their assistant level lawyers at least 10% less than private practice law firms. At senior levels the disparity is even greater; whereas a total compensation package of £180,000 is considered well remunerated for a Head of Legal in a medium sized legal department, an equity partner in a top50 law firm of equivalent qualification and quality will average more than £500,000 [\[9\]](#).

The problem is that lawyers are expensive. They are almost the definition of high value human capital, so for many companies the legal department is the most expensive per head cost [\[10\]](#); in some organisations this could cause no end of political difficulties for you at salary review time. Moreover, once in-house you are usually broadly limited to the pay rises awarded to the rest of the organisation and you will generally not automatically benefit from the additional hikes commensurate with assistant lockstep (where on the anniversary of a your qualification year you automatically move up a level of qualification into a higher PQE band).

Because in-house legal departments are generally small (see above) and legal hires relatively infrequent, one of the greatest difficulties is accurately benchmarking your salary both on entry and in the years after you have joined.

In negotiating your entry compensation I would caution you not to overly rely on industry salary surveys such as are produced by the larger recruiters or benchmarking companies. Unlike with law firms, the range of factors affecting in-house legal compensation is so varied as to make drawing a line of "best fit" on a graph almost impossible.

The result is that surveys of in-house salaries tend to be less accurate than those for law firms. The reason for this is that whilst law firms will generally make salary information public, or will have the information to hand to accurately respond in detail to surveys, the same is generally not the case for in-house legal departments, unless they are highly localised and "of a type", such as investment

banking, whose legal departments tend to be large and comprised of capital markets lawyers based in central London.

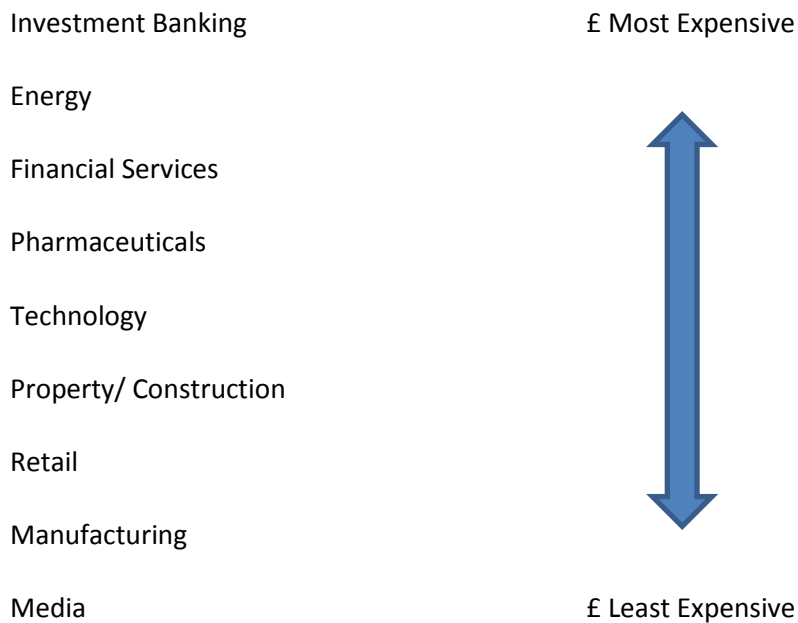
That being said, salary surveys, and other benchmarking services, do form a useful start point but for truly accurate figures, in addition to your level of qualification, you will need to consider:

- (a) Industry sector
- (b) Size of organisation
- (c) Geography
- (d) Size of role
- (e) Specialisation

Taking each in turn:

**(a) Industry sector**

Generally over the last five years compensation within each industry sector has varied as below:



The list above is of course a simplification and is in no way exhaustive. As always there are exceptions and the positioning will vary according to the market. It is interesting to note that, although investment banking as a business sector suffered exceptionally badly in 2008 and early 2009, it remained the best compensated in-house sector throughout the downturn. Indeed 2010 saw total lawyer compensation levels within investment banking approaching those of 2007 (a record year). Further, due to a political desire to reduce a short-term bonus culture at these institutions, some even saw significant base salary increases of 15-30% in 2009/10.

**(b) Size of organisation**

The correlation between the size of the organisation (as defined by market capitalisation) and total compensation is evident for senior level lawyers, however, it does not seem to have significant impact at levels below team or departmental head.

**(c) Geographical location**

This is a fairly obvious point but one often insufficiently accounted for in legal industry salary surveys. A lawyer undertaking exactly the same role in a different location can be compensated significantly differently. For example a Law Society survey found salaries for in-house counsel in Wales and the Midlands to be more than a third less than those for similarly qualified lawyers in London [{11}](#).

**(d) Size of role**

The size of the role undertaken by the lawyer is again obvious and it stands to reason a Head of Legal is likely to earn more than a more junior member of their team. However, here again industry salary surveys often bunch "Heads of Legal" (which could be a sole counsel in a small company) with "Group Heads of Legal" of major plcs leading to erroneous "average" figures. Other complicating factors which need to be considered can include whether or not the individual is also responsible for compliance as well as legal.

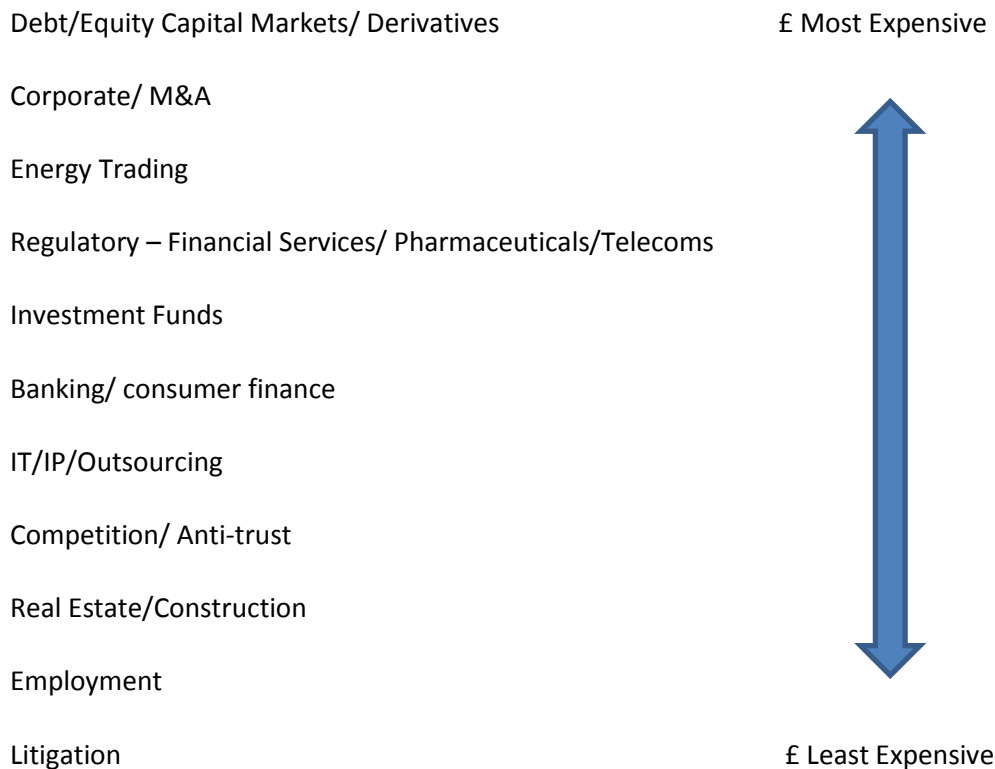
**(e) Specialisation of the lawyer**

This is not an area which The Law Society surveyed in its consideration of in-house compensation, but it has probably become the single most important factor.

Twenty years ago the in-house lawyer was nearly always hired to undertake and oversee commercial contracts. Whilst this is still overwhelmingly the bulk of what most of you will do, it has become more common than not for C&I departments to hire specialist lawyers. The reason for this change is largely the same as that driving the expansion of all in-house legal teams - increased and sustained governance legislation and enforcement by regulators. However, this is combined in many instances with the increasing complexity of the products and services being offered by corporations which itself elevates legal risk.



Over the last five years specialist compensation has varied as below:



The above is a simplistic breakdown of common specialisms as always there are many exceptions. Overall the relative cost of a specialist is determined by two main factors:

- (i) supply and demand and
- (ii) the compensation paid to the specialist in private practice law firms.

Of the above, as in any economic equilibrium, supply and demand is dominant. A good example of this dominance can be seen by examining litigation. In-house organisations rarely hire litigators, usually preferring to outsource such work to law firms. As a result litigators in law firms wishing to move in-house rarely find roles suitable for them and are more likely to have to compromise on compensation - hence why litigation always comes bottom on the table above. In 2009/10 the demand for litigators increased significantly in both law firms and in-house organisations<sup>[12]</sup>. However, even though the number of in-house litigation roles was probably quadruple what it had been prior to the recession, the overall proportion was still minute and the pool of quality litigators wishing to move in-house for any given role remained high. The corollary was that compensation for these specialists remained low in spite of their relative demand in private practice.

Exceptions aside, the good news if you are a top specialist is that there is an increasing demand for you in-house which significantly strengthens your entry level compensation position. This is important because generally, even if you are initially paid the same as in private practice, unless you are promoted, after two or three years your compensation will generally trail that of your law firm contemporaries.

## **How to make the move**

### ***(i) The limitations of using a recruitment consultant***

The most important thing for you to be aware of is that, in absolute contrast to law firm recruitment, the candidate is generally much less important to the recruiter than the corporate client. Whilst your interests and those of the in-house hiring organisation will in the main be aligned, should they start to diverge during the hiring process, then the in-house recruiter will generally be forced by economics to put the interests of organisation ahead of your own.

Doubtless many in-house recruiters would vehemently object to the statements above and genuinely feel that they have always put their candidates first, or at least joint first, at every opportunity in the recruitment process. However, as very few legal recruiters in the UK genuinely undertake both in-house and private practice matters in any volume, I would suggest that they are unlikely to be able to fully judge the comparison.

For legal recruiters it is comparatively easy to both identify and obtain instructions to act on roles in law firms. By comparison the infrequent and irregular demand from the potentially infinite number of C&I organisations which “might” need to hire a lawyer means that finding an active role is in itself a significant challenge. Even after the in-house recruiter identifies a position, obtaining formal instructions to act on the matter can be equally challenging because, unlike law firms, these positions will often be released on an exclusive basis to a single recruitment company. Moreover, the demand for C&I lawyers is fixed by the immediate need for their services whereas law firms, whose core business is law, will nearly always make space to hire an exceptional candidate speculatively.

The result is that in almost every circumstance, there are far fewer active roles in C&I than in law firms; consequently, there are almost always vastly more suitably qualified candidates for each C&I role than for an equivalent in private practice. In a “normal” economy a commercial law firm will often have a multiple open headcount for a given type and level of lawyer. The law firm might frequently consider itself fortunate to even interview candidates who match its job specification and, more often than not, will be unable to fill the position without severely compromising on the candidate. In contrast in-house roles which are correctly remunerated tend to have a surfeit of quality candidates which are comparatively easy for the recruiter to source.

Nevertheless, the overwhelming likelihood is that you will still secure your role through a recruiter. My suggestion is you speak to at least two or three. Always be very careful to make sure that you are very exact in your instructions as to what they should do and be sure to keep tabs on which organisations they approach on your behalf. Bear in mind a truly good in-house recruiter will be replete with quality candidates and it will often be they who determine if you make a shortlist for interview.

**(ii) Multiple strategies**

In addition to approaching recruiters there are a number of other strategies you should employ to secure a role. Firstly try to obtain a secondment – this has the triple benefit of enabling you to: confirm that you do in fact want to move in-house, increase your marketability to other C&I teams, and give you the possibility of joining the organisation in question at the end of your secondment.

Network and use your own contacts. Consider subtly approaching any clients whom you currently act for whose teams you feel might suit you. Depending on your relationship with your own law firm, ask a partner there to assist you. If you have definitively chosen against staying at the firm, but have nonetheless proved yourself an excellent lawyer, a sponsoring law firm partner, anxious to augment their relationship with a particular client, will often be the best ally in your search.

**The drawbacks of working in-house**

As the saying goes be careful what you wish for. Before you cross the Rubicon you should remind yourself of a few things.

**(i) Money**

We have already covered remuneration - regardless of your entry level salary, unless you are in investment banking or a few other anomalous and usually niche industry sectors, your total compensation will inevitably be less than that of your law firm contemporaries. As we have found, this disparity only increases at partnership level;

**(ii) Value**

As discussed above, remember even in the most highly respected in-house department you are always viewed as “a cost” rather than a driver of the business as in a law firm – this can weigh surprisingly heavily on you psychologically, particularly if one of your main drivers is to become “closer to the business”;

**(iii) Work**

In the final analysis you are still going to be working as a lawyer. Sometimes those who move in-house belatedly discover that that they were not trying to escape private practice but the practise of law itself. Moreover, for those of you wishing to broaden your workload, whilst you are undoubtedly likely to find more varied roles in-house, the increasing demand for specialists within C&I may continue to type cast you;

**(iv) Job instability**

The role of an in-house lawyer is intrinsically unstable. Companies merge, decide to outsource legal work, cost cut, restructure or relocate and when they do, the role for which you were initially hired will probably alter or become redundant. This need not be a negative, and indeed can often prove to be a golden opportunity for you to develop your career, however, if you like stability C&I does not always score top marks for this. Nevertheless, with 10% or more of lawyers at the top 50 firms losing their jobs in 2008-9, one can hardly hold private practice up as a bastion of job security.

**(v) Point of no return**

It is much easier to move from private practice to in-house than the converse. Once you spend sufficient time in-house you will become less and less marketable to law firms who will view you as having lost the specialist edge, client contacts, and even temperament to bill, required by them.

**Summary**

I will leave the subject of developing your career after you have moved in-house to another article. I hope the above has provided some helpful background to assist (or otherwise) your decision to move and to optimise your entry level position. In spite of my highlighting many of the negatives of the in-house role, for the overwhelming majority, it is a positive and rewarding experience and it is telling that a move back to private practice was either not very, or not at all likely, for 77% of lawyers in C&I<sup>{1}</sup>.

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<sup>{1}</sup>From 6.3% of all solicitors with practising certificates in 1999 to 10% in 2009 - The Law Society: *Trends in the solicitor's profession Annual statistical reports 1999 and 2009*.

<sup>{2}</sup>*The Times* 15 June 2009.

{3}The PriceWaterhouseCoopers “The law firms’ survey 2009” puts the reduction in fee earner headcount at top 50 law firms at between 6.9% and 18% with Top 10 firms reducing by 10%.

{4}Cited by 77% of C&I lawyers - Corporate counsel – a profile (The Law Society, June 2008).

{5}The median number of hours per week worked by C&I lawyers was found to be 48 - Corporate counsel – a profile (The Law Society, June 2008).

{6}Statistically only 10% of trainees commencing a training contract can expect to become a partner at their law firm – Legal Week 27 September 2007.

{7}In a survey of more than 2,000 law firm assistants 75% stated a desire for an alternative to partnership (Legal Business, Issue 169, November 2006). The 2009 Legal Week Employee Satisfaction Report found that only 45% of solicitors saw partnership at their firm as their primary career goal.

{8}Corporate counsel – a profile (The Law Society, June 2008).

{9}Legal Week 30 July 2009 – the average profit per equity partner in top 50 law firms was £501,800 (down from £616,000 in 2008).

{10}Medium compensation within C&I regardless of position and inclusive of performance bonus was found to be £80,000 in 2008 - Corporate counsel – a profile (The Law Society, June 2008).

{11}Ibid.

{12}Traditionally there has been an inverse relationship between the state of the economy and the level of litigation - put simply people tend to sue more in an economic downturn.

{13}Corporate counsel – a profile (The Law Society, June 2008).