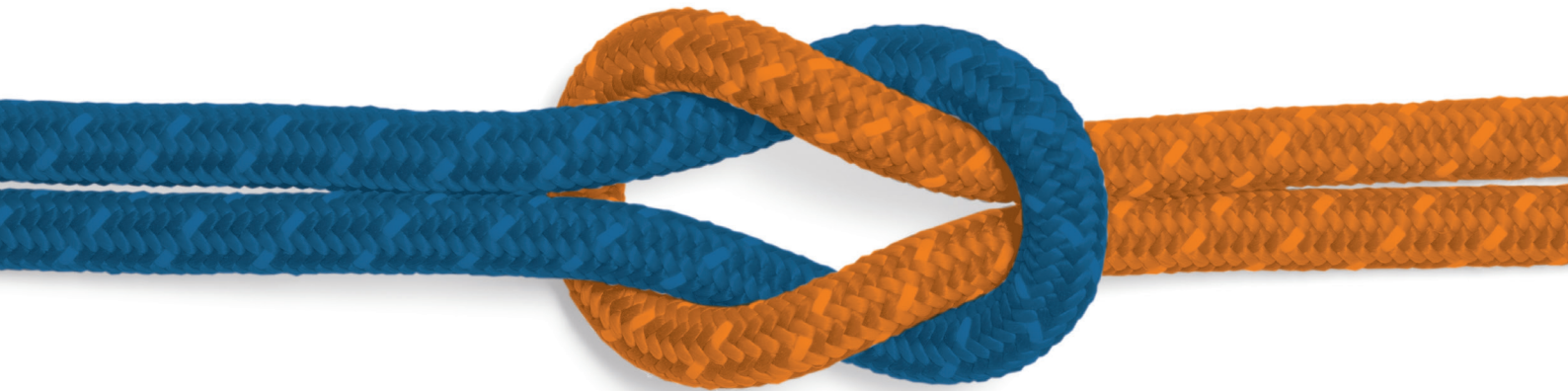


# The Dating Game

Law Firms: The benefits and perils of walking down the aisle

January 2015



■ foxwilliams

Byfield Consultancy  
thinking communicating leading

### About the authors

Jonathan Ames is one of the most experienced law specialist journalists in the country. He is a legal affairs correspondent for The Times newspaper and a special reports contributor to The Lawyer magazine. Prior to that, he spent more than 15 years at the Law Gazette, Europe's biggest weekly legal affairs newspaper, the last eight of which as editor.

Jonathan was assisted by Robert Verkaik, the former legal affairs editor of the Independent and Mail on Sunday newspapers. He is now a freelance writer specialising in law and security.

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### About Byfield

Byfield Consultancy offers market leading expertise in legal PR, litigation PR and reputation management.

For more information please visit [www.byfieldconsultancy.com](http://www.byfieldconsultancy.com)

### About Fox Williams

Fox Williams LLP's top-ranked professional practices group advises law firms and other professionals on matters including mergers and acquisitions, strategic management issues, regulation, partnership and LLP documentation and team moves.

For more information please visit [www.foxwilliams.com](http://www.foxwilliams.com)

## Foreword

**Tina Williams**, Chair and Head of Professional Practices at Fox Williams LLP



The notion that law firms are staid institutions, unwilling to respond to competition or other market pressures, has been destroyed. For the last three years merger activity has been remarkable and seems set to continue for the foreseeable future.

In the survey prepared for this report, just two respondents (of the 79 leading law firms which answered the question) said that there would not be significant further consolidation in the top 200 UK law firms. Long talked about, it is clear that major consolidation is occurring before our eyes. The underlying reasons for this activity are myriad, but globalisation of clients requiring extension of reach, the need to compete with new market entrants and controlling costs have all been cited by respondents to this survey as important drivers of merger activity. Whatever the driving force may be, it is clear that successful mergers require a clear strategy, efficient implementation and huge efforts in integration.

This report is a timely reminder that the sophistication and professionalism that firms display when executing mergers for their clients is not always reflected when dealing with their own businesses. It has revealed that many firms adopt an approach to finding merger partners that is surprisingly lacking in rigour and that there is a reluctance to use the skills of third party specialists to get deals done. The latter is remarkable, given that most firms' business models involve selling the benefits to clients of taking independent expert advice.

Firms that dream of leapfrogging the competition can find their grand plans falling down in the face of the realities that must be tackled when trying to bring together different businesses and cultures.

This is particularly the case for firms that have partners or members who are averse to change and who focus on their own patch rather than the strategic needs of their firm. Cultural differences can negate the benefits of otherwise obvious financial synergies.

When challenges arise, as they inevitably do in complex transactions, there is rarely a perfect solution, but to be forewarned is to be forearmed. Insights into what the problem issues might be and how firms have overcome them are invaluable.

For some, necessity can be the mother of compromise. The increased rate of mergers is a reflection not just of ambitious firms jostling for advantage, but also of a legal market that has struggled in some areas, with consolidation being a defensive strategy. Done well, a merger of troubled firms can shed some of the problems of its constituent parts. Done poorly, and those problems are merely magnified rather than resolved.

There remains much to learn about the why and the how of successful law firm mergers. This report gives a unique and fresh insight into these important matters. The changes which are afoot in the legal market will affect participants and bystanders alike.

# Introduction

Gus Sellitto, Managing Director at Byfield Consultancy



If you are a senior or managing partner settling down to read this report, you are probably thinking about merger. Sure, you might be thinking about merger only to dismiss the prospect for your law firm – but there is an ever-increasing chance that you will be contemplating jumping into the merger market.

While the UK economy tenaciously struggles to improve following the devastating global financial crisis, other regions – including Europe next door – are not having such luck. Those choppy economic waters – combined with growing pressure from clients on legal costs and threats from a new breed of alternative business structure competitors has created an imperative and appetite for merging that is arguably stronger than ever.

‘There has been a fundamental shift in power to corporate general counsel,’ one managing partner of a recently merged practice told our researchers. ‘Clients are the main driving force in moves to consolidate among law firms. The shorthand for that is the panel game – the increasing use of panels and the increasing reduction of law firms sitting on panels. That has created the need to have scale, and coupled with pricing pressure from GCs in an over-crowded market, there is intense pressure to consolidate.’

To assess these factors and to advise on the minefield of merger negotiations, we have conducted the most comprehensive research into the subject, involving the detailed views of leading partners at more than half of the UK’s top 200 law firms.

Our exclusive in-depth survey for this white paper provides an unparalleled up-to-date analysis of how merged law firms – and those considering merger - have or would communicate their intentions.

And one of the core messages emanating from the research is that communication is critical throughout an entire merger process.

Badly communicated announcements – or leaked information – lead to unhealthy sentiment within the firms, and, in extreme cases, can scupper a deal, tarnishing reputations all round.

Likewise, maintaining a solid reputation in the market is critical for firms hoping to attract the best merger partners. And it is interesting just how many respondents to this research still rely on the media, clients and word-of-mouth to make an assessment of the reputation of a potential partner.

Our analysis shows that merged and non-merged alike recognise the importance of well planned and executed communication strategies during deal negotiations and execution. However, the research also highlights the point that a communications strategy should start squarely at the beginning of talks.

Our analysis also discusses the importance of marrying internal and external communications. An external PR consultancy can add significant value to the process, provided it has a comprehensive understanding of the market.

And crucially, this report illuminates the amorphous concept of law firm “culture” – oft-cited by managing and senior partners as a key reason for merger talks breaking down, but difficult to define. Nonetheless, one point that emerges is that crucial to culture is having a clear narrative about a law firm’s values and identity. Clarity on those points is extremely important for potential partners.

# Executive summary

## The drivers for law firm mergers

An overwhelming 95% of the more than 100 of the UK top 200 firms that responded to our survey forecast there will be further significant consolidation in the top tier over the next two years.

45% of non-merged respondents said they would consider merging in the next two years.

Growth is the key driver for merger over financial stability for both merged and non-merged respondents (with 81% and 73% respectively citing that reason for merging).

43% of merged firm respondents said the majority of mergers in the last five years had been a success.

Nearly half – 49% – of non-merged firms maintained the opposite, taking the view that the majority of law firm mergers in the last five years were not successful.

## Choosing a partner

Some 61% of merged firms and 66% of non-merged firms previously held merger discussions with one or more firms that ultimately did not result in merger.

Just 16% of merged firm respondents confirmed they engaged a third-party broker to approach a prospective merger partner, with 61% saying they hadn’t done so.

42% of non-merged firms would consider engaging a third-party broker to make an initial approach to another firm. For those that did or would engage matchmakers, the three most important reasons for doing so were: to gather market intelligence, for help with the choice of firm(s) to approach, and to maintain anonymity.

## The dating game

Only 6% of merged firms confirmed they had instructed external lawyers for merger advice.

30% of non-merged respondents would consider instructing external lawyers to advise on merger negotiations.

Assistance with due diligence, documenting terms, and assistance with achieving partnership support scored as the three most important reasons (in order) for non-merged firms to seek external counsel.

## Careless whispers

With hindsight, the one process that merged law firms would have improved was internal communications, with 32% of respondents citing that function.

Half of merged firm respondents said they gauged the reputation of a potential partner through the mainstream and specialist press.

The same percentage relied on ‘word of mouth’ while 43% assessed client feedback.

The findings for non-merged firms were very similar: 64% would rely on client feedback; 54% on word of mouth; and 52% on press coverage.

Almost a third (29%) of merged firms relied on additional specialist communications support during the merger process by appointing an external PR consultant or agency.

43% of non-merged firms would consider appointing an external PR consultant to advise on communications during the process.

## Methodology

This report draws on two multiple choice questionnaires sent to the managing partners and communications teams of the UK top 200 law firms. One survey was designed for those firms that had merged in the last five years, ‘merged firms’, while the other was designed for firms that had not merged during that period, ‘non-merged firms’.

102 firms out of the UK top 200 took part in the initial research, which was carried out between October and December 2014. A number of respondents were subsequently interviewed in-depth about the themes that emerged from the analysis.

# The Drivers for Law Firm Mergers

Competition, client demand, growth and reputation are the forces increasingly driving top UK law firms into the arms of merger partners – but are they taking sufficiently well-informed decisions before getting hitched?

## Reputation, Reputation, Reputation

Senior lawyers rightly value the opinions of clients and peers, but our ground-breaking research suggests potentially too much emphasis is being given to informal due diligence when firms are entering such serious negotiations as law firm mergers.

In the modern day landscape of law as business – where alternative business structure accountancy firms are already capturing historic law firm territory – should informal chats be relied on when assessing something as crucial as a potential marriage partner?

Most of the cream of UK law firms still thinks it should. More than half of the top practices that have merged within the last five years relied on word-of-mouth when assessing the suitability of their potential bride.

An exclusive survey for this report – involving an unprecedented analysis of more than 100 of the Top 200 UK law firms<sup>1</sup> – produced a sobering result: half of the recently merged firms in the Top 200 we surveyed opted for an informal chat with peers when assessing the market reputation and profile of their potential partners.

About 40 per cent of those merged firms said the most useful tool in forming that view was testing the opinion of existing clients. Interestingly, 50 per cent of merged firm respondents relied on an informal assessment of a potential partner's media profile in the specialist legal and mainstream business press.

All very unscientific – it would seem – of the UK legal profession. Indeed, even those firms in the Top 200 that have not merged in the last five years anticipate they would more or less mirror that approach: 54 per cent would use word-of-mouth and 52 per cent would use an informal assessment of reputation through the media, whilst 64 per cent said they would seek the opinions of their clients.

Reputation is therefore clearly crucial to any law firm considering a merger – as that famous son of Boston, Benjamin Franklin, opined: “Glass, china and reputation are easily cracked and never well mended.”

And reputation is never more crucial than in a rapidly evolving market. As our survey results highlight, senior and managing partners at the top firms expect continuing contraction across the board in the UK legal profession.

## Consolidation is coming

Independent experts agree that merger mania is the new normal amongst the UK's leading law firms. “More consolidation is inevitable,” states Peter Gamson, Partner and Head of the Professional Practices Group at the London office of accountancy practice Grant Thornton. “The most positive reason for this is that the market – and clients in particular – have begun to realise they have more bargaining power. They expect more from their advisers, they want something that is right for them rather than just someone who charges them for doing something. The market expectation is for a greater quality of service and a greater value being delivered.”

The combination of client expectation and heightened competition is driving many firms down the merger aisle. Some 95 per cent of both recently merged and non-merged firms confidently forecast that there will be significant consolidation among the Top 200 over the next two years.

They supported that view by anonymously nailing their own colours to the mast. Forty five per cent of respondents from non-merged firms said their practices would consider tying the knot in the next two years.

For those considering a merger, of two key factors driving them into the arms of another, growth was seen as the more important by nearly 73 per cent of respondents. Financial stability was cited by only seven per cent.

“The business of law is increasingly specialised, with new practice niches cropping up on a regular basis. Most firms do not have the ability – or the time – to ramp up service levels through just lateral hires, so a merger between firms with complementary skill sets can be a very effective means of increasing market share in particular practice areas.”

*Robert Bata, Principal of international law firm strategic consultancy WarwickPlace*

Three further drivers for merger were seen as an ability to compete more effectively through size (with nearly 67 per cent of respondents giving that rationale), an ability to add at least one more practice area (56 per cent) and to achieve cost savings and economies of scale (36 per cent). But law firm managing partners are by no means unflinchingly cheered by the prospect of merging. Indeed, they are highly wary. Perceptions of the success of legal profession marriages are striking – distinctly diverging along the lines of who has tied the knot and who has not.

## Merger success or failure? You decide

Nearly 43 per cent of firms that have merged in the last five years said they considered the majority of law firm tie-ups over that period to have been successful. But a significant minority – 21 per cent

of those merged firms – described mergers in the legal profession on balance as being unsuccessful; and interestingly, 36 per cent of merged firms declined to offer a view, despite the anonymity of the survey.

Reluctance on the part of more than a third of merged firm respondents to comment suggests a significant degree of ongoing anxiety about merging. This unease is reflected in the views of the respondents at non-merged firms, half of whom consider the majority of law firm tie-ups over the last five years to have been failures. Only 24 per cent of that group described most recent mergers as being successful, with just over a quarter of respondents too twitchy to provide a view.

Without doubt, law firm mergers take time to bed down, so any final assessment on the success of recent mergers may be premature. Those with experience counsel that the market should not rush to quick judgements. “Firms have to understand that mergers will take time,” says Susan Bright, London Managing Partner at Hogan Lovells.<sup>2</sup> “We are four and a half years in and we’ve made amazing progress, but have we done everything we need to do? No. It is always going to be a work in progress.”

As highlighted throughout this report, reputation is a key factor in determining the right marriage partner and there is considerable trepidation over the perceived success of mergers among both merged and non-merged firms. Despite these findings, management committees are reluctant to bring in outside expertise to advise them on merger communications and the associated reputational risks. Of those firms that have merged, 64 per cent did not engage external public relations advisers, preferring instead to deal with the entire merger process internally.

Perhaps as a by-product of concern among non-merged firms about the actual or perceived failures in the market, their management teams are noticeably more open to the prospect of instructing external communications advisers. Forty three per cent said they would consider bringing in outside experts to offer additional support.

<sup>1</sup> The Lawyer – UK 200 2014

<sup>2</sup> On 1 May 2010 the U.S.-based firm Hogan & Hartson merged with the European-based firm Lovells LLP.



Merger mania – the new normal

That mergers are part of the new normal in the UK legal profession is beyond dispute. The phenomenon is set to continue for some time, not least because of sharpened competition from the types of businesses that lawyers only a generation ago could hardly have envisaged.

“The elephant in the room in the legal market,” says Anthony May, Partner at leading executive search firm Hedley May, “is the advent of ABSs. There are very few General Counsel that are saying, we have not started using some of those alternative providers. That sort of work used to go to all sorts of different law firms of different scales.

The attraction of the ABSs is that they offer much more flexibility to GCs in relation to billing structures, secondments and staffing up for specific projects.

“Lawyers think they sail on the brilliance of their own legal abilities; but clients buy an outsourced legal solution, whether they are using a traditional law firm or an alternative provider.”

The results of the most comprehensive survey ever of top law firm attitudes to merging shows that linking up is seen by many as the best strategy in a rapidly evolving market. But how to go about getting hitched without triggering a firestorm of negative publicity and alienating key lawyers and staff?

Mergers in the Real World  
King & Wood Mallesons and SJ Berwin

A ground-breaking global merger that brought together a market leading Chinese and Australian firm with one of London’s biggest players in Europe. The deal created in October 2013 a \$1 billion turnover firm with more than 2,700 lawyers. Initially it also created one of the longest post-merger law firm names. The firm marked the anniversary of the merger by rebranding as King & Wood Mallesons.

Q: What was the rationale behind such a potentially complicated merger?

Rob Day, Managing Partner, Europe, King & Wood Mallesons: “A globalisation trend from our core clients. When SJ Berwin first moved into Europe, in the late 1990s, it was because we saw a lot of our clients looking at Europe as a single destination for raising capital, investing capital and doing deals.

“What was true in the late 1990s was true in a different way in the late 2000s. Clients were very much looking to the Middle East and Asia-Pacific as the markets you would go to from a capital perspective.

“Our growth in Europe was wholly organic – it was adding teams and individuals on. Our growth in the Middle East was much the same.

“But when you get to really big and deep markets, such as Asia-Pacific, you start to realise that strategy is just not going to get you the same quality and capability as your clients expect.”

Q: When and how did you start communicating internally?

“You need to keep it to a very small group – about 15 people – having these conversations, because I think you absolutely need to preserve confidentiality in that early stage. Nothing blows these things up quicker than a premature communication or leak – not least because everyone is looking for answers at the time when you just don’t have them. And you probably haven’t yet tested the appetite fully or the obvious questions that you need to address.

“And in terms of detailed conversations, really getting into the nuts and bolts of it, you’re talking about four or five people – very narrow.

“But then having got through that, you need to broaden it out, particularly in a partnership like ours which is very democratic in nature.”

Q: Did you engage external support to help with the PR strategy?

Charlotte Ward, Head of Communications: “Our reliance on external PR advisers was pretty limited. We ran most of our internal and external communications internally, although there were a few times when we turned to a trusted adviser as a sounding board.

“But had we ever got a sense that the deal was potentially not going to happen – after discussions had already been reported in the press – we may have chosen to get a bit more external support, because then you’re into a completely different communications scenario.”

Q: How do you convince those partners that are not keen? Are there people you gave up on?

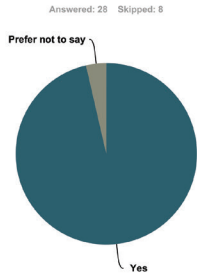
Rob Day: “No. As a management team you would feel very uncomfortable going to a vote and not feeling relatively confident about what the outcome would be.

“People are smart, so they don’t buy spin and puffery and anything that is management-speak. We spent time talking to our major clients about what we were thinking. That real-world client objectivity was hugely powerful because it involves independent views from a constituency that is of vital importance to any firm.

“The second thing is to open up transparently with as much information as you can, including the problems. It is important people get a sense that you’re being straight and you’re not trying to spin the deal through over-promise.

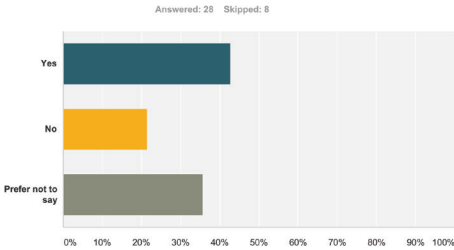
“The third thing is to get the rest of your partners to advocate. If there’s a groundswell of enthusiasm it’s infectious and people go with their fellow partners. If you don’t have that support, then it’s probably that you’re pushing water up hill and you shouldn’t really be pressing it.”

Merged Firms  
Will there be further significant consolidation in the UK 200 over the next two years?



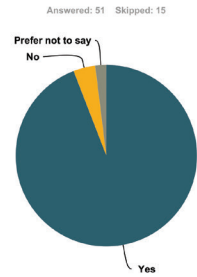
Answer Choices	Responses	
Yes	96.43%	27
No	0.00%	0
Prefer not to say	3.57%	1
Total		28

Non-merged Firms  
Do you consider the majority of law firm mergers over the last five years to have been successful?



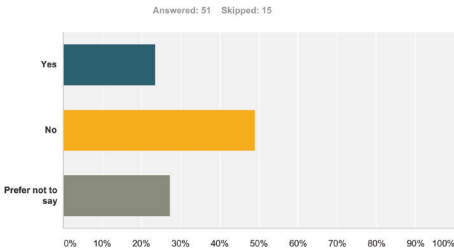
Answer Choices	Responses	
Yes	42.86%	12
No	21.43%	6
Prefer not to say	35.71%	10
Total		28

Merged Firms  
Will there be further significant consolidation in the UK 200 over the next two years?



Answer Choices	Responses	
Yes	94.12%	48
No	3.92%	2
Prefer not to say	1.96%	1
Total		51

Non-merged Firms  
Do you consider the majority of law firm mergers over the last five years to have been successful?



Answer Choices	Responses	
Yes	23.53%	12
No	49.02%	25
Prefer not to say	27.45%	14
Total		51

# Choosing a Partner

Taking the decision to merge and then finding the right potential partner needs to be handled calmly, based on facts, not emotions; specialist merger consultants can advise on the market and ease the pain of initial approaches.

## Desire or desperation?

Some of today’s largest and most successful law firms are products of mergers between two or more firms that, alone, were decent if unspectacular players. Few would have predicted that Sheffield-based Broomfield & Neals would eventually evolve into DLA Piper and be among the world’s largest firms, or that City firm Lovell White Durrant could create the presence in the US that it has achieved through its merger with former Hogan & Hartson.<sup>3</sup>

Forging a new and better firm through an international tie-up – or acquiring a firm to strengthen a core practice area – is an established method of leapfrogging the competition and climbing up league tables.

For other firms, however, the less glamorous reality is that a gruesomely tough economic climate has set the minds of partners towards merging with rivals to weather the storm. Since the 2008 financial crisis, the legal market has been in a state of flux, with challenges such as the commoditisation of work, reducing fees, overcapacity and disruptive market entrants causing significant problems for firms at every level.

Consolidation, by reducing the burden of overheads and building strength in particular areas can seem like a lifeline to firms beset by such challenges. Yet, if a firm views merging as the only way to halt a slide into the abyss, it can become entangled in what many analysts describe as a ‘distressed deal’, where the firm is no longer controlling the pace of what might be impending financial disaster.

But a merger, whether borne of desire or necessity, is neither a guaranteed route to success nor a panacea for the ills of the market – and law firms should think long and hard before jumping on the bandwagon. What is a good strategy for one may not suit another.

“It’s very important to stand back and ask what you want to get out of this.” says Tony Williams, the former Managing Partner of global law firm Clifford Chance and Anderson Legal and now Principal of London-based legal profession consultancy Jomati.

Tony Williams is a strong proponent of pausing for a comprehensive period of contemplation before leaping. Firms standing on the edge of the merger precipice must ponder a series of hard questions, he argues, to ensure there is clarity around goals. “Does this give us different geographic strength, does this deepen our capabilities in certain practices or add complementary practices, does this give us a higher level of national coverage – why exactly are we doing this?”

Law firm management must also take an honest look to ensure that its reasoning stands up to scrutiny, says Robert Bata of WarwickPlace Legal. “Is the merger idea just a vanity project for the senior partner, or a desire to plant a flag in a new jurisdiction, or perhaps a way of appeasing a troublesome partner who is seeking to empire-build?”

When firms feel compelled to merge, Tony Williams advises that the secret is taking action early. “When it is simply a case of desperation, what amazes me is just how late law firms leave it. The sooner they look at things the more options they will have.”

In other words, if a firm’s partners plunge their heads into the sand until the bank is calling in its debt or the taxman is demanding a final payment, they rapidly run out of options. “That not only forces you into difficult choices,” counsels Tony Williams, “it probably costs you lots of money as well.”

Two recent high-profile ‘forced’ mergers highlight the dilemma. Manches was bailed out by Penningtons, and an equally distressed Davenport Lyons was picked up by Gordon Dadds. Explains Tony Williams: “Some firms have left it so late that the only credible option is pre-pack administration, and that is going to destroy quite a bit of value. I can understand how you get to that position. But the warning signs are often there, and being frank about some of these things early can often save a lot of pain and also save a hell of a lot of money.”

In these distressed situations, banks often drive the final moves towards merger, as they want to protect their investment.

## Consultants in the marriage mix

There are several routes to finding an appropriate partner for proposal including senior lawyer contacts, personal relationships and professional merger consultants. Peter Gamson, Partner and Head of the Professional Practices Group at the

London office of accountancy practice Grant Thornton, says law firms will usually have at least one possible partner in mind. “They tend to ask us for a ‘quick-and-dirty’ view on the finances,”

“There can be occasions down the line where the two firms hit a sticking point and we would get involved in smoothing things over. An issue with a lot of mergers is that the smaller party is not in control – the negotiations are dominated by the larger party and the smaller side can feel hard done by.”

*Justin Kopelowitz, Director of the partners, mergers & practice moves team for consultancy DMJ*

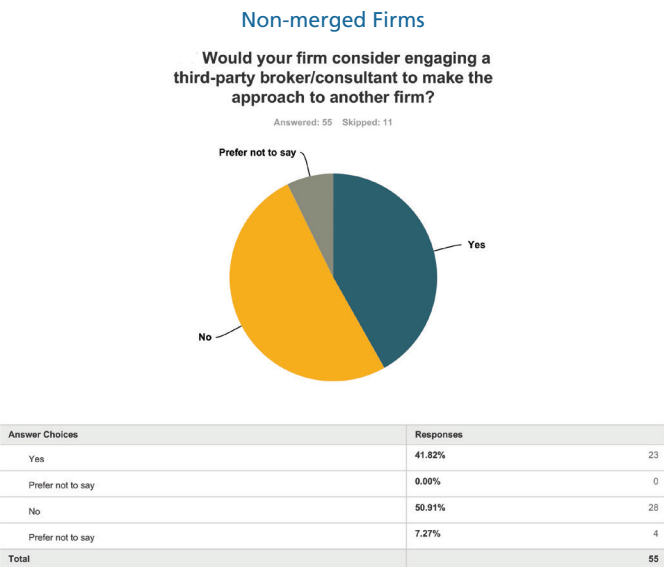
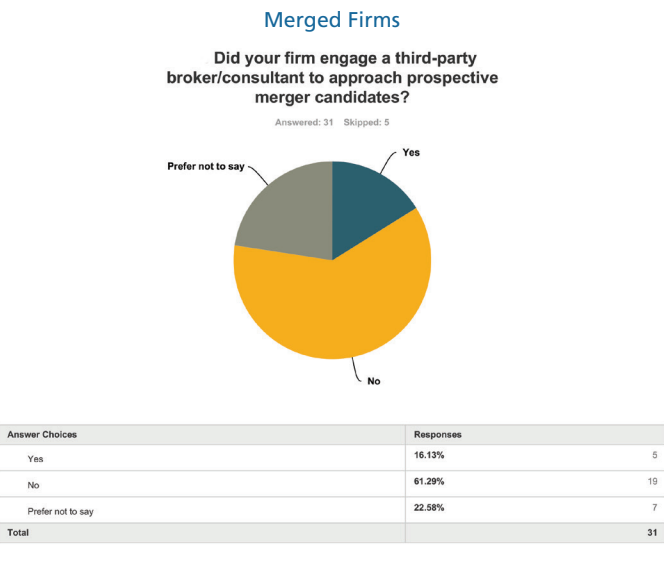
he explains, “see what the main drivers are and come back with the real headlines so that they know what is worth pursuing and what are potential concerns.”

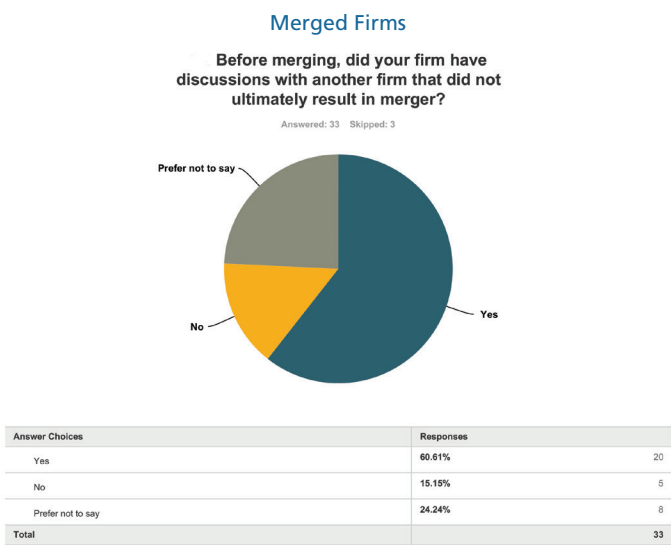
Gamson, who has advised on a number of key mergers, warns that if that process is conducted without undue haste, firms can avoid making potentially terrible mistakes: “The danger is that firms get caught up in deal fever,” he explains. “One of our jobs is to pull people back from the brink.

“If problem issues far outweigh the prize, then we will advise pulling back and thinking again.”

A serious difficulty is that firms with merger in mind often put the cart before the horse, finding themselves tailoring strategy to meet the perceived needs of the potential merger partner. Cautions Tony Williams: “This is not a speed-dating process – a rigorous approach is required.”

<sup>3</sup> On 1 May 2010 the U.S.-based firm Hogan & Hartson merged with the European-based firm Lovells LLP.





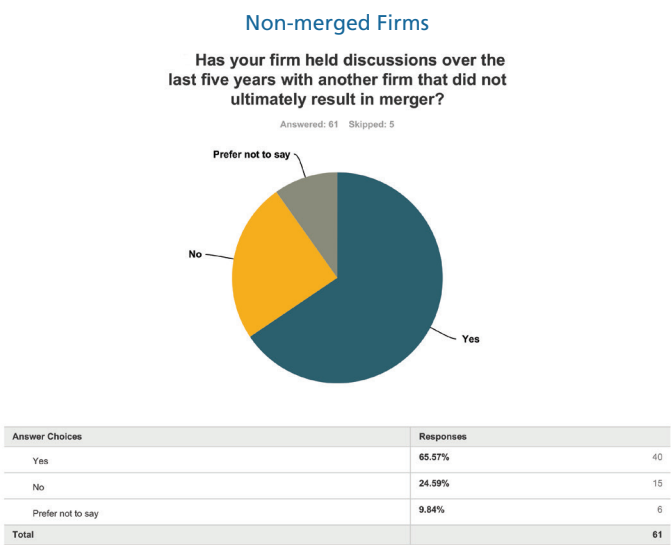
Rob Day, Managing Partner for Europe of King & Wood Mallesons, which inked a groundbreaking merger in October 2013 when UK firm SJ Berwin joined the Sino-Australian practice, warns of the risks in using third-party consultants. “People can put forward what they have on the blocks at any given moment in time,” he says. “You have to be disciplined about defining what you’re looking for and what you want.”

However, Day also sees the benefits of employing specialist consultants. “Once you have defined what you’re seeking then you need to have a really good hard and honest look at the markets, the firms and the opportunities that you’ve identified.”

He continues, “You’re never going to be a complete expert on every market place. You need a detailed understanding of the legal sector,

“The law is a relationship business, and many law firms and lawyers have contacts at various firms that could be perceived as suitable merger partners. Occasionally, two firms that have historically competed with each other will have developed sufficient mutual respect that when the prospect of a merger arises there is an easy decision to be made. But that kind of deep cross-cultural connection is rare, and a seasoned third-party consultant who can make objective assessments about potential fit will be able to add value early on in the process.”

Robert Bata, Principal of international law firm strategic consultancy WarwickPlace



a detailed understanding of a firm’s strengths and weaknesses, and a detailed understanding as to whether or not in practice a combination might work. All of those areas are where external consultants can be very useful and can stop you making silly errors of judgement.”

Management teams can seek help from outside experts to negotiate a minefield of options at what is a hugely crucial point in a law firm’s evolution. Comments Gamson: “What works really well is where third parties sit in, listen and challenge the firm’s strategic thinking. Then they can help define what the best target merger might be.”

Nonetheless, our survey shows that only 16 per cent of firms that have merged have used merger consultants. Perhaps they should have done, as the figures also reveal that more than 60 per cent of those merged firms had failed discussions with at least one other party before finding their ultimate spouse.

The same is true for non-merged firms: 66 per cent said they had conducted at least exploratory talks with another side, suggesting there are considerable behind-the-scenes discussions about a merger, yet it remains difficult to find the right partner.

All of which could explain why those firms considering a merger seem far keener on third-party advice; some 42 per cent would consider instructing brokers, with the main reason given being an enhanced ability to assess market intelligence and to maintain anonymity.

The Dealmakers

Merger consultants tend to fall into three categories – bankers, accountants and matchmakers. The accountants and bankers will have a good understanding of the market and can work with the firm on the deal. Matchmakers primarily source potential partners and put them in the same room. All three will usually have a deal book with a list of firms looking for a merger partner.

“The managing partner should be able to come to us,” explains Gamson, “and say: ‘These are the markets where I really want to increase my profile. Can you help me challenge my thinking about which firms are worth talking to?’” At the other end of the spectrum, firms will ask third-party advisers for help with a merger because they are experiencing rough middle market conditions where they are being squeezed.

Tina Williams, Chair and Head of Professional Practices at City law firm Fox Williams, suggests merger consultants should not be overlooked at the early stages of a merger because they can help effect introductions and build bridges when negotiations become difficult. “The best among them keep everyone’s focus firmly on the goal despite the inevitable challenges,” she says.

Merger consultants are generally agreed on the importance of not restricting a firm to just one prospective merger partner. Sounding out a list of

possible brides or grooms does not commit a firm to merge, nor is it perceived as a sign of weakness in negotiation. But if there are concerns over appearances, a broker can approach prospective merger partners on an anonymous basis.

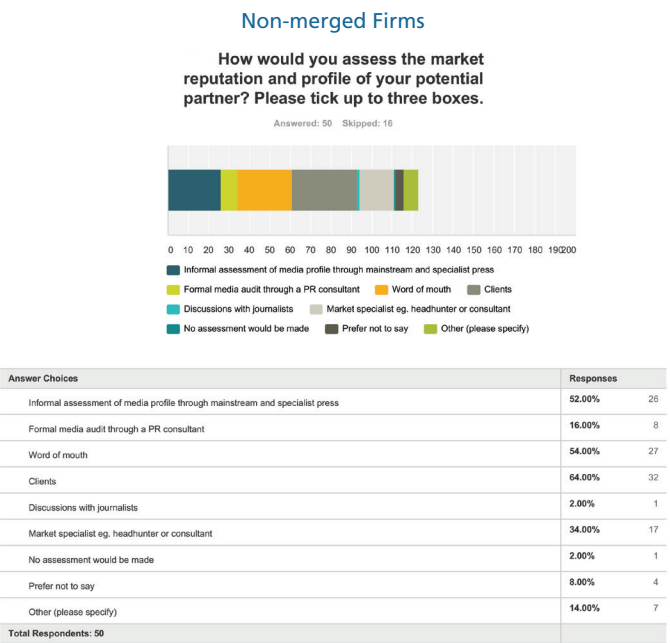
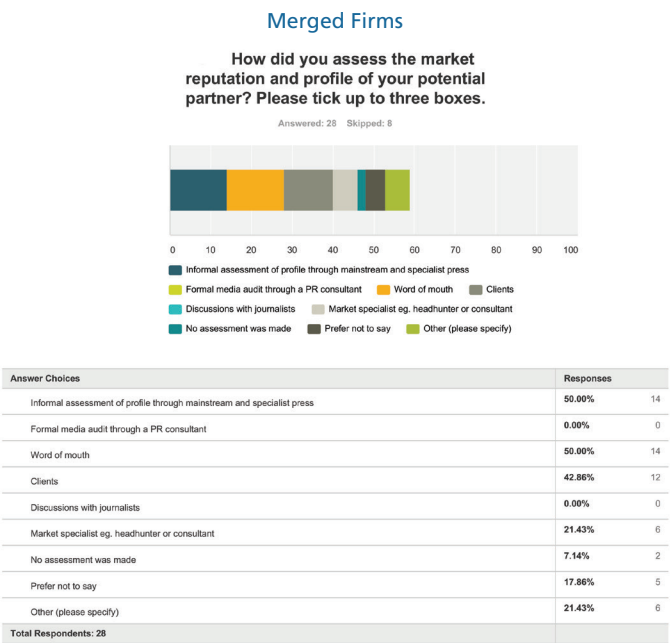
When asked to choose the three most important reasons for using a merger consultant, 80 per cent of merged respondents cited the provisions of market intelligence, help with the choice of firms to approach and to engage interest without disclosing their identity.

Reputation Returns

A core consideration when assessing potential partners is the other side’s market reputation, with 50 per cent of the recently merged firms saying that they assessed the reputation of their potential partners through the specialist and mainstream press.

The survey shows that negative media coverage of a firm can severely dent interest from potential suitors. Respondents of both merged and non-merged firms cited press reports of poor financial performance as the biggest turn-off, along with legal claims against a possible merger partner, the loss of high-profile clients and other general controversies.

The ultimate aim is for both parties to have sufficient information to be able accurately to assess whether merging could prove successful.





## Mergers in the Real World

### Penningtons and Manches, creating Penningtons Manches

Not so much a merger as a bail-out when Penningtons saved fellow Londoners Manches last October from pre-pack administration.

***Q: Picking up a firm in such distressed circumstances must have raised difficult communications issues? What did you find most problematic?***

Rolland Keane, Marketing and Development Director: “From Penningtons’ point of view, we couldn’t go to the marketplace crowing about this deal – so the communications were very challenging.

“Our discussions internally had been going on for two years prior – we had made it clear that we wanted growth and that organic growth wasn’t going to get us to where we wanted to be in the timeframe we were working to.

“We had a good strategic plan that was regularly updated and communicated internally to everyone, not just the partners. We would regularly say that we were in discussions with various firms, although nothing was solid at that stage.

“The specifics of this deal were kept within a tight group – the management board and one or two others – fewer than ten people. And the deal happened very quickly – start to completion was a case of weeks rather than months.

“A big concern was that details would leak into the public arena, so we handled the communications issues internally, but took advice from some of the other parties involved, such as the accountants. Given the nature of the deal, the accountants had been there before. We listened and didn’t always take their ideas on board as we had our own views.”

***Q: What was your key message?***

“The same as continues today – that the deal was attractive because of the strategic fit for marketplaces and sectors. Penningtons had an enormously strong private client side, but not a large family offering. Manches had the reverse. Bringing the two together created a beautifully symbiotic relationship that made sense.”

***Q: How did you attempt to overcome the negative mood?***

“The advice was that within the legal press the story would run for three months. There was a slightly salacious story about the decline of Manches – the legal press was going to tell that story come hell or high water. You have to let that run – there’s no point in sitting about defending it because that argument will not get airtime.

“There are two ways to play the communications. You can say, right, you sink all the bad news into that element of the business that has suffered. You could spin it so the old Manches firm takes all the bad news and you walk away from it, and you have a bright new future as something else.

“But we recognised that there was a lot of goodwill remaining in the Manches name, particularly in places such as Oxford geographically, and in practice areas such as family. So we didn’t want to throw the baby out with the bath water, and we carried both names through to the new practice.

“You come back with your good stories. But you don’t say simply Penningtons is great and all the bad things are contained within Manches. Especially as those people are now fellow partners and colleagues. It is a complex process to go through and knee-jerk reactions are not what you want.”

## The Dating Game

You’ve decided to get hitched, now you’ve got to deal with the nuts and bolts logistics of merger discussions; prepare yourself, advise top managing partners who have done recent deals, to spend a lot of time and money on the process.

### The first date

With law firm mergers, there’s many a slip twixt cup and lip. So it is important to remember that, once a firm has decided to embark on a merger, there are a series of crucial hurdles that must be negotiated before the deal can be done.

And because law firms are businesses that primarily deal with people in a partnership ethos, the coupling process is much more complex. Ian Mouland, Director at legal sector merger and headhunting consultancy Mouland Mann, says: “With a corporate merger you deal with far fewer people. With a partnership, you have to have the support of most of the key players.

“Whenever I work with a firm, I speak with not just the managing partner, but the heads of departments and the other key equity partners to understand what really is going on for them. It’s all well and good the managing partner coming up with a merger idea, but you need the full buy-in of the other key partners.”

That does not mean everyone has to commit to the merger – but they must all agree that the idea is worth exploring. In Mouland’s experience, “you can only get partners to commit to the next stage one stage at a time. If those key partners suspect that things are being discussed behind their backs, then sure enough, they will retaliate by saying end of talks.”

“The best phrase to repeat when considering a merger is this,” advises David Fennell, Chief Executive of recently merged Wragge Lawrence Graham & Co: “Merge in the marketplace, not in the office. In other words, you need to be out in the market talking to clients. For our merger, we surveyed the top 150 clients of our two firms to get their views, both before and after the merger. You have to know what it is about your firm that your clients value.”

At firms of any significant size, there is generally an understanding that the entire partnership cannot be consulted on everything. They already delegate many operational issues to a management board or an executive committee, and this becomes the obvious body to handle preliminary merger discussions.

Nevertheless there is an expectation that a point will arrive in the negotiations when all the equity partners will be consulted. And that, says Mouland, “is different from a corporate position, where you would only be dealing with three or four people that are the corporate decision makers.”

### Two’s company

Says Tony Williams, Principal of London-based legal profession consultancy Jomati: “The initial meeting might be only a one-to-one or a two-to-two. The process is a bit like peeling an onion from the inside, in other words you bring in another circle each time. But my advice would be to keep it very tight at the start.”



Once the merger team personnel have been selected, the next step is to find a suitable location to hold initial talks. Consultants favour meeting on neutral ground during the first stage, not least because of the need to maintain confidentiality.

Often the first meetings take place in a social environment – a restaurant or club – where each side attempts to gauge interest in a possible deal. Says Mouland: “You need momentum, but you also need to ensure that you have both formal and informal meetings with the other side. You need to get to see people in various places. You certainly need to have a social event – a mingling with drinks and dinner. And the key decision makers need to meet off site for dinner at a restaurant.”

However, “A merger won’t work because everyone gets on well over a glass of wine,” suggests Grant Thornton’s Peter Gamson, who is Partner and Head of the Professional Practices Group at the London office, “it’s got to be because the finances are properly forecasted.”

Argues Mouland: “The momentum needs to be there with a level of excitement – there has to be a wow factor.”

Let’s dance

Once both sides have agreed to dance, the talking gives way to the serious business of the paperwork. Each firm will instruct accountants to conduct due diligence. That process can take many weeks, during which those firms that have tried to oversell themselves by exaggerating profits and fee-earning will be found out. But the worth of a law firm is not purely based on its balance sheet, so financial advisers need to find ways of measuring the true value of the client list.

Market intelligence will be important in trying to establish whether a client, which has been lucrative for one of the firms over the years, might shift instructions elsewhere on merger. Alternatively, firms need to take a view on a loyal client’s business that has been in the doldrums, but might increase following merger.

All this makes the choice of accountant crucial. Some firms will use their auditors to assess a potential merger partner, while others will seek an independent adviser specialising in law firm marriages. The more international or bigger the firm, the more likely it is to use one of the big four accountancy and business consultancies.

Comments Tony Williams of Jomati: “With LLPs, there really shouldn’t be unexploded mines, and your pre-merger financial analysis should have identified major roadblocks at an early stage.”

Equal care must be taken when choosing lawyers to handle the merger deal. Generally, consultants advise against completing the whole tie-up without any outside specialist legal help.

Time to call in the lawyers

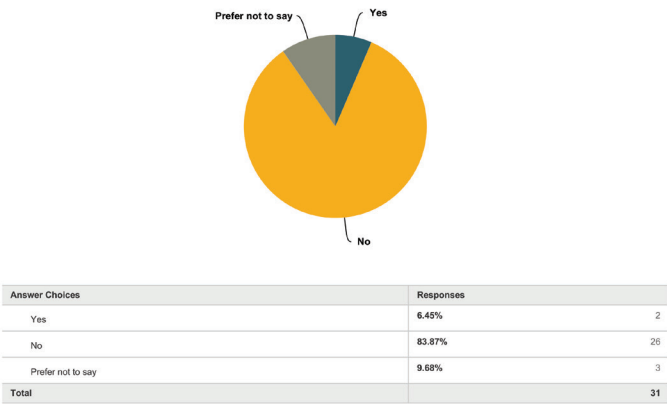
Tina Williams, Chair and Head of Professional Practices at City law firm Fox Williams, says there are striking differences between the approach of UK and US law firms to instructing external professionals to advise on potential merger: “US firms will almost invariably engage an external adviser – whether an independent broker, legal counsel or both – whereas UK firms seem not to.”

But what surprises her is the view of the management committees at UK law firms, which, while never having undertaken anything of the kind before, regard a merger as ‘simply another legal transaction’.

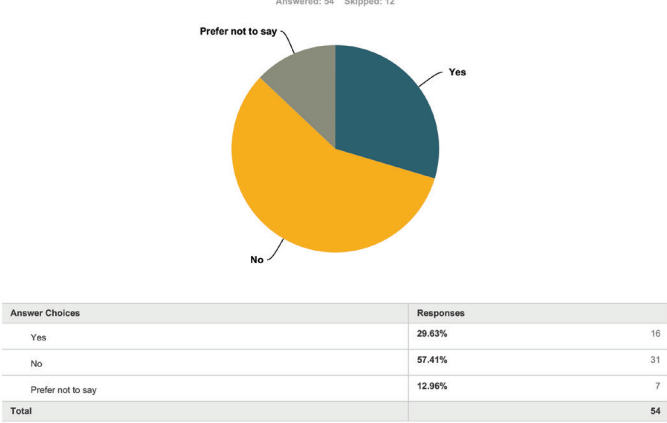
She comments: “The documenting of a merger certainly should be within the capability of most commercial law firms. Where external advice can be valuable is in the range of issues to be considered and to give access to experience of how particular issues are commonly dealt with. For example, attention may need to be paid not only to the terms on which the two firms will practise together in the future, but on how to deal with any departing partners in such a way as to minimise disruption and potential damage to the merged entity.”

Explains William Wastie, a Partner and Head of the Professional Practices Group at City law firm Addleshaw Goddard: “There is a whole range of issues that an external lawyer can advise on.

Merged Firms  
Did your firm instruct external lawyers to advise on the merger negotiations?  
Answered: 31 Skipped: 5



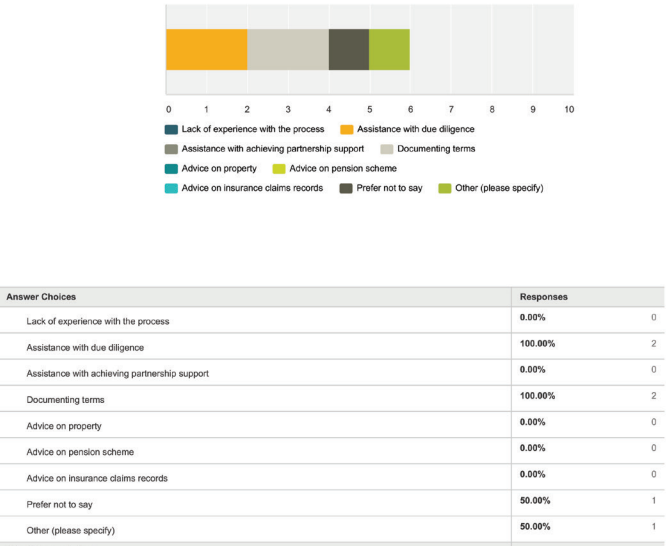
Merged Firms  
Would your firm consider instructing external lawyers to advise on the merger negotiations?  
Answered: 54 Skipped: 12



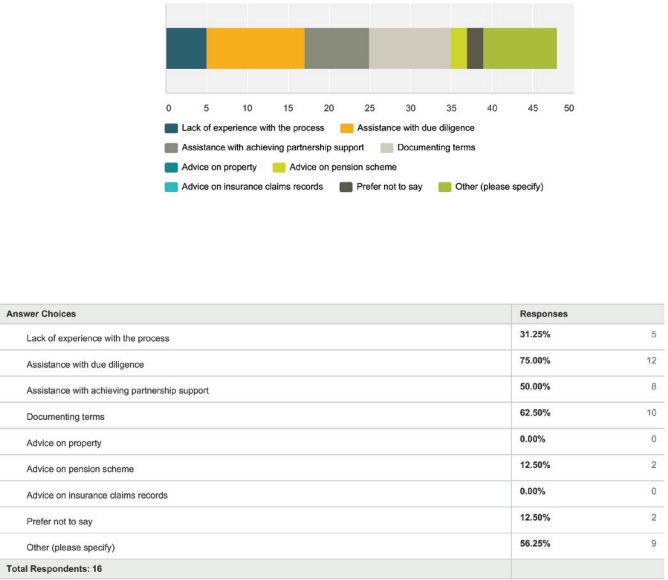
Sometimes client firms will want to drive the process mainly themselves, treating us, the external lawyers, as counsel to one side or the other.”

Wastie adds: “So rather than drafting the documentation, which they will be happy to do themselves in house, we would cast an eye over that documentation and advise on solutions to particularly knotty issues.

Non-merged Firms  
Please choose the three most important reasons for doing so  
Answered: 2 Skipped: 34



Non-merged Firms  
Please choose the three most important reasons for doing so  
Answered: 16 Skipped: 50



For example, balances in profit sharing, pension issues such as deficits that need to be smoothed out, and how to consolidate the profit-sharing in the future.”

But in the UK at least, it appears that lawyers like to rely on their own skills. Our survey revealed that only six per cent of firms that have merged within the last five years instructed external lawyers during the process.

However, those still considering a merger claim they would be more open to seeking external legal advice. Some 30 per cent in our survey said they would do so, specifically relating to assistance with due diligence, documenting terms and assistance with achieving wider partnership support for the deal.

“Merging firms don’t often instruct external legal advisers,” agrees Peter Garry, Consultant Solicitor and partnership law specialist at Keystone Law. “They normally feel they have the expertise in-house and don’t want to run up a huge bill.”

But, warns Garry, that approach comes with risks. “There is always the danger of not knowing what you don’t know. But if the firm is confident it has capable people – ideally people who have merged businesses before – at the end of the day, a law firm merger is the merger of two businesses. So it wouldn’t be fair to say that it is foolish for a large firm to advise itself in merger negotiations.”

Garry suggest that those firms taking external legal advice should ask their lawyers to work with a core checklist of issues.

First, identify assets and all the stakeholders and their entitlements. “You’ve got to assess the balance sheet and how the assets are distributed,” advises Garry. “Accountants need to look at both sides’ balance sheets to determine whether they are as valuable as each side claims. For example, the value of the WIP and debtors – are they really collectable? It is not uncommon in mergers for firms to bring big books of WIP that aren’t worth anything.”

In addition, one firm might have more valuable goodwill – partners with larger reputations, for example – than the other side.

### Two heads are better than one

James Carter, Managing Partner at recently merged Charles Russell Speechlys<sup>4</sup> maintains that taking external advice can be important. However, the amount and level of that advice depends on the specifics of the merger.

“As lawyers, we may be comfortable to deal with the legal issues, but not the financial issues,” comments Carter. “And lawyers would be foolish to think that they do not need external communications advice. However good your internal resources, a different perspective is essential. We used project managers to co-ordinate and facilitate the integration process. They were key, as they allowed an external perspective, ensured that the various work streams were co-ordinated and offered experience we simply did not have in-house.”

For Jonathan Blair, Managing Partner of Bond Dickinson, which was created through a merger in May 2013, the equation regarding external advice is relatively simple.

“Financial – definitely,” he says. “You need to understand the finer details of the numbers. You need to go in with your eyes open; you don’t want to find a financial problem down the line.

“Legal – yes, because third parties are more objective. Law firm mergers are very personal, so it is helpful to have an objective third-party adviser.

“Communications – historically we’ve handled our own communications. But it is critically important, so if you aren’t totally comfortable with getting it right, then that’s an area for external advice.”

For King & Wood Mallesons’ Managing Partner, Rob Day, arguably the most crucial point for management teams going into mergers to bear in mind is cost. “A merger is a big expense in terms of money and time,” he counsels. “You have to dedicate quite a lot of both to make these things happen, but particularly time.”

Essential for Day is devoting time early in the process. “The preliminary conversations are important because parties have to be honest about a range of hot issues – whether it’s the name, whether it’s anything else that’s emotional. You need to have a degree of reality about conflict and profitability issues that might derail the deal and know early on whether it’s worth spending the management time.”

## Mergers in the Real World

### Lovells and Hogan & Hartson, creating Hogan Lovells

Arguably the seminal transatlantic merger of the last five years, City-based Lovells tied the knot with renowned Washington lobbying firm Hogan & Hartson on 1 May 2010. The deal created one of the world’s largest law firms, which last year turned over more than £1098m million globally from over 40 offices and 2,500 lawyers.

#### ***Q: What was the message around the motivation for the merger you wanted to communicate both internally and externally?***

Chris Hinze, Head of Corporate Communications: “It was clear that Hogan & Hartson had a fantastic capability in the US, which was not something that Lovells could ever build on its own. Looking at the longer-term trends in the globalisation of legal services, the merger represented a good way to go. And the range of practice areas and underlying philosophy were fundamentally very similar.

“There was no force pushing either firm to do the deal. This was a merger of equals, with both sides coming from a position of strength and confidence in what each business separately had to offer.”

#### ***Q: What was the strategy for announcing the deal?***

Chris Hinze: “To get to a position – before going to the wider partnership – where we had done enough due diligence to be able to say why this was a serious opportunity.

“But the story leaked to the press before that announcement to partners. Fortunately, however, we were able to work with the publication concerned to agree that it would sit on the story temporarily in exchange for exclusivity on the merger announcement and access to senior management to talk very openly about the benefits and challenges.”

Karen Snell, the firm’s Senior Public Relations Manager, adds: “If it had leaked to the press before our management had been able to inform partners more widely, then that would have completely undermined the credibility of the management team. Partners might have adopted the view that they wouldn’t vote for the deal because the management had been speaking to the press about it before they’d spoken to us.”

Chris Hinze: “Once we reached a point where we all felt it was the right time and agreed a day with the publication, we started the communications process with partners, and then the publication ran the story.

“Essentially, we handled the communications in the same way a corporate would do a merger – treating partners as shareholders and providing them with the same level of information and due diligence. There was a lot of material produced around governance and financial models, around how the partnership would work in practice, around the client opportunities. Our communications strategy was very open and transparent, which helped the transition run as smoothly as possible.”

<sup>4</sup>Charles Russell merged with Speechly Bircham on 1 November 2014.

# Deal breakers – money, property and people

The path to true love in the law firm merger game can be strewn with heartache and disappointment; culture clashes are seen as the main deal breakers, but specific issues around partnership structure, remuneration and even property can turn a deal sour.

## That thing called culture

A law firm merger is much more than a crude evaluation of a profit and loss account. The human dimension of the deal may not have been a key driver when the two firms decided to come together, but if the imperatives of a tight cultural fit are ignored the merger will soon unravel.

A good management team will know enough about the group ethos and individual personalities of its lawyers to guide the firm towards the most appropriate merger partner. But they should never assume too much knowledge or take the confidence of their own partners for granted.

“Don’t forget the human element,” is the succinct advice from Charles Russell Speechlys’ Managing Partner James Carter.<sup>5</sup> “Law firms are people businesses, and however logical a decision might seem on paper, personalities will come to the fore.”

Carter also urges the need for stringent research and forward planning: “Anticipate the issues and don’t assume they will simply go away – they will come back at some point. And beware of complacency; never assume anything. Make sure that adequate research is done. We operate in a global market and everything needs to be checked on a global scale.”

Commentators almost universally cite getting the ‘culture’ right as being the key ingredient to a successful merger. “You need to merge with people of a similar culture,” is the straightforward advice from Susan Bright, London Managing Partner at Hogan Lovells, which cut a transatlantic merger five years ago. “And there has to be a desire for the deal to be a merger not a takeover.”

But defining such an amorphous concept as culture is not easy. “It is fundamental, but difficult to pinpoint,” comments Alastair Beddow, Associate Director at London-based professional services consultancy Meridian West.

“From a client’s perspective, culture relates to a consistent level of service,” argues Beddow. “What is it about the firm that is above and beyond just a coalition of individual partners? Defining that involves networks, systems and processes – in essence the management of the firm. But some of that cultural definition relates to more informal concepts, for example: what is the experience of working with the firm like? When it comes to merger, firms should take the best of their services cultures to create something new. But that is often overlooked.”

But can the essential issues that will kill a merger be isolated? Yes, according to our respondents. Indeed, when asked to provide reasons as to why merger discussions had failed, the most common reason given by both merged and non-merged firms was culture. The other hot spots are a clash of clients, partner discord, property conflicts, one side’s concerns over the profits of the other, liabilities, geography and practice areas.

Getting any of these points wrong can be cataclysmic. Recalls Ian Mouland, Director and Founder of merger consultancy Mouland Mann: “I was working on a deal where the management committee didn’t keep the partnership fully informed. Therefore, a lot of work went into it – about one and a half years – and when it came to the vote, it was voted down. That’s a real slap in the face to management.”

## Consensus is key

Management teams must remember they need to carry the partnership with them. So while that doesn’t mean taking all the partners to every meeting, it does mean finding a way to keep the wider partnership onside by ensuring all members are kept abreast of developments.

A common problem is settling the concerns of the ‘awkward squad’, a minority of partners that turn against the merger from the start. A failure at least to attempt to settle gripes can lead to a full-blooded insurrection within the partnership ranks; on the other hand, offering the awkward squad too many concessions may result in the commercial rationale for the merger being watered down.

More often than not, it is those partners with the most to lose financially from the merger who populate the minority opposition. Some will be ‘deadwood’ lawyers and the merger can provide the perfect opportunity to part company with these unprofitable partners.

Grant Thornton’s Head of Professional Practices, Peter Gamson observes: “There may be long-standing partners out there who have scaled back their work over time and aren’t necessarily running at full pace, and the merger can provide an opportunity to deal with this issue. Firms with lots of ‘partners for life’ or those being ‘carried’ by the other partners can put off potential suitors.”

Adds Tina Williams, Chair and Head of Professional Practices at City law firm Fox Williams: “There is nothing more sapping of energy and morale post-merger than a war of attrition waged by a minority, or a steady but relentless leaching away of partners.”

A superficially appealing solution might be to kick the issue of disaffected partners into the long grass. But explains Tina Williams: “A minimum lock-in period can sometimes merely defer an unacknowledged problem, resulting in a mass exodus at the end of the lock-in period.

It does, however, have the benefit of giving the combined firm’s management some breathing space to allow the merger to thrive and to plan for a potential rush to the exit.”

## How much?

A firm’s remuneration structure often reflects its culture and how it feels about its workforce. Therefore, once the two practices have opened their books and each can see the headline figures, the next step should be a close examination of their respective pay structures.

Gamson maintains it will be difficult for two firms to run on separate profit sharing schemes.

“If it is a real merger and everyone believes in it, then get everyone into the same structure from the off.”

But mergers that do not involve a single profit-sharing scheme are becoming increasingly common, with the most agile international firms recognising that a one-size-fits-all approach does not work in all markets.

For Ian Mouland the most important aspect of remuneration structures is revenue per fee earner. He asserts: “That figure provides an indication of the quality of the practice. If you’ve got revenue per fee earner of £250,000, that gives you an indication of the quality of work the firm is doing.”

Most of the mid-tier firms upwards will be aiming for a revenue per equity partner figure of £1.5 to £2m. So if a larger firm is merging with a niche firm, the smaller firm will have to take fewer equity slots.

Having tackled the people issues, the merger teams can focus attention on building the newly merged practice they will call home. If one firm is sitting on a 12-year lease with no break clause and paying an above market rate, it would make little sense to look for alternative accommodation or move in with the partner.

<sup>5</sup> Charles Russell merged with Speechly Bircham on 1 November 2014.



## Which place to call home

Addleshaw Goddard's Head of Professional Practices, William Wastie warns that property issues can kill a deal if not nailed down before the ink is dry on the contract. He sets out some of the most important questions to ask: "Which property is the merged firm going to move into? Will you get everyone under one roof from day one? What are the lease liabilities – are there breaks you can use? Are you going to be lumbered with a long-term lease with dilapidations that may put the other side off the deal?"

The key message is that management committees must identify genuine deal breakers as soon as possible, so that time and effort is not wasted pursuing hopeless deals. But they must also identify thorny issues (be they property, historic liabilities or a small gang of objecting partners) that ultimately need to be overcome.

"It is dangerous to underestimate the potential damage that can arise from keeping relatively junior partners in the dark. These are the people who most urgently need to understand that management is planning for the long term, and that the prospective merger will be of benefit to the entire partnership for years to come."

*Robert Bata, Principal of international law firm strategic consultancy WarwickPlace*

## Mergers in the Real World

### Howard Kennedy and Finers Stephens Innocent, creating Howard Kennedy FSI

The official marriage of two leading London West End firms was delayed by at least three months to the end of January 2013 as kinks in the deal were ironed out. But in the end the £45 million firm was created. The merged firm was rebranded Howard Kennedy in September 2014.

#### **Q: What was the motivation behind the merger?**

Paul Millett, former Managing Partner of Finers Stephens Innocent and now Joint Managing Partner of the merged firm: "We [Finers Stephens Innocent] had two or three quite detailed conversations with other law firms, which came to nothing. But being approached forces you to think about what it is you want to be as a firm.

"Like every other law firm, we wanted to be able to offer something deeper and wider and have a greater depth and on a bigger platform. And because we had been through the process of talking to other people, it was something with which we as a group were quite comfortable.

"We had had a conversation with Howard Kennedy in 2009, which was instigated through a broker. For one reason or another it didn't come to anything. We were then introduced to another practice at the beginning of 2012 and we worked through another broker.

"Off the back of those discussions we had a conversation again with Howard Kennedy – in the first quarter of 2012.

"We had an initial conversation off-site. I had around me a small number of people that I was able to talk to relatively confidentially. And quickly we moved from there to widening the number of people internally who knew about it. We had a very open culture, so quite a lot of these conversations we knew were going to leak."

#### **Q: What efforts did you make to manage those leaks?**

"We heard there were rumours, so we announced to everybody that we were simply having conversations. And over the next three months we issued announcements to all staff saying where we were in the conversation.

"You have to be incredibly patient because people can take a lot longer to get to where you want them to be. It's about them feeling part of the process, engaging with it and rationalising it in their minds."

#### **Q: Did you use external communications experts?**

"No. We used our business development department and I tended to do the communication myself, either by e-mail or direct presentations. We had a press release ready when we were in discussions. I was relaxed about the press hearing about these things, because we just managed it by saying 'yes, we are in a conversation'."

#### **Q: Did you use external advisers for the due diligence and the financials?**

"We had good, strong internal financial leadership on both sides. The intermediary who helped us put the deal together was an accountant, so he helped us."

#### **Q: How did you convince sceptics?**

"You need to get the people onside who you really want, and you try and get as many of those as possible. Then those people who are doubters or who might be tutting from the side-lines – once they see that they are not going to be able to stop the direction of travel – in my experience they will come on board; not necessarily whole-heartedly, but they will come."

# Careless Whispers

People love to talk. And they love to talk about their work. But that’s bad news for any prospective merger deal – regardless of the business sector – and law firms are no exception.

## What to say, when to say it

‘Keep mum; she’s not so dumb’ pleaded the government in a series of Second World War posters reminding the armed forces and general public alike that ‘careless talk costs lives’ and not to exchange chit-chat with attractive strangers in pubs. Law firm mergers are probably not matters of life and death, but they can be integral to a firm’s future profitability – and in extreme cases – professional survival.

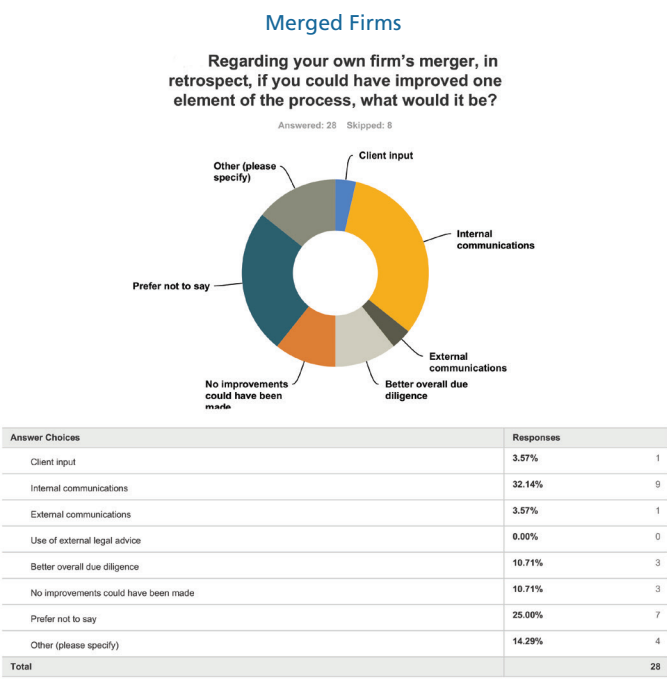
As sure as night follows day, the moment merger discussions are discussed widely in the firm, news of the potential link will be leaked to the specialist and even mainstream media; handling internal and external communications around the deal is crucial.

Carefully planning and then implementing efficient merger communications – when to tell whom what – can be the difference between a successful deal and one that crashes and burns. Fallout can include not just press and business commentators picking over the wreckage, but also long term financial and reputational damage to the firms concerned.

Communication strategies around law firm mergers divide into two strands: internal and external. Our survey reveals that, in retrospect, a key area merged law firms would have improved upon is how they communicated their plans internally. Indeed, when merged firms were asked which merger process they would have improved in hindsight, almost a third of respondents ranked internal communications as the highest – well in advance of other factors.

Both internal and external communications strategies are equally important and intertwined – but may not come naturally to law firm management committees. And senior partners tend to keep merger strategy close to their chests. However there comes a point when they will have to engage with the wider partnership; and once that group is informed, managers must negotiate the near racing certainty that the intention to merge will leak to the legal and wider business media.

It is far from ideal for clients to learn of a possible merger through the pages of the press or the flickering screen of online gossip websites. That sort of mishap is likely to be seized upon by competitors as they bid to poach clients in an increasingly cut-throat and competitive landscape.



While internal and external communications around a merger are integrally linked, a firm has got have a clear policy regarding the former before dealing actively with the latter. And indeed, internal communication strategies can vary significantly depending on which side of the Atlantic the deal is being cut. Expectations among partnerships at larger UK firms are for wider engagement, while US partners are more willing to allow management committees to run the show.

“One sure way to fail at a merger is to saturate the media with bold declarations, followed by inflated expectations, rumours, market confusion, partner defections and finally a fizzle. Let the media congratulate you on your accomplishments, rather than trumpet your unfulfilled ambitions.”

*Robert Bata, Principal of international law firm strategic consultancy WarwickPlace*

In the UK partners across practice areas generally take the view that they can offer constructive thoughts to the process. If you ask their opinion, you will certainly get it – and if you don’t communicate early, you risk disgruntlement at the perception of being ignored.

## The inner circle

Nonetheless, there are powerful reasons for keeping merger talks under wraps, within the knowledge of a small management group, until a relatively late stage. Not least is the need to avoid public speculation if the talks ultimately fail. In addition, there is a strong business argument for sitting tight on communicating intentions internally – senior partners may want to avoid the eyes of the firm being taken off the firm’s actual business for too prolonged a period.

As Tina Williams, Chair and Head of Professional Practices at City law firm Fox Williams explains: “Conventional wisdom dictates that the circle of those in the know should be widened gradually and in a particular order: management team, key influencers of the opinion of others, key partners and staff whose buy-in is essential to the success of the merged firm, other partners and staff.”

There is a prevailing perception among law firm management committees that internal communications look after ‘the nice things’, as one communications head at a leading global firm describes. “The view is that internal communications is devoted to positive messages, while anything vaguely market sensitive or contentious will always be led by external public relations advisers. But adopting that perception would be a mistake.”

“Getting the right internal communications team in place is worth its weight in gold,” comments Grant Thornton’s Peter Gamson, who maintains that a subtlety of touch is crucial. “You need to be aware how your messaging is going to impact on your partners as well as on clients. You also have to manage staff expectations as they can get very nervous about what the future holds for their roles.”

So how should a hitherto tight-knit management committee or merger exploratory team take the plunge and announce the beginning of negotiations to the whole firm?

According to Ian Mouland, Director of legal search and recruitment specialist Mouland Mann, firms need not worry excessively. “Most staff will expect that their firm is likely to be looking at merger possibilities,” he explains, because “everyone else is looking at it.”

Crucially, when announcing internally that a firm is seriously looking at merger options, the management team should already have in place statements to reassure staff. Explains Mouland: “The line should be: ‘We’ve had several meetings, but we’ve not yet started due diligence. And we will keep you fully up to speed – not on a day-by-day basis – but regularly.’”

There is no denying that even such a straight-forward approach will still create some destabilisation, mainly among support staff because they know they could be in the line of fire.

## What's in a name

Seven years after London firm Richards Butler merged with Pittsburgh-based global giant Reed Smith in 2007, the English name has all but evaporated. All, that is, apart from in Hong Kong, where the firm persists with its elongated post-merger moniker of Reed Smith Richards Butler. The reason is that the legal market in the former British colony still values the Richards Butler name.

As much as senior and managing partners might recoil from the word 'branding', the concept is just as important in the legal profession as elsewhere in business. And while deciding a post-merger law firm name might seem a bit trivial in comparison with negotiations over client conflicts, remuneration, partnership structures and property conundrums, getting the branding right is crucial for the firms' staff and clients alike.

"It is clearly one of the more important issues," says Tina Williams, Chair and Head of Professional Practices at City law firm Fox Williams, "as both firms will wish to capitalise on the goodwill built up in both of their brands. This may result in agreement being reached for a transitional name pending adoption of the stronger brand, but some of the most successful mergers have adopted a short name incorporating both brands."

Those successes may have been borne more out of luck than judgement, according to Richard Silbermann, Creative Director at consultancy Brand Remedy. "Branding seems to sit low on law firm agendas. One gets the impression during the merger process of a reluctance to consider how the joint firm is going to present itself to the outside world. It often seems to be almost an afterthought, and so is rushed at and not thought through."

An explanation for that reluctance can arguably be found in the inherently political nature of partnership. "When dealing with an organisation of 100-plus owners," says Silbermann, "decision-making is tough at the best of times." And opinions over a law firm's name can be highly emotional.

Nonetheless, there are some core principles – by which many high-profile recent mergers have failed to abide. For example, a string of names is never a good idea – especially in the modern fast-moving, digital short-circuited language of time-poor clients. "A long name won't sit well in digital media spaces," advises Silbermann bluntly. "More than ever succinct language is important."

Merged firms often opt to keep a long name that is simply the combination of the legacy firms for a year or so before gently dropping elements. The rationale is that the process gives the merged firm's clients a chance to get used to the elongated name before any wholesale change is made.

"But that approach is borne out of a lack of understanding about good branding and communication," says Silbermann. "You need to communicate effectively the fact that the old firm is no longer and the new firm is now known as '...X'. But owing to the genealogy that sits in law firms, they are often reluctant to lose historical connections. There is a fear of losing a long-standing name."

But there needn't be. The process can be managed far more effectively now thanks to modern technology. "A well designed communications campaign will resolve the issue," says Silbermann. "How many times do you have to communicate with someone to say firm X is now part of firm Y and we will be known as firm Z before the penny drops? Huge corporate mergers happen all the time and other sectors manage the process better. That is to say, this is a fundamental part of our merger – we want to go to market as firm Z, so let's integrate that into our planning."

## Is there a leak in here?

Once the merger team has announced to the wider firm they are in merger discussions, it is inevitable the information will leak. Warns Tina Williams: "Any management team embarking on merger talks should be prepared for a leak of that fact from the outset and be ready with statements for clients, the press and internally to partners and staff who are not in the know."

"The one thing that will upset just about everyone, including clients," explains Tony Williams the former Managing Partner of global law firm Clifford Chance and Anderson Legal and now Principal of London-based legal profession consultancy Jomati Consultants, "is if the first time they hear about a prospective merger it is in the legal press. Even if you only beat the legal press by five minutes -- that will be enough. People get very upset if they feel they have been left out or blind-sided by the merger of their own firm."

In many cases, the best option is prepare a holding comment simply confirming discussions. But it is crucial to bear in mind just how powerful a tool external communications can be. Adept use of the media can allow a firm to leverage its position in relation to a prospective merger partner. That might sound brutal and self-serving, but there's nothing romantic about the law firm merger process and such advantages can be vital.

## The power of the media

A senior media relations expert comments: "The media is a very powerful tool, which you can use to leverage the position to one side or the other, depending on which side is more sophisticated in their approach. There can be almost more credibility to what is read externally than to what is communicated directly internally. So you can use the media as a tool to plant the seeds of what you want your internal audience to think."

Arguably the most significant communications decision a firm in merger discussions will make is whether to instruct an external public relations expert or agency.

"For those parties that are merging from a position of dominance – then the story is unlikely to be negative for that side. But if you are being consumed by someone else, then there can be a need to get some outside, objective advice."

*Head of Communications at leading international law firm*

Outside agencies can be viewed as not having as comprehensive an understanding as the in-house function of what type of communication is required, in particular for the specialist legal press, the message itself and the key journalists to be targeted.

Historically, an exception to that general rule involves distressed mergers, or situations in which one firm is far more dominant than the other. As one senior internal communications specialist says: "It's the too-drunk-to-stand-up type of situation, which we saw during the financial crisis. Then there is more of a need to bring in an external agency to give outside objective advice because your reputation is under threat with the mainstream press."

But there can be other circumstances when there is a clear role for external consultancies in merger communications.

## Get the right PR expertise

Fred Banning, Head of PR at City firm Pinsent Masons says: "There is a role for external consultancies, particularly if the in-house adviser is new to the legal market, having come from a different sector to find six months in that there is a merger deal on the cards."

But, says Banning, "the overriding principle when retaining external advisers is that they must add elements that a law firm doesn't already possess through its in-house team. "The worst thing you could do," he says, "is go to a big global agency that claims to know everything there is about crisis management because it works for global blue chip companies. The legal market is different to the PLC environment and you need to understand what those differences are."



“It’s crucial to have a communications function that is completely joined up regarding what you are saying to your own people, your clients and the press. If any one of those audiences gets a slightly different message, that inconsistency will be damaging.”

Fred Banning, Head of PR at City firm Pinsent Masons

Overall our survey has shown that nearly 30 per cent of recently merged law firms brought in specialist communications support during the process. And some 43 per cent of non-merged firms said they would consider appointing an external PR consultant to advise on a prospective deal.

But there are still signs that law firms remain cavalier about the importance of communications issues. The survey found that 53 per cent of merged firms said it was not important to involve either their internal communications teams during initial merger discussions. Another 20 per cent said it was not important to involve those teams at due diligence or advanced stages of negotiations.

The findings are surprising considering the clear fact that merger discussions can leak so quickly internally and then to the legal and the mainstream business media.

Ultimately, however, 80 per cent of survey respondents at merged firms said it was very important to involve communications experts at the pre-announcement and post-merger stages of the deal.

Merger Communications do’s and don’ts

**Do** – make the assumption that when the merger team communicates merger discussions across the firm, the existence of those discussions will be broadcast externally.

**Don’t** – assume that anyone will keep their mouth shut. There are always people with different interests and agendas. And also, human nature means people will invariably chat.

**Do** – realise that every merger is different, so firms need to understand what is driving the deal and what the pressure points are.

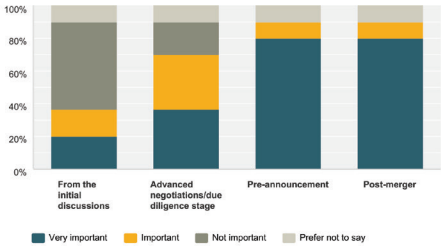
**Do** – have a communications policy and function that is completely aligned in relation to what it is saying - to its own people, its clients and the press. If any one of those audiences gets a slightly different message, that inconsistency will be damaging.

**Don’t** – wind up the merger communications exercise once the deal has been inked. Merger communications need to run for up to two years afterwards, because, for example, if the firm changes its name, it must ensure the transition of goodwill from the former name. Firms need to make sure that clients know who the new firm is – and the new firm must demonstrate that the merger has worked by promoting new panel appointments and large-scale transactions that the firms wouldn’t have won separately.

Merged Firms

How important was it to involve your internal communications team at each stage of the merger process?

Answered: 30 Skipped: 6

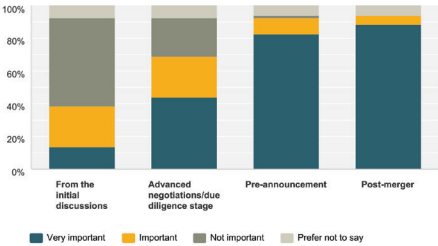


	Very important	Important	Not important	Prefer not to say	Total
From the initial discussions	20.00% 6	16.67% 5	53.33% 16	10.00% 3	30
Advanced negotiations/duel diligence stage	36.67% 11	33.33% 10	20.00% 6	10.00% 3	30
Pre-announcement	80.00% 24	10.00% 3	0.00% 0	10.00% 3	30
Post-merger	80.00% 24	10.00% 3	0.00% 0	10.00% 3	30

Non-merged Firms

How important would it be to involve your internal communications team at each stage of the merger process?

Answered: 52 Skipped: 14



	Very important	Important	Not important	Prefer not to say	Total
From the initial discussions	13.46% 7	25.00% 13	53.85% 28	7.69% 4	52
Advanced negotiations/duel diligence stage	44.23% 23	25.00% 13	23.08% 12	7.69% 4	52
Pre-announcement	82.69% 43	9.62% 5	1.92% 1	5.77% 3	52
Post-merger	88.46% 46	5.77% 3	0.00% 0	5.77% 3	52

## Mergers outside the Top 200

There is nothing like a top tier international law firm merger to grab the attention of the media and get the legal sector talking.

But for every multi-million pound business created through the likes of deals cut by Norton Rose and Fulbright & Jaworski, or King & Wood Mallesons and SJ Berwin, there are dozens of mergers of small and medium-sized firms taking place across the UK, as they take steps to thrive – or survive – in an increasingly challenging legal market.

The combination of five harsh economic years, dramatic cuts to the legal aid budget and eligibility, and the shifting structural and competitive sands created by the advent of alternative business structures, has forced many practices of up to ten partners to get hitched.

But are they really managing to find a merger partner? Merger consultants suggest that at this end of the market – for firms with turnovers of £1m to £10m – the reality is much more cut-throat.

“The issue for a lot of these firms is that they are not particularly profitable,” explains Justin Kopelowitz, Director of the partners, mergers & practice moves team for consultancy DMJ, “And those firms are very difficult to merge. There are many struggling law firms out there, but we concentrate on those that are making profits and have something to offer a potential partner.”

And the market is relatively buoyant for those firms that are still in good health. “We are finding buyers,” comments Kopelowitz. “If there’s a client base, the work is going to come and that work can potentially be developed at a larger firm, then they will be attractive.”

Valuing these firms is the difficulty – and there are only a few brokers with enough experience of current market conditions that can provide an accurate steer.

“Solicitors are not always realistic about what their firms are worth,” says Ray Fox, a former legal director at business consultancy Dun & Bradstreet, who has valued about 350 law firms at the lower end of the UK market and sold around 150.

“The value of a law firm is not dictated – as I have been told – by the value of the capital account or the size of the overdraft. The value is what the firm is worth in the open market.”

A key difference between the law firm market and that of public companies, according to the experts we spoke to, is that solicitors buy revenue rather than profit. Fox’s technique involves assessing the different income streams at a law firm prospectively up for sale and weighting them against comparable figures at practices he has sold over the previous twelve months.

“I consolidate that into a multiple of the turnover,” explains Fox, “and then have about forty other factors that influence whether that number goes up or down. For example, the quality of a firm’s website, the structure of the firm in terms of how many fee-earners to support staff it has and whether there is passing trade.

“After factoring in all the elements, you get the magic number of what the firm is worth. But often you get solicitors saying they want four or ten times that value.”

Ultimately, argues Fox, the word ‘merger’ can be something of a misnomer at the smaller end of the UK legal profession. “My definition of a merger is where all the equity partners at both firms take equity in the enlarged practice – and that doesn’t happen that often. If firms A and B come together, you rarely get firm A & B – normally A is taking over B or vice versa.”

**Byfield Consultancy**

9 Staple Inn Buildings

London

WC1V 7QH

Tel: 020 7092 3999

[info@byfieldconsultancy.com](mailto:info@byfieldconsultancy.com)

[www.byfieldconsultancy.com](http://www.byfieldconsultancy.com)

**Fox Williams LLP**

Ten Dominion Street

London

EC2M 2EE

Tel: 020 7628 2000

[info@foxwilliams.com](mailto:info@foxwilliams.com)

[www.foxwilliams.com](http://www.foxwilliams.com)