

Saxton Bampfylde



An Independent Mind

Sharpening the role of a law firm NED



Introduction

The legal sector in the UK has seen enormous change over the last decade.

There has been consolidation at all levels; the pandemic has brought about a change in working practices; US law firms have continued to make inroads into the London market while boutiques have prospered in specialist areas; General Counsel are taking an increasingly sophisticated approach to buying legal services; and some law firms have listed. But there is one constant – competition continues to increase.

As we look forward, there are more challenges on the horizon. The years of cheap interest rates look unlikely to return imminently, with a consequent impact on deal flow. The transformational challenges and opportunities offered by AI are not yet fully known or understood.

In 2022 the UK legal services market was valued at £43.9bn increasing by 6.3% at current prices on the 2021 value. But the number of law firms and scale of their operations continues to decrease.

When a sector encounters considerable change and challenge, what separates the excellent from the good, is the willingness to explore beyond the normal operating parameters and seek insights from other areas. While this can sometimes occur through recruitment, acquisition or merger, there is a growing interest, and indeed enthusiasm, for an external opinion or perspective: typically a non-executive director (NED) or advisory consultant.

Saxton Bampfylde has been finding and placing non-executive and executive talent across the professional services environment for over 30 years. Recently, we have seen a growing number of non-executive appointments in all sizes of law firm across the UK, and this trend appears to be one that is set to continue. To understand this trend we wanted to explore the drivers and understand why some firms are keen, and equally why others do not feel the need or the inclination to take this step.

To allow us to delve deeper into the topic of why interest in the non-executive function is growing in the UK legal sector, we spent time gaining insight from those directly involved. We talked to a range of managing partners, chairs and non-executives from leading international, City and regional law firms throughout England and Scotland – those who have and those who don't have non-executives on their boards. We are grateful to each of our participants who gave their time and reflections to this piece.

We explored a range of areas including:

- **definition of the non-executive role**
- **how it adds value**
- **whether an independent view is important**
- **why some firms have NEDs and some do not**
- **how to make the search work**
- **and finally, what makes it attractive to candidates**

Our discussions were varied and interesting and all contributors were honest and thoughtful with their responses. We are extremely grateful for their time and insight. We hope that this piece is useful to firms and candidates alike and we welcome all thoughts and questions it might prompt.

No more navel gazing – an independent perspective is needed

The introduction of the non-executive function to the board was a relatively new development in the history of the firms we spoke to – typically happening within the last five to ten years. When asked about the motivation for bringing in that independent view, the reasons were consistent and specific across most firms.

“To stop our board being an echo chamber.”

The repeated references to an industry that historically, and even currently, was described as ‘insular’, ‘navel-gazing’, and ‘sometimes disconnected’, show that there is a self-awareness amongst the leaders in the legal sector and helps to reveal why an increasing interest in and appointment of non-executives is underway.

The need for an outside and considered perspective was a vital part of the rationale, and that doesn’t just mean outside the firm itself. It also means outside the sector or geographic region. One contributor highlighted: *“We want a more thoughtful board – diversity of opinion is becoming much more necessary.”*

The strategic aims of a firm were also cited as fundamental to the reasoning – for example an acquisitive strategy had driven the search for a non-executive

with substantial experience in mergers, both in the UK and internationally. The need to demonstrate clear specialisms in certain fields of law has also been a driver for bringing in non-executives to provide experience, insight and a broader client perspective.

“Need to recognise that it is not a challenge, but value, to their business.”

The logic for making non-executive appointments is important and needs to stand up to scrutiny from partners and other stakeholders: non-executives must bring objectivity, they must demonstrate added value and, equally as important, feel valued.

“It is incumbent on me to make my role work for them. I need to keep adding value.”

The ability to support and augment the executive function is a significant role of the non-executive and in our discussions there were examples of non-executives adding value in core areas such as business development, marketing, and sector specialism.

There were some specific examples where independent advice was impactful and actively sought. The most salient included:

Enterprise risk management – considering what is important for capital investment in the firm.

One interviewee said: *“Lawyers are good at looking at client risk, but not so good at considering enterprise risk – in areas like AI and cyber. I helped them think about what areas to invest in.”* This is important, especially in a partnership where every expenditure is closely scrutinised and can sometimes be more drawn out because of this.

Succession planning and thinking more strategically about the next chair and board members and often greater focus on those coming through into partner and functional executive positions.

This style of executive mentoring was seen as making a real impact in certain firms. As one NED reflected: *“I am working to move them away from operating as a management team, to thinking of themselves as a leadership team.”*

The remuneration committee (or RemCom) brings debate, deliberation and distraction in each remuneration cycle.

The benefit of an independent approach, driven by objectivity rather than partner politics, combined with the experience from public company boards where non-executives can add value, was highlighted. It is vitally important that they enjoy, are valued and given agency in their role. They need to be part of the team while still retaining independence – a balance that is important to get right.

“Really fulfilling and allows me to grow still and develop my experience more.”

The NEDs that we talked to, thoroughly enjoyed their roles – particularly with *“intellectually curious, articulate and bright people.”* When the board is receptive to some challenge and to accept an external view, it is considered a very rewarding non-executive opportunity, and one that allows for self-growth and development.

Whether a seasoned non-executive across many different boards, or those who are at the beginning of a non-executive portfolio career, a role in the legal sector was regarded highly. It was considered a much ‘closer’ relationship than in other sectors. The emphasis on value derived from investing in this role was recognised as being connected equally to the genuine professional and personal contribution brought to the table combined with the importance placed on the investment made by the firm. Lawyers are considered and considerate and that was how the non-executives we spoke to felt about their roles.

Stand out from the crowd – working together to create that distinction

With greater ambition to expand nationally and internationally and increase efficiencies, law firms are facing an increased need to distinguish themselves from competitors – both in the marketplace and also when attracting talent.

“My role is to make the board more alive and present and more connected with the business.”

However, to create that sort of distinction and build a brand that is authentic can be a challenge when many partners are lawyers. An external perspective can be extremely valuable in dealing with these issues. A non-executive can ask the questions that their semi-detachment allows. They can propose ideas based on experience outside the confines of the law firm and indeed the sector. In short, they can bring fresh eyes to an established business.

This is where the question of whom to recruit for the role and whether a legal background is beneficial or not, has to be considered. The general consensus of those we talked to was that a non-executive didn't need to be a lawyer. In fact some did say it was best if they weren't. What was essential, it was agreed, was that they should have experience of working closely with law firms previously, either having bought their services, done business development with them or worked closely with them. For those that did bring in lawyers to a non-executive role, it was highlighted that the commerciality of that candidate was crucial if they were to add value to the development and strategic direction of the business.

There were some who did suggest that the “value in being or having been a lawyer

allowed for a better understanding of the way they think” and that there is a unique vernacular in the sector that did take some getting used to. However, that should not be a prohibiting factor in choosing a non-lawyer.

“You need to think about opening up debate but not going at it like a bull in a china shop.”

The importance of interpersonal skills and a nuanced approach by the non-executive was highlighted – challenge for the sake of it is not the right approach and needs to be tempered in a way that differs from plc boards, for example. Those who are going to do well and succeed as non-executives with the firm need to think about this and “*find your way of having influence and vary your influencing skills and style, as appropriate.*”

A non-executive can also really help to foster the values and cultural approach, bringing in the experience of people strategy from other organisations.

An emphasis on mentoring can be supported by non-executives as well. They can bring focus to future generations coming through the firm and demonstrate that it is taking its internal and external position seriously. The perspective of all other partners who are not at the board table must be taken into account regularly.

Pastoral care can sometimes be overlooked in any size of business, but especially in one that is growing. It is vitally important not to diminish this function. The role of the non-executive can “*bring much needed consistency through periods of change*” which can be hugely valuable.

A new era dawning?

“In the world where we have seen NEDs expand in most other areas I am surprised it is not more common in the legal sector.”

There is a sense that a shift is coming in the legal sector. As technology drives and enhances service delivery, new generations emerge and competition increases. This has really brought more firms to conclude that an outside perspective is beneficial.

While the partnership or limited company model does not mandate a non-executive or independent governance function there is a growing appetite for the benefits it brings. One commentator referred to “*self-serving regulation*” becoming a thing of the past and that the “*legal sector needs to wake up to this*” and gain outside perspective.

“Lawyers need to stop thinking that they are a unique bunch and nobody understands them – they would do better to listen to the outside and see what they can learn.”

A perceived ‘tribalism’ in the sector is harmful, it was suggested, and the dial needs to move forward to ensure that they stay current, competitive and successful.

They must be comfortable and capable of challenging and utilising the experience and knowledge of others.

“Being a good lawyer isn’t good enough to be a good leader or manager.”

The external perspective can really help with building the management team and driving a talent pipeline that can allow the business to evolve and aspire to be much better. In a consolidated market looking to attract and grow both talent and client base, that is going to be crucial.

“We are trained as lawyers in a very linear way. We are not trained to be business people. Some succeed as they have a natural aptitude for it, but for most we really need that outside perspective, that external view and friendly challenge.”

Lessons from the pandemic have shown that the legal sector, like all other industries, can respond quickly and evolve. There was no manual and technology imperative, and many businesses in fact thrived during this time, taking opportunities from the substantial challenge.

“The managing partner often is one of the biggest billing partners, and they become more operational and strategic – to take them out of the client winning activity seems bonkers and makes a good case for having NEDs.”

The highest levels of income across the majority of firms often comes from the most senior or managing partners. This is often crucial for financial success and therefore remuneration and resource across the business. To remove or reduce this income generation as a senior partner takes on greater business management and operational responsibilities does not always make the most sense – certainly commercially. The introduction of one or more non-executives can help to alleviate strategic pressures and provide crucial support to a managing partner to enable them to maintain a good level of focus on income generation.

There is a shifting attitude we observed through our conversations. There are some that still haven’t even considered it and there are others telling those in the industry: “*you are absolutely daft not having NEDs – they aren’t that expensive and really bring value.*”

The perspective of those that had currently chosen not to have non-executives was particularly interesting. The suggestion was that: “*We are going to look like an outlier in a few years if we don’t evolve and change our view*”. For those who had bad experiences as a result of not having found the ‘right’ non-executive or independent support in the past, it really did impact their

view on introducing this role. One partner interviewed commented: “*collectively we agreed we didn’t want it again as it didn’t work the first time*”. It was acknowledged however that this attitude was changing to reflect huge shifts in the sector, with new partners and senior executives showing greater interest in the non-executive function. A generational shift in attitude was posited by one interviewee who said: “*new blood will, I think, change that view and we may see non-executives return to our board*”. Whether this speculation comes to pass will have to be seen.

The firms without NEDs didn’t outright reject potential need to bring them in, but the consensus was reflected in one conversation: “*it is not the path our business is on at the moment*”.

The preference for individual consultants on specialist topics or issues was preferred by some firms and positively referred to. The outside perspective was certainly not disregarded, but for some, a consistent long term investment in a non-executive did not make it to the top list of priorities – at least for the moment.

And the moment is key: our experience suggests that we are at a particular inflection point for the sector and the sands are shifting. Each firm is different and on its own journey, but the ability of non-executives to “*deliver absolute nuggets*” should certainly make them worthy of consideration. One firm which had recently (last five years) introduced non-executives candidly observed: “*There was scepticism when we brought them in, but they really have delivered.*”

That ability to deliver and create an impact could make the significant difference, but each firm will take their own decision.

Devil is in the detail – putting value in the search

Whether appointing non-executives for the first time, or looking to bring new candidates into an existing function, the search is crucial. Time and thought has to be invested across the leadership team and wider partnership to clearly identify the reasons for hiring, the skills and experience the candidate should have and how they will operate within the firm.

It should also be socialised widely with the partnership and larger business, and an open discussion had with the appointed search partner about whether a non-executive is required or whether a more consultancy style role could be utilised to address specific issues or investments.

“Law thinks it is the be all and end all sometimes and it really could benefit from that external view – diversity, horizon scanning, culture development, client relationships. They could learn heaps from other sectors, and I think it is really important they invest in that.”

A brief has to be nailed down early, where the firm is very clear on its priorities. The areas to consider closely for a non-executive appointment include:

What skills and experience are needed in the non-executive candidate

- Any firm must closely consider what is really needed at that point and recognise that this might change form in the firm’s evolution.
- The breadth of a non-executive’s portfolio elsewhere is important, and experience on public boards is becoming more relevant.
- There has to be a recognition that it is difficult to tick all boxes for every skill in one person and that firms need to prioritise.
- A very specific skill or knowledge, such as in generative AI or ESG, may be useful, but the contribution has to go beyond that.

Knowledge or experience of the partnership model

- The limited liability partnership model is still prevalent in UK legal practice. However, increasingly, there has been a move to the limited company model. With half of law firms still being partnerships, and many more having formerly been partnerships, this very distinct culture of the partnership model must be understood. A non-executive does need to know that it isn’t *“control and command in the same way as other operating models.”*
- Law firms are not required to have a non-executive director from a legal or governance perspective (unlike other organisations, such as public limited companies). As a result, firms opting to have them have specific reasons and definitions of success for the appointee.
- Partnerships tend to think very carefully about long-term investments in areas such as technology, as they don’t get outside capital and that presents more constraints. This is certainly something a non-executive should be aware of.
- Knowledge of other operating models and governance approaches to help develop a wider view, experience and approach to developing the non-executive role.

Background of non-executive to understand legal world and specific business issues

- Consider what experience they have dealing with client service and satisfaction and how this can translate into the legal sector and the firm specifically.
- Experience of professional services or consultancy and having worked closely with law firms is beneficial but should not be prescriptive.
- Do they have specific expertise in, for example, technology, digital marketing or AI and how will this be important for the business?
- Governance and regulation will be of increasing importance – particularly around mergers where a new operating structure requires to be created.
- ESG and sustainability – with a growing emphasis across all sectors on the environment, community and how to implement genuinely effective structures is an area of ongoing focus where experience is important.
- Leadership and people mentoring – knowledge and advice on how to bring the best out of the current and future leadership team and instil a strong cultural basis.
- Diversity, equality and inclusion – this comes from the introduction of an outside thinker but also those who have experience in promoting or implementing strategies.

Some of those we talked to, who didn't have non-executives or who were less convinced about the need for them, did use consultants on a more ad-hoc basis and gained the benefits of external perspective and experience without an embedded strategic role.

"Many lawyers have never been clients – how do they know how clients think?"

This did also reflect the kind of support that firms benefit from according to where they are in their development and size. Consultants were brought on board for specific client service or engagement approaches. In some instances, this was combined with a non-executive role while in others it was a stand-alone one-off project.

The investment of bringing on board non-executive support is one that must demonstrate value, and there was discussion about whether this was significant enough with only one external perspective, or whether greater diversity and discussion or challenge would come with two. This was proposed as an important consideration, not only for the firm but also for the non-executives themselves. An individual appointee could potentially cut a lonely figure as the only voice questioning a topic or issue. That is certainly a consideration for a firm when contemplating both the introduction of non-executive support and also for the candidate considering the role.

"If you start with scepticism from your team and they can't be persuaded after two board meetings that the NED is right, then you might have to accept that you haven't got the right one."

The non-executive role is an investment – from a time and monetary perspective – and there has to be buy-in and broad agreement that the individual is right. The executive must be alive to this, as must, of course, be the non-executive. If time is to be called, it must be done before resentment kicks in.

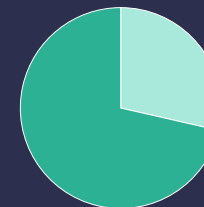
"If you are always looking in the same pond don't be surprised if you get exactly what you had before."

And finally, but crucially, a key component in finding the right candidates is selecting the best search firm to drive the process. With a wide variety of search companies, the specialisms are also varied. Whether to pick one whose experience is centered on the legal profession, board appointments, professional services or a wider remit should be carefully considered. One interviewee we spoke to suggested that a purely legal search firm can create a "very myopic view" for the client and limit the candidates.

There will be a rationale for the search firm that is chosen, but it should be done thoughtfully and with a view to stepping outside the comfort zone. As one commentator said: "pick a search firm that will bring you some outliers that you might not have considered initially. Even if you don't pick those candidates it really makes you think." ■

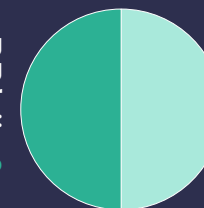
Who we spoke to

Firms with non-execs
72%



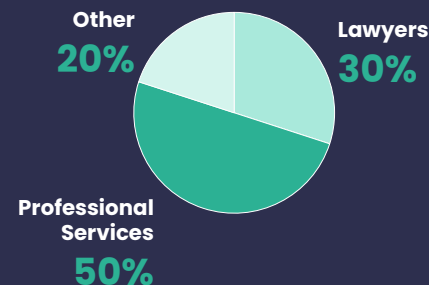
Firms without non-execs
28%

Firms considering appointing non-execs in the near future (2 years):
50%



Firms not planning to appoint non-execs in the near future (more than 2 years):
50%

Background of Non-executives



Average number of years firms have had non-execs:
5-8 years

Average tenure of a non-exec
2-3 year term
(80% have done or plan to do two terms)

About Us

Saxton Bampfylde is globally recognised as a trusted, values-driven leadership advisory firm. We have a rapidly growing Board practice that operates right across each of the sectors in which we operate and represents over a quarter of all the work we undertake. Over the last 37 years, we have assisted Boards with recruiting Chairs and Non-executive Directors as well as working with them on Board Reviews, succession planning and coaching.

Appointments of seniority require a highly targeted search to identify appropriately qualified individuals and it is essential that each of them is then approached by an articulate and well informed search professional. We have specialist researchers who bring the focus and dedicated time required to bring our clients strong, diverse and broad lists. As a firm we pride ourselves on our success in advising on diverse appointments and believe we have one of the strongest track records in this respect of any major search firm in the UK.

If you would like to find out how we can assist with your next search or to hear more about our leadership advisory services please contact us at:

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