

Effective decision making in law firms

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The decisions that we make as individuals are a reflection of who we are and shape what we become. So it is with law firms. The culture of a firm and the face it shows to the market are the accumulated result of the decisions that its partners have made over the years.

Plenty of academic and business books offer models to help us with our decision making. The one thing we can be sure of is that there is no silver bullet and that decision making is in no small part a question of 'horses for courses'. This chapter aims to help you think through what tends to work best in practice and why, as well as the challenges and pitfalls. It focuses on the more behavioural aspects of decision making in law firms rather than on any formal procedures or governance structures.

I asked senior partners (SPs) of seven very successful law firms to talk about how they make their best decisions. They lead firms in Europe, the United States and Australia. Some of the firms are based in one country, while others are spread across the world, ranging in size from 75 to 200 partners. In their experience there are clearly some things that in practice generally help and other things that tend to hinder both a good decision-making process and arriving at a good outcome.

I was also curious to find out how they align their decisions with their firm's culture and what they want to project to clients, partners and staff about the firm. As one SP said: "Rightly or wrongly, leadership is judged by the quality of the decisions you make about people and strategy and how you handle crises."

It became clear that all law firm leaders can learn a lot from the wise, shared experience of the SPs I spoke to. I have summarised some of their individual viewpoints and most important insights towards the end of this chapter.

1. Decisions, decisions; so many variables

How a firm makes a decision and how well it turns out depends on a wide range of factors, including the type and size of firm, the style of leadership, the economic context and the type of decision. Different types of decision call for different approaches, depending on whether they are strategic, operational, value based, crisis driven and so on.

On the one hand, some of the firms invested a lot of time and resources into their strategic decision making: "We think strategy matters." They mentioned several examples of the range of strategic decisions they had considered: whether to merge, and if so with whom; opening new offices; acquiring a new team; remuneration policy; reducing the number of partners; changing retirement age; and pensions.

However, on the other hand, several of the SPs felt that they make very few strategic decisions. In fact, one stressed that they sought to minimise the number taken:

We believe the fewer major decisions the better; fewer laterals and offices. There are other firms that are far larger and they may make more decisions and faster, but not necessarily good decisions. We have a very narrow strategic focus. We are not prompted to do anything about strategic decisions because our current work is so successful. The phrase "strategic imperatives" doesn't resonate with our partners. But we are one of the most profitable firms in our market, so we assume we must be doing something right by not making a lot of decisions. If you look at law firm profitability movement tracked against major decisions, it is not a good correlation.

In a people business like the law, most of the major decisions will be about the people, whether they are coming in or going out, getting promoted or remunerated or being assessed or supported. For many firms, the choice of new partners is their most important decision.

2. How does it work?

In short, the answer is that decision-making processes work in ways that differ hugely and have evolved to suit the particular firm's size, shape and needs.

Some firms have well-developed governance structures and swear by them: "We have a clear governance framework for the whole firm that provides for where the decision making might be and with whom we consult. It is incredibly helpful."

Others are more fluid: "Our processes are not very rigid, they evolve over time to meet new conditions."

Firms have created different governance structures to fit their context and needs. Some have elected positions for their leadership; others have appointments, some for fixed terms, others more flexible. Some have managing partners while others can't bear the name 'managing partner'. Some have executive teams or committees; others have strategy committees. Some have boards and some include external directors; most do not. Some have one partner, one vote; others have weighted voting rights, although hardly ever, it seems, is a decision taken by vote.

At the centre of those structures is a core group of leaders who often initiate the discussion on major decisions, collect the information and are in charge of the process.

3. What helps good decision making?

Among all these differences, it is not so easy to work out what really contributes to good decision making that is in the long-term interests of the firm. So, I asked the SPs: "What are the most common conditions that are conducive to your best decision making?"

Their answers are very varied. They have had quite different experiences and look at decision making through different lenses.

However, out of the variety, some clear themes emerged about achieving consensus, taking a long view, harnessing good processes and building in checks and balances.

It also became very clear that one major component weaves through everything. That component is consensus building and it is the best place to start.

3.1 Consensus

In practice, it's about taking and shaping views.

Law firms, for the most part, are still essentially a collection of owners. Their cultures and governance structures are very different from companies with CEOs and more hierarchical structures. The consequence is that any significant decision making will usually involve many people and often take a fair amount of time and effort. Sometimes it is a top-down initiative, while at other times it is bottom-up – but either way, consensus is the aim before the decision is made.

“Our firm is still very consensus based, we would never simply announce a decision without building consensus first. Our policy is teamwork, consensus building and long-term focus.

Law firm leadership now is about managing people and getting them bought into the vision. Lawyers have to feel like part of the decision and that they have been heard. They need to feel part of the organisation; it takes a lot of time, like herding cats.”

If I think we need x then I go out and find the person and make the case to the partnership. It creates legitimacy; everyone gets an opportunity to weigh in. Is it efficient? No!

It works because it is consensus driven. We only come to a decision when the outcome is already certain. It is rare that there are surprises. Things have percolated so much that we only get to a point of consideration when consensus has been reached.

3.2 Building consensus

(a) *Appreciation of each other*

At the core of the consensus-building process is mutual respect and trust. It involves a great deal of listening and emotional awareness to feel the reactions and the mood. Some leaders allow a reflection period so that everyone feels they could have spoken if they wished to.

What drives the firm is an appreciation of each other. We are all invested in the success of each other. I have a couch hour with each partner once a year – an intimate discussion. Our partnership team is a democracy. Certain opinion formers have louder voices than others, but it is all about finding a consensus, discussing and then reaching a conclusion. Is it efficient decision making? No. It's old-fashioned, but very powerful.

Listening, so all feel heard and valued as an owner of the business.

We have a full debate. As chair, I feel the mood of the room, seeking

consensus, take views from all, put the proposal to the meeting and get a rumble of approval.

(b) *No surprises*

To build mutual trust and confidence in the decision process, openness is seen by many as an essential ingredient. The importance of transparency in remuneration was emphasised by most.

Everything is open, especially on remuneration. The transparent governance system and testing views combine to create confidence and trust.

We operate on a 'no surprises' basis, especially on remuneration. Everything is open. This reflects our firm culture: very open, loose, but some structure; partners are very engaged.

We make good decisions on compensation – no surprises, deeply engaged, and based on values. There may be a few niggles on the outcomes, but people move on from it.

Compensation decisions we do really well. It's a meritocracy. The system went out to all the partners, was well socialised and we got real engagement.

Our compensation structure is modified lock-step; it is transparent, so we don't get resentment.

(c) *Persuasion and networks*

The art of persuasion is a combination of the skills of the firm's leaders and the use of formal and informal networks. Both are central to the consensus-building exercise. You need to have a champion for the cause who can persuade, but also listen to criticisms and challenges and so improve the proposal.

You also need to find out through different channels where there may be unhappiness or unwillingness. It involves testing the water through the networks to shape the decision and using the feedback to help decide whether to proceed, amend or pull back. As firms grow and move away from their founding generation of partners, these networks become more important for their capacity both to persuade partners to engage and to help build the required trust that leaders are acting in partners' best interests as a whole.

Telling a lawyer what to do will ensure disaster. It's about convincing people it was their idea. Lawyers are taught to question; they are cynical by nature; they prefer to say no and they don't like change. It is a blend of seeking input and selling the idea depending on solidity of views of our strategy group.

Building consensus is done through informal networking with other partners, sometimes around practice heads if they are blocking things.

There is a lot of shuttle diplomacy; we want a sense of what the outcome will be. We don't encourage vote taking. In fact, we have never needed to take a vote. If one or two people feel very strongly about something, then it is probably time to back off.

It's good to use networks to know where your problems are and if you think

certain partners will be troubled, deal with them first.

We have a chairman. It is not a decision-making role, it is about creating a consensus around a decision. It is fairly drawn out and involves ‘hallway chatter’ to identify who are our opinion leaders. It is slow and labour-intensive.

(d) Time

Everyone involved in leading the consensus building remarked on their own focus on effectiveness over efficiency. Several partners talked about iterations and the time involved. They recognised that their process takes time and tends to work best where most of the partners are in one place or at least one time zone.

This taking of time to build consensus has a built-in additional benefit for the quality of decision making. We return to this later when we look at the role cognitive biases can play in some major law firm decisions.

Our compensation structure is subjective. It takes 10 months because we interview all the partners.

It has taken five years to build consensus on letting people go.

New partners are a major decision. All partners are involved; there is a full debate. There are no committees. Two weeks later, we make a final decision. We build in reflection time. It doesn’t change very much, but it builds in a check and balance on the first wave of decision making and everyone feels they could have spoken if they wished.

Lateral candidates meet with every one of the partners. This may be more typical in the United States.

Most of us started at the same place, this allows the culture to dominate.

Opening the office was three years in the making – building consensus, ensuring all potential pockets of resistance were addressed. It wasn’t the firm, but rather certain individual partners saying the firm needs to do this, so it was a bottom-up initiative. We persuaded the chairman to recognise it and then finally put it to a vote and all agreed.

The board is responsible for strategic direction. We go through an exhaustive approach. In 2000, we engaged a management consultancy that conducted a one-on-one consultation with each partner. We review our strategy every three years and now have project groups following up on different aspects. We are looking at a range of issues: how you get more profitable, how you build excellence into your reputation, the globalisation of the legal market. Normally we take six months for this process.

(e) Fit with core values, culture and brand

Many firms have put considerable energy into thinking about their values and culture through a highly consultative process. This exercise generates, among other things, a touchstone for decision making. It is like a road map or set of signposts that have already been widely canvassed so that decisions can be referenced against them.

Our firm has strong core values: teamwork, innovation, manners and excellence. I can share a couple of examples of good decisions we made using those values:

- We decided to proceed with a litigation-only brand and pick specific areas of litigation. It was very brave. We passed on other work, but it has been a good decision. We were clear from our values about focus and excellence on our product and service.
- We recently considered a lateral hiring that would have been very profitable, but the candidate did not fit with some of our values on teamwork. It was not a difficult decision because it was about culture and fit. It is helpful to have signposts that people follow. We have already had the core values discussion so we wouldn't expect anyone to disagree with the decision.

It is about core values and focusing on the right people, product and profitability. So many law firms are struggling because they are not offering the right product.

Decision making is a reflection of the firm's culture. There is a fair amount of legitimacy because of our size; we have a tremendous amount of buy-in. Reflection of the culture is shorthand. For example, we have a very open culture: we have full transparency on pay, the work people have done, hours, practice group fees, etc. In many firms this is not so and only the managing partner knows this data and makes top-down decisions with it. That reflects and creates a very different culture.

Fifty percent of our remuneration decisions are based on performance and weight is given to the firm's values: generosity of spirit, collaboration and passion. It's about brand value, introductions to the firm, research, writing – not just fees.

Our recent overseas office is an example of a good decision because it fits with our brand, our know-how; we have significant work flow and we are harnessing a region with a growth economy.

(f) Practicality and implementation

From the beginning of the consensus-building process, it is important to address implementation, to think through the practical steps and impact on the ground. Several partners mentioned the advantages of breaking down decisions into smaller components to make them less threatening and more achievable.

It works well when implementation challenges are addressed in the decision making.

Everyone is engaged and decisions are firmly grounded in the tools we have actually got.

Make it bite-size and get a good chair for the discussion. When we develop a range of options, they always include something ready to implement.

Even on one of our weaker decisions, we had thought through implementation. Partners here are keen to see things happen. Get stuff in bite-sized chunks. Then it is not too frightening, bite-sized is good. Implementation is then about effective delegation; you need a good team.

You need to create excitement and consensus on implementation too, so it feels like a good decision for all.

3.3 The long view

As well as taking time to think things through carefully, partners are very aware of the long-term impact of their decisions. Unlike companies which are pressured to deliver short-term results by the markets, law firms can take a longer view. The leaders I spoke with talked about the fiduciary role they have to act in the best interests of the firm over the long term and for the next generation of their lawyers.

Our policy is teamwork, consensus building and long-term focus.

For big decisions, it is important to take a moment out to think 12 months down the line and think of all the things that could go wrong and what they might be and why.

Recently we made a major decision to move our pension scheme from defined benefit to defined contribution. This required 75% approval. There were many different views on the board. Some of the board members were personally affected by it. In the end they approached it as fiduciaries with the best long-term interests of the firm in mind.

Our appointments committee was originally comprised of the firm's founders and then it self-perpetuates. It appoints the leadership in the firm's best long-term interests. They select the person they think is willing and perceived to be ready, and then they build consensus again, always looking at the long-term stability of the firm.

3.4 Process

As well as developing consensus, the leaders all considered that it was important to have a sound process. Whereas their governance processes varied enormously, they all sought good data with unbiased information and well-thought-out, developed research.

Our trainee appointments to solicitors every year are a big decision. They are the future of the firm. We worked out that there were three individual things they were going to be scored on through the process. We were very careful to be faithful to the process and to make it less about intuition, which is what most recruitment seems to rely on. We paused, reflected and recorded the score before we moved on to the next bit of the process.

3.5 Checks and balances

The consensus-building process has its own checks and balances system within it. Partners emphasised the benefits of these and of the different roles played to test and challenge decisions. Some included boards. They all saw space and time as essential when making important decisions.

Decisions are well made when they are made by a very small number of people and then well challenged.

We use, as an external devil's advocate, a senior partner at a major firm of management consultants. We are engaging him for our succession planning in the firm. It will be an 18-month process; there will be lots of engagement with partners and associates. It is quite exciting – it gives us the capacity to think strategically and be challenged.

The board acts as a check and balance, just by being part of the process. Things had to have been well formulated, discussed and honed before they get to the board. If something comes to the Board you pretty much know it is going to be approved. Part of the pre-meeting activity is consensus building. We would never put something to the vote unless we expect it to pass.

Our managing partner will suddenly say at the eleventh hour, “ I don't think we should do it” to push back and test.

We have an annual review where the leadership team is challenged by all partners.

Debate and challenge come from an executive committee of partners. Each member of this committee represents a diverse constituency group of partners whose views they canvass on a regular basis. The quality of the wider engagement and discussion is very dependent on the chairmanship of those constituency group discussions. The executive committee then has cabinet responsibility on its decisions to avoid the mayhem that can be caused by leaks.

4. What hinders good decision making?

Having explored the positive side, I asked the SPs what they found to be the major impediments to good decision making and what tends to derail the process in practice. Some of the problems arose out of the absence of the positive conditions or were side effects of them.

4.1 Lack of engagement and communication

When consensus building has not worked, things do not tend to go well. Partners want to have their say, but often there is also a limited amount of enthusiasm for lengthy consultation processes. So for decision makers, there is a skill to be developed in finding the right balance between engaging people without them losing interest through a consensus-building exercise that is too lengthy. A further level of flexibility is required in times of crisis, when the emphasis shifts to directional leadership, more rapid decision making and clear and timely communication.

Closed minds, lack of engagement – some people think it is management's job and don't engage. Some lateral hires from bigger firms are just not expecting to be told about decisions, never mind involved in them. In their previous firms new partners just arrived unannounced in their groups.

The biggest challenge in practice is process paralysis. The firm is full of individuals who are strong willed and hate process.

Apathy derails the process. As we get bigger, we have to have process and people get bored with it.

Getting consultation wrong or the communication wrong leads to trouble.

Also, partners want a strong leader, particularly in a crisis; they want clear, straight decisions. If you leave a vacuum, it will create problems – communicate straight away.

4.2 Time

This cuts both ways. It has been suggested that law firm leaders may be more cautious by nature and tend to take more time over their decisions than most leaders. This can help to avoid some of the problems of thinking biases that corporate boards tend to encounter. However, it can also bring a slowness verging at times on paralysis.

The flipside of the good consensus building is that challenge takes time. We can be quick, but decisions do need to permeate through.

Probably over-thinking and over-analysing is the biggest hindrance. We have so much information we become paralysed. Our current managing partner would rather not make a decision than prejudice the consensus. On one major decision we brought in an outside facilitator because we got stuck. Doing nothing is our biggest Achilles heel.

Our worst decisions are because we have either taken too long or acted too quickly. Lateral hires often bring a lot of time pressure. If it has taken too long, the answer should probably be “no”.

4.3 Lack of cultural fit and lateral hires

The hiring of lateral partners or senior associates was the most quoted problem in decision making. Several adverse factors seem to be at play, including an absence of cultural fit, devoting inadequate time to the process, thinking biases and a lack of good information flow.

Our decision to open in another jurisdiction was based around acquiring a new team. We wanted our own team there for our European investors. The problems all arose around the people. They just did not fit.

What we are not so good at is lateral hires sometimes. There is always a bit of bias at work. The biggest risk is cultural fit. It is compounded by confidentiality. Partners don't make the time; they just want it to work too quickly and not think it through.

A challenge is lateral hiring, misreading personality issues – we haven't learnt and it is very difficult to call that. It seems odd when you are faced with a CV and references and evidence of their work. But there is a lot of group-think and these decisions are very emotionally driven. It is easy to misread people. We couldn't see that one lateral hire didn't have the force of personality to build a practice using the goodwill in our name.

We have never made a lateral partner hiring.

4.4 Implementation and responsibility

For several SPs the biggest challenge comes in implementing the decision.

We need to introduce accountability to help implementation. For example, I would like to make part of a partner's remuneration dependent on making a person they nominate for partnership successful as a partner.

Who is personally accountable for our new venture? No one, really. We need to have a timeline and be clear about how to continue. For example, we should set a timeframe for our new project, say by giving it three years. At present we are open-ended. We get mission creep. We need to benchmark and decide what success looks like; it is about profitability and the long-term position of the brand. When we were smaller we did not have these issues.

We liked that idea, process came along and the implementation was zero.

4.5 Making decisions for the wrong reasons

If the decision does not fit with the strategy, it often comes unstuck in the long term.

For example, when the decisions have personality-driven issues and are made to meet the demands of or give opportunities to one individual rather than to benefit the firm as a whole. If you become too pragmatic or opportunistic, it is then very difficult to stop something going forward on strategic grounds.

Making decisions that aren't aligned with our brand.

4.6 Cognitive biases in law firm decision making

Another reason why decision making can be less effective is because of the adverse impact of cognitive biases. What are these biases and what role are they playing in the major decisions that law firms make?

The brain isn't the rational calculating machine we sometimes imagine. Over the millennia of its evolution it has developed shortcuts, simplifications, biases and basic bad habits ... the brain can be a deceptive guide for rational decision making.¹

As an increasing body of research shows, cognitive biases come into play to deal with complex situations:

An important starting point for theories of human judgement and decision making has been the suggestion that people have limited capacity for mental work, and in order to deal with a complex and fast-changing world they have developed a number of simple modes of reasoning. These "heuristic" modes of thinking can lead to error and bias.²

People are imperfect information processors and "Even the brightest people make judgemental errors on a regular basis".³

Academic researchers on decision making recommend "rational" processes that involve specific steps. For example:

1 "Hidden Flaws in Strategy", *Charles Roxborough McKinsey Quarterly* 2003 no 2.

2 Heuristics, Biases and Strategic Decision-Making, Maule, A John and Hogkinson, Gerard P2002, *The Psychologist*.

3 *Judgment in Managerial Decision Making*, M Bazerman 2006 John Wiley & Sons.

- define the problem;
- identify the criteria;
- weight the criteria;
- generate alternatives;
- rate each alternative against each criterion; and
- compute the optimal decision.

The rational decision-making model looks at a logical process that should be made to reach optimal decision making. However, people have limits to their rationality or “bounded-rationality”⁴, and we can probably understand decision making better by looking at how it is done in practice rather than at how it should be done. In reality, people are limited in various ways by time, cost, availability of information, usable memory, intelligence and perceptions. These limitations prevent the full use of the rational model and lead to a reliance on intuitive biases. People often “satisfice”, meaning that they forgo the best solution and choose the first alternative that meets their minimum requirements.

Experience shows that people in practice do not always reason in a logical manner. We live in a fast-moving and complex world, with increasing pressures to make important decisions very quickly. In order to cope with this environment people have developed different ways of thinking. Researchers have drawn a distinction between what they have called “System 1 and System 2 thinking”⁵. System 1 thinking is our intuitive, fast, unconscious, automatic and emotional system. System 2 thinking is more logical and conscious, is slower and requires effort. We use System 1 the most to cope with the fast pace of life and usually it is adequate. However, people tend to place too much reliance on System 1 thinking and judgemental errors are much more likely to occur when it is used. The need for more System 2 thinking is much greater in major and complex decisions such as strategic decisions. These thinking systems and cognitive biases recently received widespread attention with the recent work of Daniel Kahneman (Nobel laureate in economics), *Thinking, Fast and Slow*.⁶

So what are these common bad habits or cognitive biases? How might they apply to law firm decisions? It is important to recognise and understand them to achieve wiser decision making. I explored with the SPs whether these biases were at play in their decisions and how they affect rational decision making in law firms. I asked them to consider whether they had come across six of the most common biases, how often and which were the most important for their firm. Once more, there were many differences in their experiences, but there were some common themes. The most prevalent biases at play were towards the status quo and a tendency to seek confirming evidence.

(a) Over-confidence or optimism

Human beings generally have a strong tendency to be over-optimistic or confident.

4 *Models of Man*, Simon H A 1957 Wiley.

5 “Individual Differences in Reasoning”, Stanovich and West 2000 *Behavioural and Brain Sciences* 23.

6 *Thinking, Fast and Slow*, Daniel Kahneman 2011, Allen Lane.

Our brains are programmed this way. Optimism and confidence are, of course, positives and they are prerequisites for building any business or profession. However, over-optimism and over-confidence can be disadvantages when making significant decisions. They can lead to unrealistic precision, for example, with too narrow a range of possible outcomes, over-optimistic forecasts and underestimation of future challenges.

For the lawyers I met, the experience is rather different than for many corporate decision makers. We have seen many recent corporate disasters following the over-confidence of the latter. Lawyers are known for their scepticism and in general their optimism is more muted. However, in certain circumstances over-optimism seems to kick in and distort decision making, particularly in lateral hiring.

No, definitely not over-optimism; not us.

We are tempered by a heavy dose of realism. We have plenty of 'Eeyores' around here. Decisions go through endless filters. However optimistic people are, there is a heavy dose of realism, so we have muted optimism.

We are never over-confident; we are risk averse.

On the other hand:

Lateral hiring decisions, we have seen lots of biases: over-optimism, confirming evidence and sunk costs. I always say to a lateral, be careful what you wish for and with your projections, and have a plan B.

Our new overseas office is a good example of over-optimism on the break-even period.

Yes, we hired a particular partner to build a practice even though we had no basis for it.

Absolutely, it was pretty prevalent. If we had stepped back, we might not have done it, but we were feeling it was all going to be marvellous!

Decisions are not so good when we are carried away with enthusiasm for the project.

(b) *Confirming evidence*

This involves seeking out information that supports our instincts or point of view, while avoiding or misinterpreting information that contradicts it. It affects where we go to collect evidence and how we interpret the evidence we do receive, leading us to give too much weight to supporting information and too little to conflicting information. Some commentators consider it to be very detrimental: "Probably the biggest single problem for human decision making is that when people have ingrained beliefs, they will put a much higher bar for evidence for things they don't believe than for things they do believe. Confirmation-seeking bias, I think, is what social psychologists call it. Organizations can have amazingly good evidence, but it has no effect on the decisions they make if it conflicts with their ideology."⁷

Yes. On our overseas office, we didn't research the cultural aspects; we applied European-style thinking. There was some confirming evidence and it's too early

7 Sutton Robert, 2006 *Stanford Magazine*.

yet, but I can envisage sunk costs and escalation of commitment too.
 Confirming evidence, absolutely.
 Yes, generally when we take references proposed by an individual.
 Yes, definitely.
 Confirming evidence, yes sometimes and especially when it may confirm the status quo.

(c) ***Sunk costs and escalation of commitments***

When you find yourself in a hole, the best thing you can do is stop digging.
 Warren Buffet.

This bias is commonly known as ‘throwing good money after bad’. It shows up when people are tempted to make choices that justify or protect past choices, even when those past choices may no longer be good ones, rather than cutting their losses. When large projects overrun, firms keep investing in them even though the original economics of the decision are no longer valid. Commitment to a project or strategy is often continued or even escalated in spite of strong negative feedback or indications of failure. IT projects are a classic example.

Even though people know that rationally sunk costs are not relevant to a present decision, they still prey on their minds and can lead to poor decisions. People still feel responsible for the previous decision. It requires a conscious effort to set aside any sunk costs for present decisions that have a past. People are unwilling, whether consciously or not, to admit past mistakes. This natural tendency is often exacerbated in business because admitting a previous bad decision is frequently a public matter and can lead to criticism. It is very difficult to make a public admission of poor judgement. It may have costs in terms of money, reputation or status. Lawyers are notoriously reluctant to admit they were wrong.

Yes, lawyers never want to admit they are wrong.
 Yes.
 Yes, but it depends. If things are going wrong, we will try like hell to get them right. Our core asset is the client relationship – we must defend it at all costs and it’s very rare that say we are not going to do so.
 Yes, although we are getting better at cutting our losses. When revenues are increasing, it’s easier to fill the black holes, but when revenues are falling or flat, we need to pay more attention and be more decisive.
 Not really – if we make a mistake, we put our hands up and deal with it quickly. We closed a foreign office and got the key client matters to a competent firm and extracted maximum value; there will be “nil cost” to the firm.

(d) ***Status quo***

This bias can also influence the decisions people make. It draws people towards alternatives that perpetuate the status quo. It operates subconsciously to try to protect people’s egos from damage. Taking action involves responsibility and

somehow people think that inaction generally involves less responsibility and carries less risk of criticism.

One of the experiments done to show this bias at work asked students to handle the investment of a pretend inheritance. Different groups received their inheritances in widely differing forms of investments with very different risk profiles. However, they mostly left the majority of the money where it was. Their decisions were driven by the status quo of the initial allocations rather than their risk preferences.

Yes, very much so. We have a strong need for consensus, so there is an inbuilt bias towards what we know and what is established.

Yes, very much so.

Yes – if any bias applies to us, then it is this status quo. The prevailing attitude is if it is all working fine why change it?

Yes, yes.

Yes – in 2002 we bought a firm with a practice that does not fit with our brand; we still have it.

I see this a lot elsewhere. You don't see it here. Part of our core value is innovation. It really annoys me when I ask someone why they have done something in a certain way and they say, "We have always done it like that." I challenge them to think of the best way instead.

(e) **Framing**

The framing of a decision can bias the outcome. The first step in making any decision is to frame the question or issue to be addressed. The way an issue is framed can alter the whole way that choices are evaluated and a decision is made. It is arguably the most important and dangerous element of the process and often the most hidden. People tend to adopt the frame they have been given, rather than looking at the issue afresh from their own point of view.

It reflects the paramount importance of who is framing and guiding the decision-making process; of how proposals are made and how information is presented. It is often closely interrelated to other cognitive biases as it can set up a status quo trap or can introduce anchoring (see sub-sections (d) and (f)). It may also lead people to confirming evidence (discussed in sub-section (b)) and help them fall into sunk cost traps (see sub-section (c)).

Interestingly, only one of the SPs thought this was particularly important. It is unclear whether this is because the bias is so hidden or because there is such a high degree of challenge in law firm decision making that negates it.

Yes – anchoring around first impressions, they count. We give undue weight to first impressions, then fight against them. Unconsciously a lot of weight – instincts, corridor test, appearances, manner – but hopefully we are wise enough to sort this out.

Yes – anchoring, particularly around the founders' views. When the founders endorse a view, we see big-time anchoring. The more you get away from the founding generation, the more trust you will need to build as this anchoring bias

disappears. We will need greater persuasion that we are acting in their best interests.

Yes, we see anchoring. There is a sub-problem of idleness that goes with it. People trust you as founder. If you say something, they want to agree with you. They assume; they don't do the thinking for themselves – rather they let you do the thinking for them. I try to combat this with more open-ended questions to get them thinking.

Yes, definitely framing is very relevant. I see it in an acute way in litigation, you see it in the corridor discussions of Royal Courts of Justice. I am very aware of it. It really affects outcomes in decision making.

(f) **Anchoring**

This bias leads people subconsciously to give disproportionate weight to the first information they received or initial views that are expressed.

It is well illustrated by another experiment.⁸ Many groups of people were asked the following two questions:

- Is the population of Turkey greater than 35 million?
- What is your best estimate of Turkey's population?

They gave half the people the figure of 35 million in the first question and in the other half they used 100 million. "Without fail, the answers to the second question increase by many millions when the larger figure is used in the first question."

It is a particularly pernicious psychological flaw. In experiments, people show this bias even when they see the initial number given by the spin of a roulette wheel.

There are all types of anchors: initial impressions, estimates, comments from colleagues, stereotypes. Past performance, events or trends are some of the most common anchors in business. People often take an anchor and adjust from it without questioning the starting point. A common example is sales forecasts for future years based on sales in the previous year. Another common area is fund managers using past performance to advertise their funds. While the information is relevant, it often tends to give too much weight to past events at the expense of other relevant factors, particularly in fast-changing environments. Another common area for anchors is in negotiation when a seller names a high sales price so the buyer becomes anchored around that figure.

As we know from the research, high intelligence does not make you immune to cognitive biases. It seems from the interviews that a fair number are recognised as being at play in law firm decisions. On the basis that it is much easier to recognise other people's mistakes and biases than our own, there is a reasonable chance that more biases are operative than just those uncovered by the SPs in our conversations.

The prevalence of the status quo bias is supported by an interesting, extensive piece of research⁹ done in the United States on the psychological make-up of the legal profession. The results are summarised in the table overleaf.

8 "The Hidden Traps in Decision-Making", Hammond, John S Keeney, Ralph L and Raiffa Howard 1998 *Harvard Business Review* Sept.

9 Extract from "Growth is Dead, Part 7 Psychology" 2012m Dr Larry Richards, Adam Smith, Esq.

Trait	Population	Lawyers
Scepticism**	50% (the norm)	93%
Autonomy**	50%	89%
Abstract reasoning**	50%	81%
Urgency*	50%	71%
Resilience**	50%	30%
Sociability**	50%	7% (12% including rainmakers)

The research shows that lawyers tend to be highly sceptical, independent and not very resilient. They do not cope well with failure or setback and do not like to try to move things forward because they might fail. They want to point out the problems in any proposition. This means that there is something inbuilt about the legal profession which makes it slow to adapt and keen to hang on to the status quo in the belief that that will create more security.

The best way to tackle biases is to build awareness of them. One of the SPs had specifically done so by reading some of the materials quoted and discussing them with his partners:

We try to be aware of biases and to counter them. Some of our best decision making comes from looking at how to deal with those decisions that were incorrect. We have a series of meetings and unpick them.

Another way to tackle biases is to build in plenty of time and process to activate System 2 thinking. Lawyers naturally seem to do this in the consensus-building process and this may be one of the components contributing to the success of the law firm model:

Biases are less of a problem if the process is one that evolves over time. I am not sure they are so relevant at the top of law firms as they are in corporate boardrooms. This is not a group of people getting in a room; it is not an analysis of dynamics of a group in a room.

Debate, challenge and a culture of openness are other ways of tackling biases. Although it takes time and energy, the more that these are incorporated into the decision-making process, the less likely it will be that the rationality of a decision is distorted. Introducing a devil's advocate role, as one firm described, is an excellent way to bring in external challenge and legitimise constructive dissent. External board members can play a similar role.

5. Individual leaders' insights on decision-making

The chairmanship of discussions and the stewardship of the decision-making process are crucial to effective decision making. The role here for law firm leaders involves a considerable and nuanced skill set.

After discussing all of the important themes above, I asked each law firm leaders to share one insight into effective decision making. Below is a collection of their responses.

5.1 Find the right balance

I find myself juggling a lot between:

- being prepared to be bold but not being unrealistic;
- being pretty directional and building consensus;
- listening but not too much; and
- being strategic but a bit pragmatic.

The hardest thing is to decide which initiative to follow through. Every decision has huge inertia. Often nothing happens unless you make it happen, so how hard do you push and when? You have to be thick-skinned. People often want to take a shot at you, but also want you to keep doing it.

5.2 Look at the consequences

Always look at the consequences and think them through.

You are often deciding on the least bad outcome, rather than what is a fantastic outcome.

5.3 Be responsive

Responsiveness is so important; you need a quick reaction time if anything is raised. Don't let it fester. You have to know where your problems are and deal with them first. If you think certain partners will be troubled, deal with them first.

5.4 Be flexible and communicative

We have different processes for different decisions: strategic, operational, crisis. Between the four central people, we have daily phone calls. We have a strong corporate governance system that is well known to the firm. It gives confidence and is helpful when things go wrong in the market.

We have a lot of communication between the chairman and CEO. Since the economic crisis and negative growth, we have had a much more informal style of leadership. Lots of informal catch-ups, no structure – it's changing to a constant conversation, getting more attachment. With 120 partners on one continent, we can do it; it's a point of differentiation and strength.

Different decision making is needed for different types of decision and depending where you are in the cycle.

You need flexibility in approach. If you have a consensus-driven group, decision-making processes have to reflect the culture. To get legitimacy, you need to get consensus.

5.5 Find the right pace

Too many organisations are slowed down by slow decision making. Ninety percent of decisions are not bet-the-farm decisions, so get on and make them and let people crack on. People like cracking on and this is how we have cracked on as a firm.

Make time and space for the really important decisions. I picked up from Kahneman to rely less on intuition.

5.6 Display good leadership and open-mindedness

Good leadership, by which I mean inspiring people to make bold decisions and to get people on-side. We need to give people a line of sight from their contribution to overall strategy.

Lots of people come with a pre-existing point of view. We need to be able to say, "I am wrong" and lawyers don't like that. We need an element of modesty.

5.7 Think about your followers

Realise the importance of recognising who is going to follow you and how they think.

Strong leadership needs to have a sense of urgency and show the results of failure to do something in order to beat the status quo.

6. In conclusion

The greatest improvements you can make to the quality of decision making in your law firm often come not from formal governance structures, but from leaders recognising and taking opportunities to improve their decision-making behaviour.

The shared experiences of the SPs highlight areas where they have developed their own leadership and their firms' styles of decision making. They include the softer skills required to create consensus, reflect their culture and successfully implement major decisions. It is a flexible art form.

We know that even big hitters are not immune to cognitive biases. Being alert to them and countering them can avert distortions of rational decision making.

Whereas some advocate that the fewer big decisions, the better, all are clear that if you do take a big decision, take your time if you can – but do not take too long!

This chapter 'Effective decision making in law firms' by Sarah Martin is from the title Good Governance in Law Firms: A Strategic Approach to Executive Decision Making and Management Structures, published by Globe Law and Business.