

Take the law into your own hands

CIOs should ensure they are legally astute to reduce their dependency on specialists, writes *Janine Milne*

It used to be so simple. Individual IT chiefs had free rein to decide what IT kit to buy and what level of security they needed to support the business.

Today, IT is hounded by business legislation from all sides, with modern regulations – such as Sarbanes-Oxley, MiFID and the Data Protection Act – all carrying a heavy technology element. Add the legal ramifications of data theft, cyber-squatting and security breaches, all of which can leave company reputations in tatters, and the chief information officer (CIO) suddenly seems to be shouldering a hefty amount of legal and business risk.

The managing director may be ultimately responsible for any security or compliance breach, but the CIO's head is likely to be served up on the sacrificial chopping platter as a garnish. Roger Bickerstass, joint head of IT sector group at law firm Bird & Bird, says he does not think all IT directors and CIOs are fully aware that they are working in an increasingly regulated environment. 'The freedoms of setting up PCs on desk and licensing in a relatively unconcerned manner are long gone,' he says.

So today's IT director needs to add legal expertise to their arsenal of first-class IT, people management and business skills.

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Simon Briskman, technology law partner, Field Fisher Waterhouse

And many IT directors are beginning to feel the changes, says Alan Herd, IT manager at law firm Anderson Strathern. 'In the past couple of years, more and more of my role has moved away from technology towards legal issues and compliance.'

Added responsibility

While large firms usually have internal legal and risk teams, in small and medium-size firms far more responsibility falls on the IT director's head. 'In my last role in financial services, we had a large audit and risk team and there were people supporting the framework. We have 260 staff at Anderson Strathern, so I have to do roles that other people did before,' says Herd.

Obviously, working in a law firm means Herd has an enviable amount of expert help on hand, but for other IT chiefs in medium-sized companies, such as Mark Beattie at London Waste – see case study, 20 – that internal help simply isn't there.

Even large organisations with their own legal teams do not always have IT law experts in-house.

While Enron and 9/11 have played their part in raising compliance and legal issues, this is also simply a sign that IT is growing up. 'CIOs are now right in the middle of business and that is where they wanted to be,' says Simon Briskman, technology law partner at legal firm Field Fisher Waterhouse. Just as they had to learn business lingo, they must now become legally astute.

Every board member needs a broad understanding of the law, human resources (HR) issues and finances that govern their departments. 'It is symptomatic of the industry growing up,' says Bickerstass. 'The financial director has always needed to know a lot of law and now the IT director needs it as part of his skillset.'

But while HR and finance directors will cover legal issues as part of their professional training, there is not an IT equivalent. Recognising the growing legal dimension to the CIO role, the BCS is seeking to fill the gap, introducing an IT Law qualification to give IT professionals a broader understanding of the legal issues affecting them.

For one thing, having basic legal knowledge can help IT chiefs understand when they need outside legal help and will help them get the most out of legal discussions. Briskman says CIOs need to know enough to be able to make an assessment and when to ask for advice. 'If you talk to a specialist, it would be a real benefit if you understand some of the issues,' he says.

But having a passing legal knowledge can also be a good career move. IT, in the

Best practice

How to manage the relationship between the IT department and the legal team.

- **Get senior management** to buy in to the importance of communication or joint responsibility for compliance across IT, legal and other departments, says Ian Stevens, lead partner in the CMS Cameron McKenna Technology, Media and Telecoms sector group.
- **Be open** and realistic about what is achievable with the IT infrastructure.
- **Organise teach-ins** – get the IT team to explain how new technology works and get the legal team to explain the implications of new regulations.
- **Jointly maintain a diary** of new regulatory requirements / IT changes to ensure new measures are implemented on time.
- **Liaise regularly** with finance to ensure the risk and financial control management procedures implemented are: being used, workable and meet regulatory requirements.
- **Just as you have a disaster recovery plan**, the IT and legal team should formulate a litigation response plan, in case the company faces prosecution.



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Mark Beattie, head of IT, LondonWaste

Case study:

Mark Beattie, head of IT at LondonWaste

A little legal knowledge goes a long way

As one of the capital's largest waste management companies, LondonWaste is used to complying with government and environmental legislation.

Over the past few years, head of IT Mark Beattie has also begun to feel pressure to understand how compliance and legal issues affect the IT department, particularly in the area of data protection and contract law.

'We are very regulated and make sure our software is properly licensed and that we operate policies, but it was becoming clear that for buying software we were not as up to speed on the legal niceties as we should be,' he says.

About four years ago, Beattie attended a data protection course, and last year extended his knowledge further by completing the BCS's new Foundation Certificate in IT Law, provided by law firm Pinsent Masons.

The three-day course covered everything IT staff need to know, from employment law and copyright to digital evidence and accessibility.

Beattie found the company was already doing many of the right things, but in other areas it provided him with some practical knowledge. At that time, the company was updating its accountancy system for the first time in 15 years. Although LondonWaste has an internal purchase expert, the individual was not experienced at negotiating the service level agreements that characterise software deals.

Learning about contractual best practice meant Beattie felt more confident negotiating contracts and warding against the need for costly

contractual amendments later on.

Rosemary Jay, who heads up law and training at Pinsent Masons, says understanding contract law is a key skill for IT heads. 'What you do with your standards terms and commercial arrangements is important; it is not just the big outsourcing projects that are important, but the day-to-day stuff,' she says.

Beattie does not claim to be a legal specialist after the course, but he does feel that he now understands the broader issues. 'You are not a legal expert, but it gives you the ability to speak in a legal environment with some degree of confidence,' he says.

And the new-found confidence is saving the company money. 'We have access to a lawyer, but then there's the bill,' says Beattie. Armed with his legal knowledge, Beattie can either tackle more contract issues himself or consult Pinsent Masons to check he is taking the right approach, rather than rely on lawyers to do everything.

same way as the finance and legal departments, are support services with feelers into all business units, says Briskman.

'I'm not sure the marketing department or HR touch on other areas of the business,' he says. 'CIOs, lawyers and accountants reach into lots of areas of the business. So they can really appreciate different areas and place projects on a business agenda.'

Arguably, IT gets closer than any other of these support functions, which means the CIO can carve out a vital role as a link that can broker communications between different business groups.

'The CIO is a facilitator,' says Briskman. 'I understand the law better than him and he understands the range of solutions and constraints, so he needs to be in a position to learn what the legal position should be, but also needs to get under the skin of business people to understand the real needs.'

Being that person who proactively talks

to the business, find out their biggest areas of risk and keep an open dialogue with the legal department presents a huge opportunity for IT to raise its profile.

Cover your back

Herd, at Anderson Strathern, says contract law is most likely to make the CIO seek specialist advice. He is also concerned about document and email management, which he has tackled by investing in Interwoven WorkSite software that forces people to save emails, ensuring version control.

Taking control of data in terms of its location, quality, version management and accessibility is perhaps the key part of IT's legal role. At the first whiff of litigation, firms must be able to lay their hands on documents and information to back their case.

Sue Clarke, senior research analyst at Butler Group, says companies need a dedicated person to take responsibility and

know where the data is. 'That could be a CIO or a records manager,' she says.

Taking this further, Ovum senior analyst Mike Davis believes that by tackling areas such as data management, security and complying with legislation, CIOs are largely covering the legal issues they need to know as an IT professional. 'IT staff should not have to change their job because they should be doing most of it anyway,' he says.

But one thing is certain. Litigation is on the rise and ignorance is no defence, says Tracey Stretton, legal consultant at risk agency Kroll Ontrack. 'There is a critical role for IT to play because they understand data and how company systems work,' she says.

What is needed, Stretton says, is joined-up thinking between IT and legal departments. Rather than wait until they have to seek out legal advice, proactive IT heads will build their knowledge and these vital contacts themselves. **CB**