Brainless no-brainers – avoiding the perils of hasty decisions

By Nick Jarrett-Kerr

I once had a colleague with a clean desk policy. The trouble was that towards the end of the day, my colleague would rush to do everything she could to get the files and papers off her desk, with the result that costly mistakes were frequently made.

When lawyers get involved in management projects, they often feel the need to display leadership by brave actions, bold conclusions and speedy decision-making. Instinct, intuition and insights are all vital parts of the decision-making process but can also be a form of 'fool's' gold driving managers to reach a speedy conclusion without understanding the need for careful research and fact-finding.

Without picking on particular firms, I have seen three different types of poor decision-making in law firms.

First, ill-considered and over-hasty planning has led many firms to undertake – and later to regret – projects which appear cost effective in the short term but have come back to haunt the firm later. Many firms now regret expensive frolics such as new offices in their own town, in their capital city and in overseas jurisdictions. Other examples include poorly planned mergers with other firms, and the acquisition of laterally hired partners which seem doomed to failure from the get-go.

The second area of concern is the lurch which takes place in some firms towards tough, aggressive and controlling management styles. Firms with a culture and history of collegiality and consensus often feel the need to become more efficient and commercial in their decision processes and, put bluntly, simply go too far. When I hear top management teams say words like "we have to be seen to be tough", I start to worry that the desire to be bold and decisive has overtaken proper concern for fairness and deliberation. This is often displayed with issues like partner underperformance, where the symptoms can be ignored for years before the management team suddenly loses patience and seeks suddenly to expel the underperforming partner with little warning and without giving much of a last chance. The facts may adequately support expulsion but invariably not at the expense of fairness and equity.

The third and converse problem area lies at the other extreme of the management spectrum. Too many law firms seem to get bogged down both by the need for endless consensus and circular discussion, and by the firm's desire for perfection. This results in management projects getting delayed by nit-picking, circular discussions and the micro-management of detail. Wrong or muddled decision-making then takes place, based on a failure to differentiate the wood from the trees.

Here are ten decision-making rules which firms would do well to observe. Many firms do some of these; few in my experience always manage to do all of them.

Rule 1: Take time to get your decision-making structures right, making sure that everyone in the firm understands and agrees the decision making authority granted to the top management team (and others). Make sure that the firm retains an appropriate balance between power and responsibility and between authority and accountability. This is a tricky area which is often assisted by external objective advice.

Rule 2: Take great care to organise your agenda and priorities strategically. Too many top management teams put the urgent and easy decisions at the start of their agenda or task list, in the hope that this will maximize the time available for the tricky decisions. Too often, the opposite is the result in that unnecessary time is spent up front on a list of trivial or unimportant issues, leaving too little time at the end of the day for the real problems. This can often result in over-hasty conclusions being reached.

Rule 3: Take into account the law of unintended consequences. Ask yourself the question "if we make this decision, what (or whom) else might be affected in the long run?" Consider the impact any change may have on people in the firm whose support you will need. Additionally, always consider the possible effect which any decision may have on the firm's culture and values, as well as on internal morale.

Rule 4: Try to assess the value or impact which any decision may have on the firm in financial terms – cash flow or funding implications, money saved/expended, fixed cost or overhead which could be increased/decreased, revenue which is expected to be generated, or profit which is expected to be engendered. Avoid however observing this rule at the expense of the rest.

Rule 5: Understand that the most important decisions are often made by default or emotion. Remember particularly that very few decisions can be categorized as no-brainers and most need some degree of analysis, however basic. Equally, decisions cannot be merely data-driven. Stand above your research data and ask yourself questions like "what is the worst that can happen if we make no decision, or get the decision wrong?" Apply a fairness test with people decisions to avoid an over-reliance on the facts.

Rule 6: Avoid political decision-making – including decisions made primarily to appease the 'hawks' in the firm at the expense of the 'doves'. Where the decision requires a partnership vote, try not to bulldoze decisions through the partnership by threatening/implying you will resign if the decision goes against you.

Rule 7: With important decisions it helps to start with the Pareto Principle; gather 80% of the data and perform 80% of the analyses in the first 20% of the time available. In many cases, this will enable a decision then to be made. In some cases, it will become clear that more research is necessary.

Rule 8: If what you have decided isn't working, don't cling on to the wreckage but change your mind earlier rather than later. Management decisions rarely achieve a 100% record of correctness, so don't beat yourself up, if something has gone wrong.

Rule 9: When something is working well, celebrate success and then double and then redouble your efforts. Ask yourself questions like "Is there any other area of the firm where a decision to do something similar might also work well?"

Rule 10: Get the firm's information flows well-organised. Although it is clear that firms should be moving from management by consensus towards a more consultative approach, lines of two-way communication are a vital ingredient to successful decision-making.