trowers & hamlins

thinking Business

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Welcome to our third UK edition of Thinking Business – where we aim to share our expertise and ideas with you to support growth and sustainability in your business.

In this edition, we are focusing on the theme of productivity and critically considering ways in which businesses across the United Kingdom might drive up productivity through innovation, creativity and adaptation. As we move towards Brexit, there is no option for organisations to stand still or rest on their laurels and stakeholders are hungry to see management driving stronger results. Responding to Brexit throws up many issues on a day-to-day level, however we have decided to focus on some of the bigger picture themes that we see our clients addressing in today's climate.

This publication looks at productivity across the board, and we have specifically chosen to share some of the things our clients are talking to us about, such as:

- Developing a people strategy;
- Getting more out of supply chain relationships through the use of revolutionary technology such as blockchain, innovation and smarter contractual arrangements;
- Making the most of social media, and thinking more carefully about the risks, opportunities and potential returns; and;
- Investing for the future, considering themes such as reshoring in the context of owner-managers investing in plant and machinery for the longer term.

We hope you'll enjoy reading this. Should you wish to discuss anything in more detail, or ask any questions, please do get in touch with your usual Trowers & Hamlins contact, or feel free to email any of us directly at thinkingbusiness@trowers.com. You can also follow us on Twitter @Trowers.

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Getting the most from your people strategy

For many businesses, people are both the greatest asset, and one of the greatest costs. If you're willing to think outside the box, shaking up your people strategy can have a dramatic impact on your bottom line.

Every business is focused on people, either internally as a resource, or externally as potential customers, clients, suppliers and recruits. Whether your organisation is entirely dependent on its employees, in the manner of a professional services firm which has nothing else to sell, or is more focused on getting a product to market with the help of staff, people need to be at the heart of your business strategy.

Companies that wish to drive up the productivity of their human resources must focus on three things, according to Tania Tandon, employment partner in the firm's London office. These are attracting the right people, retaining the right people by minimising fallout, and reducing the costs associated with dismissals.

Tandon says: "When you set out your objectives for the business over the next three to five years, your people strategy should either influence, sit alongside, or actively support it depending on the role of people within the business."

A key element of attracting talent relates to a business's core identity – its values, culture and mission statement can be a real differentiator in the marketplace. Retaining that talent then depends on the extent to which those statements correlate with reality. Trowers & Hamlins has created a tool which allows organisations to measure how the internal perceptions of their core values stack up against the stated aims of management.

Tandon says: "The bigger the difference between what the company is saying its values are and what the people are saying those values are, the more volatile the business and the higher the people costs. It is more difficult to attract the right people, and retain them, if, once they are in the business, they realise there's a big gap between the messaging and the values on the ground."

Achieving alignment with the business strategy is critical, and only then can companies deal with the key elements of recruitment, retention and termination.

One way in which businesses can 'walk the walk' in recruitment is by making sure that the people running the interviews are both on board with the business strategy, and are going to be the individuals working with the interviewee if the candidate is successful. "Often we see recruitment panels who are not going to work with the candidate if they join." says Tandon. "The person gets an impression which bears no resemblance whatsoever to the working environment they are going to end up in. Most employees resign due to line managers and management."

The challenge is to balance giving the best impression to candidates at interview, with driving longevity in the decisions which are made.

Tandon believes that many recruitment processes – volumes of paperwork, objective criteria, three rounds of interviews, psychometric testing, verbal reasoning tests, and so on – should be scrapped, if companies want to work smarter.

"In nine out of ten cases the processes are not needed, and they are a huge cost to the business," she says, "both in terms of the staff and the time involved. There's an obsession with processes in the name of transparency, and a mistaken belief that transparency means lower risk. In fact, in many cases increasing processes leads to increased risk of claims, because the processes are not applied with any understanding of what they are there for."

When it comes to retention, innovative organisations such as the Big Four accountants have now often eliminated performance management procedures and replaced them with a new focus on playing to people's strengths. Tandon says: "The idea is to spend less time and investment on people's negatives, because it is rare for real weaknesses to decrease, making the return on investment minimal. People don't change significantly once they are adults. Instead, investing in collating the strengths within an organisation delivers a competitive advantage and return on investment."

This means continuously seeking to maximise potential by giving employees the opportunities to work in areas where they can thrive. The result may be smarter staffing of teams, thinking outside the traditional hierarchies – including someone from the catering team on a project if they have the requisite language skill, for example.

"Either someone is too weak for the business, in which case you should terminate their employment," says Tandon, "or they are worth keeping. If you are going to keep someone in the business, focus on their strengths instead of their weaknesses, because endless focus on the latter is just depressing and time consuming for everyone involved."

There are copious further examples of innovation around the retention piece, including through the use of incentivisation, and by addressing work-life balance challenges. Volkswagen was one of the first companies to agree to stop its Blackberry servers sending emails to its employees when they were off-shift, to stop staff's work and home lives becoming blurred, and the boss

of Virgin Group, Sir Richard Branson, famously offered his personal staff as much annual leave as they wanted, on the assumption that they would not take holiday if it would in any way damage the business. Such moves are aimed at encouraging agile working, and measuring people's outputs, rather than inputs.

"There is a growing recognition that increased revenue is going to come from people delivering better because they are more satisfied, rather than because they are chained to the desk," says Tandon.

"There is a danger of becoming buried in processes and systems, setting up committees – such as diversity committees – and following other trends without considering whether they support your business strategy or serve any positive objective." Tandon adds, "People generally want to feel included, and not part of a group labelled according to a characteristic that may not be relevant to their part in the business."

Finally, another way in which firms can cut the costs of people in the business, without cutting people, is by addressing the enormous amount of time and money spent on termination processes. Businesses should view people who are leaving as assets rather than failures, because there is no better PR machine for a company than someone who has worked there previously and has only good things to say.

"Also, if you have information to protect, then the closer you stay to people who are leaving, the more chance you have of protecting that information" says Tandon.

Organisations should revisit other commonplace HR practices such as exit interviews, as they can potentially expose the business to an increased risk of claims, rather than assist them to defend any future claims or teach them any lessons. Take a step back and question the business objective of conducting the interview. If there is one, consider the balance of resources and process - in some cases, the exit process without sufficient resources to implement this effectively can increase business risk.

In most cases, by the time someone has decided to leave, it's often too late to keep them. Employees tend to either prefer not to burn bridges and say very little or embrace the chance to complain. Do either of these meet a business objective? Instead, adopt an early mind set with a people focussed strategy placing greater emphasis on engaging with employees, which is a more productive approach to business. In the long term, this will save you time and money, as it is well known that the recruitment and training cost of hiring new staff outweighs the benefits of retaining existing staff.

Streamlining the exit process means departees can be waved merrily on their way, after some careful and tactful disentanglement on the social media side, and companies should be sure not to spend too much time or money in the process.

So in short, the message is simple – 'declutter' and striking a balance is key.

DRIVING BENEFITS FROM SUPPLY CHAIN RELATIONSHIPS

The success of a business is often inextricably linked to efficiencies in the supply chain. Whether embracing new technologies or simply reviewing supply contracts, productivity can be influenced significantly by improving the process by which inputs become outputs.

While critical to the success of any business, at times the supply chain can seem like a part of the organisation bedevilled by an entrenched mismatch of motivations: the purchaser wants the best possible quality for the lowest possible cost, and the producer is fed up with being squeezed to endlessly deliver more for less.

The key to increasing productivity through the supply chain therefore lies not in driving a harder bargain out of suppliers, but rather in investing in long-term relationships, so that suppliers become motivated partners and not dispirited providers.

Many businesses are now focused on restructuring their supplier relationships and increasing their supplier collaboration, and new technologies are presenting opportunities for even greater efficiencies. One of the lynchpins of productivity in the supply chain comes from efficient communication between the various links in the process, and here the latest innovations around blockchain technology have the potential to revolutionise the way supply chains can operate.

This supply chain represents all the links involved in taking a product from raw materials to end user, and, in today's sophisticated environment, those links can span huge numbers of parties spread over countless locations. If something goes wrong, it can be hard to work out what happened, and if a customer wants to know about a product's constituent parts, it can be impossible to trace them all. When companies are asked to be accountable for the use of forced labour (for example) in their supply chains, it can be extremely difficult to police them.

That is where blockchain comes in. A blockchain is an open, distributed ledger which allows for transparency and security in a database. In the supply chain, it can be used to register the transfer of goods on the ledger as a series of transactions, identifying the parties involved, the price paid, the state of the product at the time, plus the date and location of the deal. No one party owns the data, so it cannot be manipulated, but instead it can allow everyone involved to trace products back to the origin of their raw materials.

Adrian Jones, a corporate partner in the firm's London office, says:

> **"Blockchain is expected to provide a new way of verifying all the steps in a supply chain, acting as an open ledger which allows us to follow goods right back to their source."**

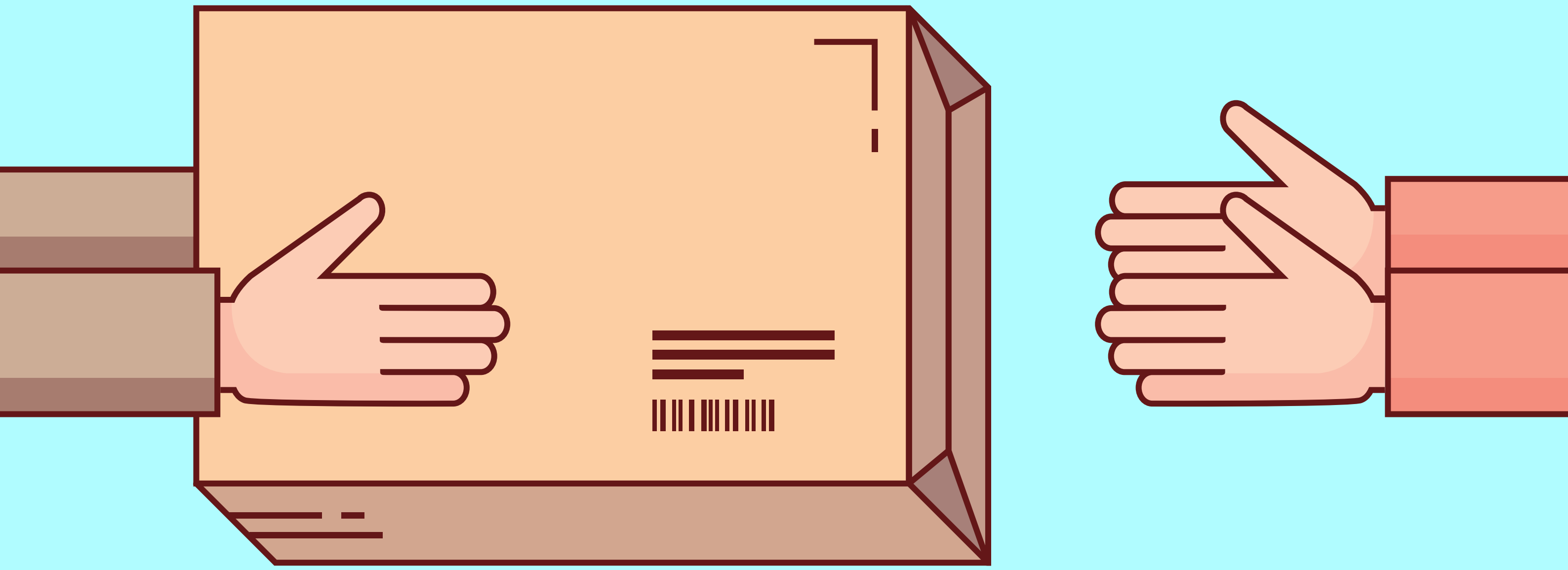
Whether tracking the 15 suppliers who may have been involved in producing a designer leather handbag, or tracing responsibly-caught yellowfin tuna from catch to consumer, the demand from customers for more transparency around the provenance of the things they buy is clearly growing. For a business-owner, the ability also to smooth the process by which the various links in a supply chain work together can drive significant cost-savings.

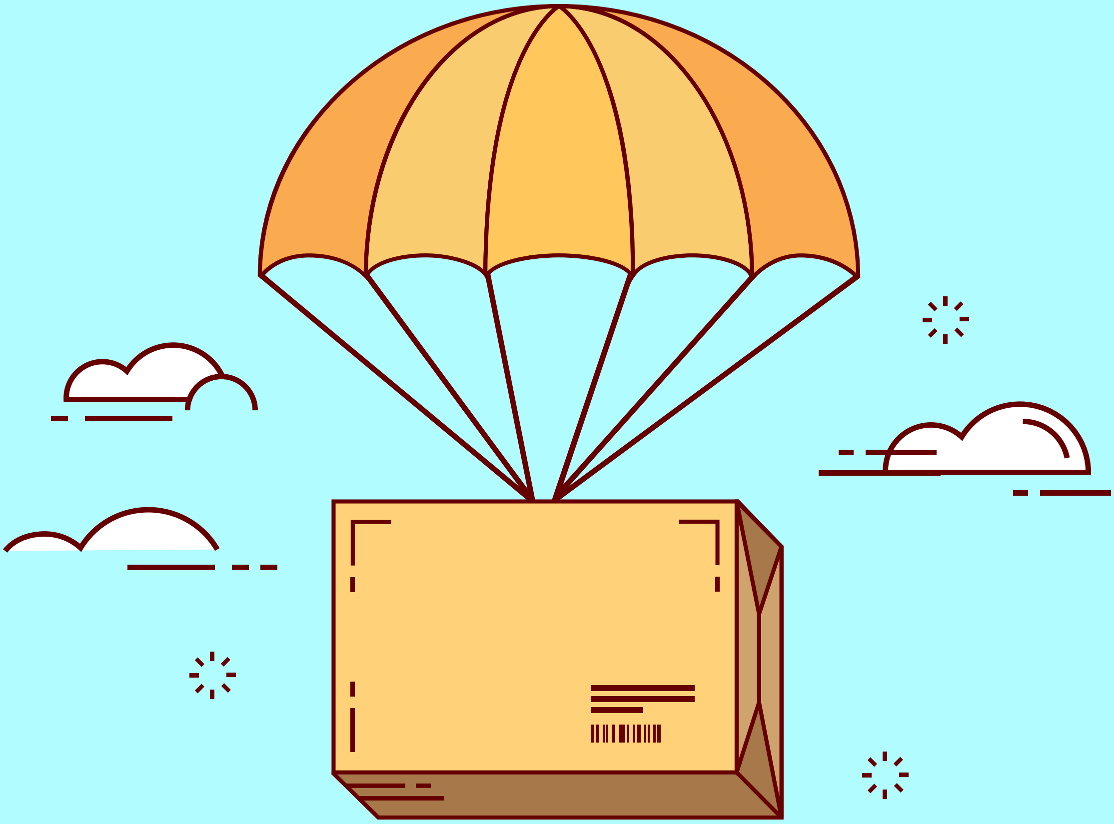
Jones says: "We see many examples of clients being innovative and taking a more partnering approach to their supply chains. Some businesses are getting their suppliers involved in product research and development, others are sharing the benefits of efficiency savings or increased sales, investing directly in their suppliers or undertaking joint ventures with key suppliers."

The most effective way to manage a supply chain is to efficiently manage the internal and external interfaces within it, and lack of communication can significantly hinder that. If the supply chain is not operating smoothly, businesses are forced to build inventory to buffer themselves against peaks in demand or supplier failures, and inventory costs money. If, instead, suppliers can be involved in the planning process to meet requirements, then that buffer is no longer required.

This type of approach, dubbed vendor-managed inventory, sees buyers sharing more information with suppliers, so that those suppliers take more responsibility for maintaining an agreed level of stock, usually at the buyer's end location, which may be in store.

Less forward-thinking, but no less critical to the smooth running of a supply chain, are the contract negotiations which take place between vendor and buyer. Many businesses operate without written terms in place with suppliers – preferring to keep arrangements high-level rather than prescriptive – but this can create





problems when disputes arise around things like the calculation of staged or retrospective discounts, or where liability falls when a particular issue arises.

Corporate partner Riccardo Abbate says:

"Certainty of legal terms is really what you should strive for, so that you don't get a battle of forms, where each party is trying to contract under its own terms. Don't end up with a contract which is based on nothing more than oral and email conversations, but instead make sure terms are agreed upfront."

One of the key areas of debate for all parties is payment terms, and as of April 2017 new measures have come into force in the UK requiring large companies to publish details on the time taken to pay their suppliers. The rules are designed to shine a light on bad practice, with the Department of Business, Energy & Industrial Strategy saying SMEs were owed more than £26 billion in overdue payments in January this year.

Large businesses are now required to report publicly twice a year on their payment practices and performance, including the average time taken to pay supplier invoices. Failure to do so is a criminal offence.

Supplier incentivisation is another hot area when it comes to driving efficiencies, and has been credited as a key mechanism behind the success of the Olympic Delivery Authority ahead of the London 2012 Games. Likewise, we see cost sharing in the supply chain as another lever being used by innovative organisations.

Whatever the methodology employed, supply chain collaboration has increased dramatically over the past few years. Working more closely with suppliers, and building more meaningful relationships, is perhaps the best way to cut down the time spent moving products from start to finish, and to thereby increase productivity.

Using social media to maximum effect

Social media has overtaken many traditional forms of advertising, and is increasingly used as a marketing tool by brands anxious to raise profile. But leaping onto Facebook, Twitter or LinkedIn without careful forethought may not be the most productive way forward.

According to the UK's Internet Advertising Bureau, advertisers spent a record £8.61 billion on digital advertising in the UK in 2015, up more than 16% and the biggest increase in spend since 2008. What's more, the amount spent on advertising on social media grew 45% to £1.25 billion, accounting for 41% of all banner and video display advertising.

But while no business can afford to ignore the opportunities which social media presents – bearing in mind that Facebook is now one of the biggest companies on the planet – diverting spend away from traditional formats just because that is what competitors appear to be doing may not necessarily be the best strategy.

Alison Chivers, a partner in the London corporate group, says: "We would say, before you decide that it's a good idea to launch your brand on to social media, reflect on this and actually consider your strategy, focus on why you want to do it, and what you want to achieve."

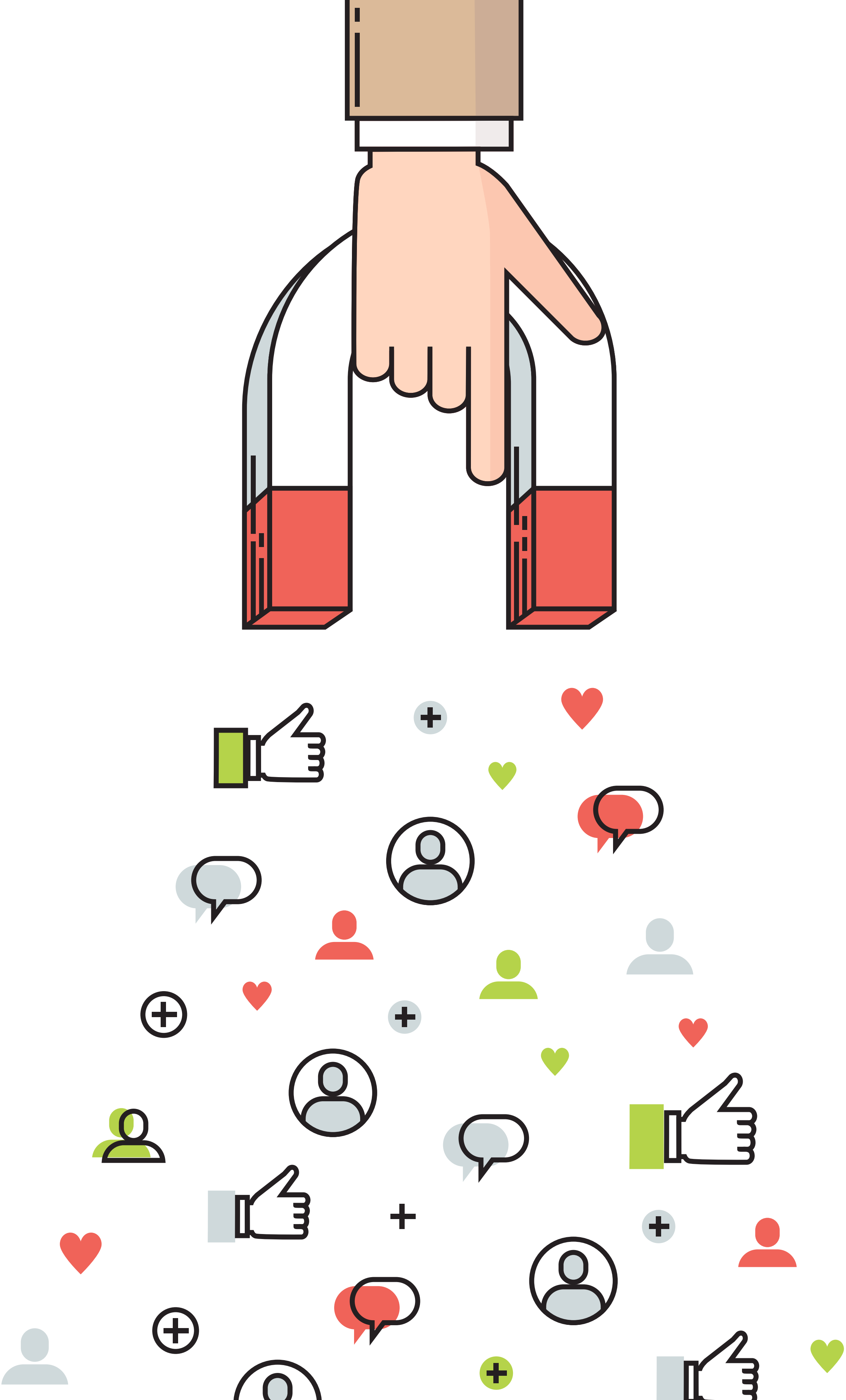
There is a distinction to be made between different types of industries, says Chivers, because while a consumer goods brand may benefit enormously from reaching out to customers via Twitter, the same may not be the case for a mid-market accountancy firm, for example.

She adds: "Take a step back. Although on the face of it social media has advantages, in that it's cheap and you can potentially access a huge market of customers, you should still give it as much consideration as you would give a traditional form of marketing."

When it comes to networking, social media can appear to offer huge opportunities to make new connections, but it has become increasingly difficult to evaluate whether, and to what extent, new relationships are actually being forged, and existing ones enhanced.

Engaging with social media is not without risk, and it may be just as quick to damage your brand as it is to reinforce it. One common problem which arises is when employees overlook the contextual difference between using social media in a personal or a corporate capacity. Often the lines are very clear, but tweeting about your Sunday lunch on a Twitter account linked to your employer, seen by all the company's customers, may not be particularly well-advised. The same applies if commenting on the news of the day on LinkedIn, or becoming involved in impassioned political debates on the firm's Facebook recruitment site.

As well as the potential brand damage, companies need to be aware that ill-advised posts could lead to legal liability. For example, an employee commenting on their personal Facebook page about the clients they are working with could not only be a breach of their employment contract but may also leave the company in breach of non-disclosure agreements or other confidential obligation which it is bound by.



Mitigating such employee-linked risks around social media requires ensuring that all staff, including any staff who are not employees, really understand the cross-over between work and personal use of social media, as the employee is a representative of the company they work for. Their use of social media in a personal capacity can trespass into their working relationship if the content in any way relates to work or work contacts, or if the image they are portraying of themselves to third parties affects the reputation of the business.

Tania Tandon, an employment partner, says:

"Social media has meant that people enter jurisdictions and subject their employer to legal regimes in those jurisdictions without actually physically going there. An employee posted a view on sexuality can be welcomed in one jurisdiction and illegal in another."

Employers can significantly reduce their exposure to risk by training employees on behaviours in the workplace, and by ensuring business contacts and confidential information are retained by the company and deleted from social media for departing employees.

Further risks arise around copyright and other intellectual property protection both as regards to protecting the company IP and as regards of infringing third party IP. One of the first challenges when it comes to online marketing is to make sure that you own your intellectual property, according to Caroline Hayward, an IP partner in the London office of Trowers & Hamlins. She says: "If you commission a third party, such as a marketing agency to design your website, it means that, unless your contract says otherwise, they, not you, will own the copyright. Not only do you want to own that copyright so that you can go after other people if they start copying your web materials, you also want to own your domain name, so that you avoid being held to ransom if/when your relationship with the agency comes to an end.

It is not uncommon for a web designer to own a company's domain name, (website address) and to (in effect) lease it back to the company. But that means that, should your business decide to change web designer, you may potentially have to pay out a large sum to keep your address.

Even if you do own the intellectual property, there is still only limited recourse if you are unhappy about what is posted about you online. For example, disgruntled customers can be quick to pepper your social media sites with derogatory comments about your products, but, short of suing those customers for defamation, or taking action on few possible grounds, there is not much you can do. Hayward says: "Often clients get very upset because of criticism they are receiving on social media, and the truth is that, very often, they can't get rid of it." Sometimes customers or commentator posts can amount to a massive brand disaster, such as that experienced by United Airlines, which got into trouble in April for throwing a customer off an airline and was on the receiving end of a social media storm when video and customer criticism went viral.

Businesses that sell products have an additional problem from the sale of counterfeits and illegal imports. While websites like eBay do have complaints mechanisms allowing companies to complain if users are selling products which infringe copyright, patents or trade marks, again the most effective and efficient way to tackle such problems may be through the courts.

Of course, you can only stop infringements if you know that they are doing it, so a key message is to monitor closely what's happening. "First of all, you have to be vigilant about what people are doing with your IP online," says Hayward. "It's a question of making sure that, every month or whatever, someone takes a proper look around to see what's going on with your brand and products."

But another danger is that you make a huge investment in social media content, only for it never to be read. Chivers says:

"Measuring return-on-investment can be tricky, and how you do it depends what industry you're in. If you're selling goods online and people are clicking through to your website and making purchases, then that's easy to track. But in many cases the purpose of using social media is more about raising general awareness of a brand and your overall profiling, and that's much harder to measure."

She advises clients to use a combination of measures, including analytics tools embedded in online content to see whether people are viewing articles which are being posted, checking whether people are engaging with comments made on Twitter (perhaps by retweeting), and prompting debate on discussions started on LinkedIn.

Overall, the message is that it is great to embrace social media, but proceed with caution.

Chivers says: "If you were running a newspaper advertising campaign in the past, or you were putting an article in a magazine, it's probable that anything going out would be signed off by at least three or four senior people before leaving the building. It shouldn't be any different if you're posting something online. Just because you can put something up instantaneously does not change the fact that it's representing your brand and has the potential to be seen by hundreds of thousands of people."

Investing for future growth

After a big push in the Eighties and Nineties to move manufacturing and back-office functions to low-cost economies overseas, many UK companies are now looking at reshoring to increase productivity. Where should you be focusing investment?

Three or four decades ago, UK plc cottoned on to the attractiveness of low-cost economies like India, China and the Philippines, and manufacturers and services businesses alike moved production and capabilities offshore. Now, after years of under-investment in domestic plant and facilities, the tide is turning, and both supply and demand-side factors are motivating a reshoring of activities closer to home.

One of the functional drivers for such a shift is the gradual wage inflation taking place in these low-cost economies, which means the cost differential is no longer as attractive as it once was. Equally, the supply of highly-skilled staff overseas is not always up to the standard which companies now feel they can find in the UK.

Tim Nye, a partner in the London corporate department, says:

"There also appears to be a much higher attrition rate of labour in offshore markets, because the labour force is much more opportunistic and likely to move, delivering more churn than you would necessarily find in the UK."

Another key motivator for a potential move is the need to increase efficiency, by locating manufacturing plants closer to core customers. This was the reason given by Symington's, the maker of food brands like Ragu, Chicken Tonight and Golden Wonder pot noodles, when it moved production of its noodles from China to the UK, creating 50 jobs with a new factory in Yorkshire. Likewise, Hornby, the toy train maker, moved production back to East Sussex from India recently.

Many factors will influence a company's decision on where to invest resources, but Nye says that companies would be well-advised to take a long-term perspective before considering re-shoring.

“Fundamentally, what determines where you want to be located should be your existing markets and locations, and your future growth strategy,” he says. There is no point moving back to the UK if your business plan says that over the next three to five years, you want to break into Asian markets.”

For many companies which are focused on selling to UK customers, however, it can make sense to bite the bullet and refocus resources. “If you’re a UK corporate and your markets are predominantly UK, and if you’re ultimately trying to drive efficiency and increase productivity, moving onshore can significantly reduce the lead times involved in getting products to market.”

Not only can such a move generate supply-chain efficiencies, it can also remove elements of risk involved in the transport of goods across geographies. The global nature of supply chains give rise to risks around customs and tariffs and, they also mean that geopolitical events and environmental disasters can become a concern. The 2011 earthquake and tsunami which hit Japan had an almost paralysing effect on the global automotive industry, for example, because so many car component factories were hit in the port cities along Japan’s northeast coast. Since then, car manufacturers around the world have changed ways of doing business, often double-sourcing more parts and holding bigger inventories for fear of future disruption.
Another key factor influencing decisions on investment location is around the political costs of doing business, whether in terms of the costs of business incorporation, the taxation burden, or the levels of government support available. The UK’s fiscal regime may not be the most favourable globally, but even in light of the Brexit vote, this remains a politically stable jurisdiction and business taxes are pretty competitive.

The current government at Westminster has also shown itself to be willing to offer support to businesses considering moves abroad to cut costs. Nissan, the car manufacturer, was famously persuaded against reducing UK production following assurances from politicians, who reportedly told the company they would make every effort to ensure the UK automotive industry remains competitive post Brexit, as well as consulting on new technologies to benefit the car industry.

Production of the popular credit card-sized computer Raspberry Pi was also switched back from China to Wales after its success meant it was cost effective to produce it closer to home. Being able to boast the logo ‘Made in Britain’ was important to the device’s inventors, and that consumer angle is often another important consideration for business owners.

Consumers increasingly place considerable value in knowing the provenance of their purchases, particularly in sectors like fashion and fast-moving consumer goods, where people are often willing to pay more for something which is locally produced and has been delivered with minimum air miles.

Nye says: “When you’re looking at where to locate and how to channel investment for future growth, there are a number of different elements to consider. Whereas, previously, decisions had come to be driven by low costs, and moving to keep production expenditure down, now, the questions about what will provide greater productivity and efficiency are more complex and often the pre-eminent factor.”

He adds, “While we have seen the costs of doing business in these offshore markets increase, and the availability of skills and talent falter, that doesn’t mean that reshoring will suit everyone. It may well be that some businesses need to maintain an offshore structure because it gives them access to a global supply chain, which will benefit their customers if they are focused on global markets.”

Even where companies have decided to reshore, or remain onshore, that does not mean they have necessarily shunned the use of low-cost centres. Increasing numbers of UK-headquartered corporations are now basing many of their activities away from head office, with banks and law firms moving in recent years to locate back-office functions in Belfast, Northern Ireland, for example.

“

By onshoring,” says Nye, “many business leaders choose to move to multi-sites and find low cost centres within the UK away from their headquarters.”

In such a way, onshoring has been proven to decrease risk, increase efficiency and bolster productivity in many companies, even if it is not an easy-win for everyone.

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