

Alternative Fee Arrangements: Value Fees and the Changing Legal Market

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Executive summary

HEADLINES IN the legal press have long predicted the death of the billable hour, as clients express increasingly vehemently their dissatisfaction with this outdated way of valuing legal services. But the habits of decades are hard to shift, and the structures and behaviours that have resulted from this way of working require more than cursory attention.

The global financial crisis has acted as a catalyst to change, though. With businesses under huge pressures to cut costs, do more with less and gain greater certainty of costs, clients are necessarily becoming more assertive in their fee discussions with their law firms and demanding alternative fee arrangements. Firms must face up to the fact that some clients will simply not work on the basis of billable hours any more. Other clients may offer more regular work in exchange for more predictable cost.

But all of this is more easily said than done. What kind of fee structures are firms using, and how do you make them work for your firm? How do you put a face value on a piece of work, and how do you ensure continuing profitability? This report sets out to answer these questions and many more. Throughout the report, key points are illustrated with examples from firms and companies which have entered into alternative fee arrangements.

Chapter 1 sets the scene and explains where the billable hour came from, why it stuck and why the world is now changing.

Chapter 2 examines how it is that, deliberately or otherwise, firms can end up

overcharging their clients – sometimes quite significantly – as a result of the weaknesses of the billable hour as a fee model. The motivation for change among firms may be weak, but the benefits for clients are potentially enormous.

Before leaping into further discussions, it is important to be clear what is even meant by alternative fee arrangements. Chapter 3 describes the need to move away from the idea that more time spent on a matter means more money for the firm and proposes a new term: value fees. The link between fee structures and the behaviours they encourage is discussed, and possible ‘alternative’ structures are examined.

What do clients think about all of this? Chapter 4 explores clients’ views of alternative fee arrangements – and indeed about paying fees to their external counsel in general.

Chapter 5 shares the experiences of firms which are successfully using alternative fee arrangements. It explores why these firms decided to start offering alternatives to the billable hour, what they had to do differently to make the new structures work, the challenges faced and the outcomes.

One of the challenges, of course, is to put a clear value on legal services rendered. How do you decide on a price? Chapters 6 and 7 explore this key question, highlighting the need to identify the variables in a matter and really understand what the case means to your client – and indeed to your firm.

Chapter 8 focuses on the change that is needed for firms to be able to implement alternative fee arrangements with any level of success. How do law firms need to change their behaviour and culture to adopt a different way of working?

Continuing on the topic of change, Chapter 9 outlines some practical ways in which law firms and lawyers can adapt their working habits to support productivity and efficiency. Project management, Six Sigma and lean methodology, decision trees, early case assessment and early case mediation are discussed.

Chapter 10 explores the questions that smart buyers ask and how to respond to ensure they understand value fees. In particular, it is important to be able to respond satisfactorily to any concerns that quality will drop if lower fees are paid.

Chapter 11 explains how to be a smarter seller and make value fees work for you.

The focus is broadened in Chapter 12 to consider some more general benefits and challenges of value fees becoming more prevalent in the legal market. The impacts on staffing, training, results and cost-cutting are all discussed.

The final chapter constitutes a discussion of the old normal and the new normal, and the pace of change. What will lawyers need to know and do to survive and thrive in the new normal?

About the author

PATRICK LAMB is one of the founding members of Valorem Law Group, LLC. After spending 18 years at an AmLaw 100 firm, including several years as an equity partner, Pat left the firm to join a litigation boutique, where he spent seven years, including six as a member of the firm's management committee. During these years, he was an avid proponent of budgeting and non-hourly fee arrangements. Ultimately coming to the conclusion that firms could not exist in both the hourly and non-hourly worlds, Pat and three colleagues, all big firm refugees, formed Valorem, which began in January 2008 as a non-hourly, value-fee firm. The firm represents businesses in complex disputes, and has more than doubled in size since its inception.

Described by one in-house lawyer as "one of the few lawyers who gets it", Pat was named a legal rebel by the American Bar Association in 2009 and is a frequent speaker on value fees and the role of project management in the successful use of value fees. He began writing the popular blog 'In Search Of Perfect Client Service', at www.patrickjlamb.com, in 2005.