Diamond Box - Appropriate Fee Arrangements

There and back again: a question of value

In 2008 the Association of Corporate Counsel (ACC) launched the ACC Value Challenge. Its stated intent was to 'reconnect the value and cost of legal services'. This seemed to both catch and further define the mood of increasing dissatisfaction in the hourly rate (which has been well documented elsewhere).

Looking back, in some respects the ACC were extremely wise when launching the initiative by choosing not to define what was meant by the term 'value' in this context. However, whilst recognizing that one definition would be too generic in nature, the lack of one has inadvertently created confusion both for corporate counsel and law firms alike and has, in part, contributed to the adoption of alternative fee arrangements (AFAs) being less widespread than initially predicted.

Therefore, what should corporate counsel and law firms do now when seeking to 'reconnect the value and cost of legal services'?

Speaking the same language

The key first step is ensuring that clients and law firms are 'speaking the same language'.

The term itself, 'alternative fee arrangements', is a strange one. By its very definition, it is being determined by what it is not, namely anything which is not based on an hourly rate. This has led to some law firms viewing anything not done against their standard rate as being 'alternative'.

Therefore a term we prefer to use at Baker & McKenzie is 'appropriate fee arrangements'. Why this subtle shift in naming? Simple.Whatever the agreed fee arrangement is, it needs to clearly align with the economic interests of client and lawyer; it should be structured to encourage completion of a clearly specified (and identifiable) client objective; and finally, it should encourage and incentivize the lawyer to identify ways in which to become more efficient. It is therefore one which clearly reflects the appropriate value of the transaction. In sum, an appropriate fee arrangement.

A question of value

As a general rule, a client doesn't want to buy a lawyer's time. It is the expertise that comes with that time which is important. Expertise which (hopefully) will help the client achieve their business objectives, however defined.

The first thing to acknowledge is that law firm clients' realize value from their respective law firms (and lawyers) in a number of different ways. It may range from the more tangible areas such as cost control and the total absolute cost of a matter, to the specific legal expertise being provided (and the associated knowledge transfer to the client). It can include the certainty of 'outcome', both financial and legal (indeed, for some clients, cost predictability and management of cash flow may be as important as the actual amount). It can also encompass the speed of resolution or completion of the matter (something which can be extremely important for example in litigation or M&A matters).

Using AFAs sensibly

Search...

Diamond Box Themes

- 2014 **GC & Digitalisering**
- 2014 **Leadership & Management**
- 2014 **General Counsel NL Benchmark**
- 2014 **Smart Legal Sourcing**
  - Digitale samenwerking
  - Appropriate Fee Arrangements
  - Verwachting GC – advocatuur
  - Klant van de toekomst
- **Varia 2014**
- 2013 **Tomorrow's General Counsel**
- 2013 **Litigation & Dispute Design**
- 2013 **Compliance: Fraud & Corruption**
- 2013 **Legal Project Management**
- 2013 **Varia 2013**

Latest Newsletters

If ‘value’ is therefore key, how can both law firm and client develop and implement appropriate fee arrangements that meet (or ideally, surpass) expectations?

A fundamental requirement is ‘trust’ between both parties. Where trust exists between law firm and client, there is a fundamental shift in the relationship, encouraging greater partnering behavior between both parties. Put bluntly, it means that both parties are pulling in the same direction and against a shared view of ‘success’ and value.

Before blindly embarking on an AFA, law firm and client should consider the following three key points as a minimum:

(1) How will the proposed commercial arrangement support the (client’s) business in achieving their goals?

(2) What are the elements of potential value which are most important to the client (and does the proposed commercial relationship support this)?

(3) How will both parties best measure and track how value is delivered? (This will help in both being able to clearly articulate the value delivered internally, and also be used as a basis for future, similar, arrangements).

Successfully implementing an AFA requires having clearly understood and articulated expectations and having clear responsibilities. Even at the most basic level, recognizing that different fee approaches require different forms of management, both from a law firm and client perspective is a good start.

However, nothing can replace the dialogue between law firm and client. For lawyers, this means we need to listen and respond appropriately. For clients, this means we need to be much more specific about what is important to us and how this will help drive value, both at matter-specific and business level (as ultimately the question of value is the client’s to make.) For both, it means ‘speaking a common language’ based on trust, openness and honesty.

There and back again. It’s a question of value.

About the author:

Stuart J T Dodds, Director of Global Pricing & Legal Project Management, Baker & McKenzie

Stuart is responsible for the development of Baker & McKenzie’s global pricing and legal project management strategy and provides targeted pricing, negotiation and project management support to partners and client facing colleagues across their 76 offices worldwide. He is a frequent speaker at conferences, and has been extensively quoted in pricing and project management journals. Stuart is the author of a book on law firm pricing, negotiation and legal project management, ‘*Smarter Pricing: Smarter Profit*‘.

Authors’ note: This abbreviated article has previously appeared in fuller form in ‘Smarter Pricing, Smarter Profit’ by the author, published by the American Bar Association (April 2014).

Source: Stuart J.T. Dodds, Baker & McKenzie | Themes: Appropriate Fee Arrangements, Smart Legal Sourcing

- GCN Nieuwsbrief 9 september 2014
- GCN Nieuwsbrief 1 juli 2014
- GCN Nieuwsbrief 19 mei 2014
- GCN Nieuwsbrief 8 april 2014
- GCN Nieuwsbrief 25 feb 2014
- GCN Nieuwsbrief 21 jan 2014