Embedding fee culture

In his fifth article on fee management, partner Ori Wiener of Møller PSF Group explores how to embed the right fee culture within law firms

It's a well known fact that a firm's management team can have a significant impact on its business culture. In the case of fee management, this can be to the benefit of all stakeholders (even clients) if properly implemented.

Generally speaking, the way that senior management can influence partners and fee-earners' cultural relationship with fees extends into the following areas:

- raising awareness and de-risking this topic;
- demanding clarity on the reasons for accepting or rejecting new work (not just being busy);
- formulating a clear and consistent position regarding the firm and partners' ability to deliver value-added services;
- providing the right support and infrastructure to allow partners to deliver on these expectations;
- providing training on fee negotiation and matter management; and
- creating a common understanding and expectations of partners in relation to fee negotiation and pricing, and where to draw the balance between accepting new work and protecting profits.

The two biggest obstacles to a proactive approach to fee negotiation culture are partner indifference/ignorance and fear.

Raising partners' understanding of the financial drivers of the firm is a relatively simple but often poorly implemented way to help them understand the impact on profitability of decisions made on specific matters.

Just collecting and measuring basic data on matter profitability and providing the right kind of financial reports and analyses can go a long way.

Des Woods, the former head of learning and development at Linklaters, recalls: "Having analysed the fees achieved for similar work and similar clients, we found that the only factor that consistently explained the vast differences in recovery rates was the confidence with which partners approached a pending fee negotiation".

Likewise, the more a firm's partners share views and experiences with regards to fee arrangements and outcomes in an open and constructive manner, the more individual partners will feel encouraged to either consult other partners, ask for support or take on a more commercial and effective approach to handling fee discussions.

Providing opportunities in which such discussions can take place can be a relatively low cost management initiative but result in high returns on investment.

Accepting new instructions

One of the worst mistakes a partner can make (in terms of generating profitable work) is to accept work only for the sake of utilisation.

Many partners find it difficult to strike the right balance between protecting profits and protecting personal or group utilisation.

Firms should start thinking about fees in terms of being clear why they would want a partner to accept or decline a piece of work in the first place.

There are typically six good reasons for accepting work:

1. it pays the right rates;
2. it generates a track record/reputation;
3. it helps to develop new know-how;
4. the work will lead to other work (paying attractive rates);
5. it is effectively paid training for associates; and
6. it leads to new and potentially interesting contacts.

If none or only one of these criteria apply, firms should actively discourage partners from taking on the work. The argument of available spare capacity as a reason for accepting work is very dangerous, as it overly emphasises utilisation.

Rather than taking up spare capacity with marginal work, it would be better spent on business development and building a stronger pipeline of work. This would inform partners of alternative opportunities and allow the spare capacity

WHEN TO NEGOTIATE

Stage	Pros	Cons	How to manage/optimise
Before selection process	If done smartly, it can remove the incentive to seek alternatives.	Sometimes it's not possible to define the scope of work needed.	Ensure the client will not use a fee quote as the basis for shopping around. Use a framework and assumptions to protect against changing the scope of work.
At time of selection	Often unavoidable. Greater clarity on scope of work.	Client has maximum leverage to apply pressure on fees.	Detailed scoping. Try to get performance bonuses to keep headline numbers competitive.
At start award of mandate	Client has less leverage.	Client may prefer to focus on getting the project going.	Establish/confirm a clear framework and assumptions. Put out anchors.
During matter	Client has the least leverage.	Client may feel taken advantage of.	Consider raising fees when the client changes the scope or a major win has occurred
After matter	Scope of work and outcome known.	Client regains considerable leverage (carrot of future work)	Take advantage of deal euphoria if possible.

to be better employed. Surprisingly, many firms face resistance from their partners when looking to introduce such criteria, possibly because their purpose and benefits are misunderstood.

Preparing for fee negotiations

Generating a clear understanding of a client's needs and their selection criteria is one of the most important preparations that partners can make ahead of fee negotiations.

"Partners have to know their clients so well that they know how and when to negotiate on fees and anything related to delivering the best possible service," notes Elliot Moss, director of business development at Mishcon de Reya. "This might include which fee structures work best for the client and the firm. It might also include how formal or informal a fee negotiation should be."

Partners need to hone in on those issues that clients value the most and for which they are able and willing to pay a premium. Firms that are able to provide support in this area and that can build a client-centric culture in which these issues are front-centre in partners' thinking will benefit financially.

Support in this area can cover a wide variety of areas, including:

- providing reliable costing data to improve estimation and fee quotes;
- accurate financial reporting to help partners manage matters and avoid surprises;
- client and matter reviews; and
- encouraging business developers or partners to raise these issues with clients consistently, and not just before a key selection process.

Active discussions between management and partners on these issues will raise awareness of the importance of these issues and encourage more partners "to give it a go".

One of the biggest contributing causes for the reluctance typically encountered in many partners to negotiate on fees is the disconnect between a partner's individual performance in agreeing or recovering (premium) fees and their personal financial incentives.

This makes it difficult to motivate partners to engage in an activity in which they don't feel particularly comfortable. It is also perceived by many to be fraught with personal risk, such as the potential to alienate a client and lose the prospect of future business.

However, fee negotiation is a vital element of firm profitability. As David Harkness, head of tax, pensions and employment at Clifford Chance, observes: "given that we are a lockstep firm, each individual partner's drawings at the end of the year may not seem to be materially

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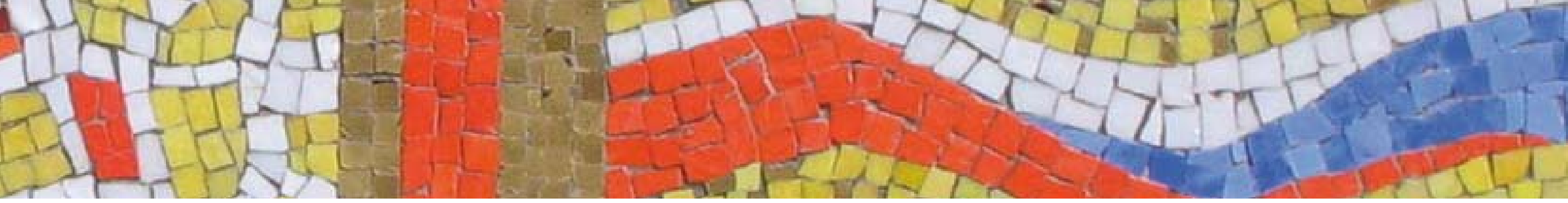

impacted by decisions made by that partner during the year. The impact of giving a 5% discount or making several write-offs is simply not felt at the individual level. However, when cumulated throughout the partnership as a whole, raising our recovery by one per cent would make a very real difference to our profits."

Besides providing financial training so that partners fully understand the impact of discounts or premia on the firm's profitability, the two most salient areas for training in relation to optimising profitability are effective matter management and fee negotiation skills.

A significant amount of value and profit is lost (virtually thrown out of the window) by partners in the course of a matter. This typically includes instances where time is either not recorded properly, is written off ahead of any discussions with clients or is discounted because clients have not understood why a piece of work was undertaken in the first instance.

One of the most common sins is to agree to do work outside the original scope of work, without reviewing the underlying fee arrangements. On occasion, it may be appropriate to allow the scope of work to expand without a concurrent increase in fees. However, in the vast majority of cases, a sensible conversation with the client at the right time and in the right manner can have a positive impact on both the fees and the relationship.

A number of firms have started to make fee negotiation training available to their partners in order to address partners' discomfort in negotiating with clients, as well as growing pressure on margins and fee arrangements.

Small modifications to partners' approaches can have a positive impact on the outcome of a fee negotiation. A high-impact fee negotiation programme should help partners to differentiate between the issues (i.e. fees) and the relationship, to establish appropriate veto positions and targets, and to apply techniques which are simple to use and adapt to the negotiation process.

It's also important to create a common internal language regarding fee negotiations and to establish common benchmarks or expectations regarding individual partners' efforts in relation to fees.

A common language is particularly helpful in coordinating preparations ahead of major fee negotiations, such as for panels or major transactions. These benchmarks can help partners to stand up to client demands and take some of the perceived risk out of negotiations, as partners can feel better able to judge when to give in to a client demand or risk losing the client or matter on the basis of terms and conditions.

Adds Moss: "it is important that partners understand what good negotiation looks like. Training (of the right kind) helps, but so does learning from the best within the business, i.e. partners in their own firm sharing their experiences of how they have done it."

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