

Budgeting and Negotiating Fees with Clients: A Lawyer's Guide

SALLY DYSON



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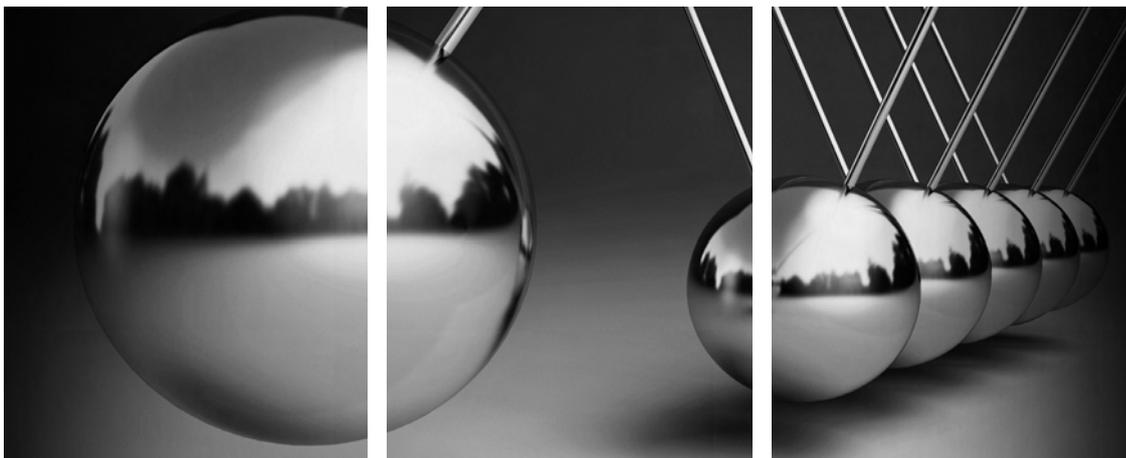
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Executive summary

WITH LEGAL fees coming under increasing scrutiny, all law firms, whether they charge by the hour or operate alternative fee arrangements (AFAs) will need to negotiate fees; be it a discount to an hourly rate or a year-long fixed retainer. Budgeting and negotiating skills will be needed by all fee earners with responsibility for agreeing any fees or discounts. The more a firm uses AFAs, the more important budgeting and negotiating becomes.

Most legal training focuses on black letter law and technical legal skills. Fee earners may be unprepared to deal with client demands on fees. The systems, processes and management information in law firms are generally predicated on the assumption of standard hourly charge-out rates. Fee earners often lack the information and tools that they need to make accurate matter cost predictions, and the ability or incentive to manage matters cost effectively. Without this information, their negotiating positions are also undermined. This report will help both individual lawyers and firm leaders to plug the skills gap by analysing the problems faced. It provides novel approaches, step-by-step guides and practical tools for improving individual behaviour and firm-wide processes, and inspires readers to make changes by following the example of others. As the case studies cited in this report confirm, the rewards for firms which achieve best practice in budgeting and negotiating

include increased profits, strengthened client relationships and competitive advantage.

A key tenet of this report is that negotiation does not have to be about winners and losers. A successful negotiation can be one in which both parties feel that they have secured a commercial result which meets their objectives. By concluding mutually satisfying negotiations, law firms will generate profitable, strong and long-term client relationships, thereby securing their future financial health and fostering successful individual careers.

Chapter 1 of this report describes the various approaches to fees taken by law firms and coins the phrase 'universal law firm fee continuum' or 'continuum'. Readers will recognise their firms in the descriptions and find their places on the continuum. Establishing a firm's position on the continuum will highlight the aspects of the report which will be most relevant for each reader. Some readers may be contemplating making greater use of AFAs, but are wary of the consequences and unsure if AFAs can be managed profitably.

Chapter 2 examines the rise of AFAs and explains why they are intensifying the need for lawyers to hone their budgeting and negotiating skills.

The report continues, in Chapter 3, to address the reasons that many lawyers are sceptical or fearful of AFAs. It also shows how firms can counter the perceived downsides of AFAs through better budgeting and negotiating.

Having established the need for well-honed budgeting and negotiating skills, Chapter 4 goes on to set out the key financial measures that all lawyers need to understand. This chapter de-mystifies some critical financial concepts and explains their relevance for preparing budgets and negotiating fees with clients.

Chapter 5 continues to take the reader through the elements needed to understand the cost, to the law firm, of conducting a matter. It then builds on this information to show how to create a matter budget.

Chapter 6 tackles the all-important question of how to stick to a budget and incorporates an overview of legal project management, written for this report by Pamela Woldow and Douglas Richardson of Edge International.

Chapter 7 turns to negotiation, starting with how to overcome the common obstacles to effective fee negotiation that are faced by lawyers.

Chapter 8 explains how to take control of the negotiation process from preparation through to closing, and Chapter 9 focuses on how to ask for (and get) the desired fees and structures; primarily by demonstrating value to the client.

Chapter 10 follows with a wealth of tips, tactics and tricks, covering everything from how to act, through opening gambits and walk-away points, to traps to avoid.

The report goes much further. Knowing what needs to be done is only part of the battle. Gaining acceptance of new techniques and ways of working across the firm is much harder. Chapter 11 guides firm leaders seeking to develop and communicate a strategy for better budgeting and negotiating, while Chapter 12 deals with implementing and embedding best practice across the firm. These chapters will be particularly useful for anyone charged

with turning a firm's strategy into reality – whether that strategy is to increase profitability through deployment of AFAs, or simply to increase realisation through better negotiation. The vital importance of communication, empowering employees, optimising support services and aligning incentives is shown. These chapters provide valuable insights for firm leaders, be they the managing partner, practice area head or leader of a support service function.

There are detailed case studies at the end of this report, all based on personal and up-to-date interviews. Case study 1 features an interview with Tim Aspinall, managing partner at UK top-100 firm DMH Stallard. He describes the award-winning business tools introduced by the firm for budgeting, negotiating and communicating with clients – and the impact that they have had on the firm's business.

Case study 2 relates to Crowell & Moring, an AmLaw 100 firm, which successfully operates value-based billing.

Case study 3 presents a client perspective, from a legal procurement manager, who sheds light on the methods that are commonly used by procurement professionals and provides observations on law firm negotiating technique.

This report concludes with three practical tools to enable readers to start putting the lessons learnt throughout the commentary into immediate practice. Appendix 1 contains a matter plan template, which is an essential component of a matter budget. A matter budget template itself is set out at Appendix 2. Appendix 3 comprises a pre-negotiation checklist, which reminds lawyers of the information that they need in order to negotiate effectively and organises that information very concisely.

Readers of this report will develop an appreciation of how their approaches to

budgeting and negotiation impact the prosperity and sustainability of their firms and why astute budgeting and negotiation is more important than ever. They will be guided in how to adopt best practices in budgeting and negotiation, both for themselves as individuals and across their firms. The advice in this report is supported by case studies which demonstrate the tried and tested nature of the methodologies advocated and by practical tools which can be adapted to suit readers' own practices.

About the author



SALLY DYSON is the director of Firm Sense Limited, a specialist consultancy providing client relationship evaluation and advice exclusively to law firms. Sally qualified as a solicitor and practised at Slaughter and May. She then worked as an in-house lawyer for nearly a decade before moving on from the practice of law to found Firm Sense.

Sally combines expertise in client listening with an in-depth understanding of law firms and their clients. Sally advises law firms on aligning organisational practices and individual behaviour with client needs in order to improve client retention, win business and improve cash flow and profitability.

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I WRITE in Chapter 12, citing Jo Owen, that leadership is a team sport and the same could be said of the writing of this report. Far from being a mere desk-top exercise, I have been lucky enough to receive advice, information and contributions, freely given, from a wide range of lawyers and consultants. Special mentions must go to:

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I have spent many pleasant hours soaking up information in the delightful surroundings of both the British Library and the Law Society Library. Of the books that I read in those august institutions, I have particularly relied on:

- *The End of Lawyers?* By Richard Susskind;
- Ronald Baker's *Implementing Value Pricing*;
- Roger Fisher and William Ury's *Getting to Yes*, as well as Nic Peeling's *Brilliant Negotiations*;
- Kim Cameron and Robert Quinn on *Diagnosing and Changing Organizational Culture*; and
- John Kotter's *Leading Change*.

Numerous other thought leaders and experts are referenced in the text.

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