

Time recording – why bother?

Depending on who you listen to, time recording is an important determinant of the value of work done for a client, or, colloquially, *"time expands to fill the fee available"*, and is of no value to the client. What end of the spectrum do you sit at, or are you somewhere in between?

The "death" of time recording, and the concept of the billable hour, has been predicted for many a year, and this year has already seen a number of senior individuals in the profession reinforcing this view, including the chief executive of the Legal Complaints Service.

So what is the future for time recording and the billable hour?

Beloved of the number crunchers who populate the ranks of law firm managers these days, and that is not just the finance directors, would anyone want to challenge the might of the billable hour from within?

The omens are not good with ever more sophisticated ways of capturing time being developed, including time recording on your Blackberry, whilst basking in the summer sunshine (abroad that is!).

Well, you should. If not today, then at least the subject should be on the agenda of the management team. Why?

1. Clients don't like it;
2. The regulators don't like it;
3. Staff don't like it;
4. Partners don't like it;
5. Law firm managers, including finance directors, don't like it (as much as they used to).

Nobody likes it, except time recording systems vendors, of course!

Clients don't like it

Firms are already moving away from the billable hour as a basis for charging for work done, and some services are provided to clients on a fixed fee basis, either as a percentage of the transaction value or as a fixed monetary amount. There are, of course, a myriad of other "alternative billing" bases, but most still have the billable hour at their heart, and so require you to continue to record time. Charging clients on a fixed basis provides them with certainty, which they like, and need if they are to run their own businesses efficiently. Clients also like the fact that fixing the price enables both sides to bear some of the risk in transactions, with, for example, a lower abort fee, and a higher success fee. Clients are also wising up to the fact that, as law firms begin to limit their liability in transactions, why should they pay them by the hour to investigate transactions to the nth degree, and to the fact that, the law being a knowledge based profession, clients know that the additional cost of providing solutions to the next client, after the first, is low, so why should they pay for lawyers to reinvent the wheel each time, and reinforce the management inefficiencies that exist in some firms, who haven't yet grasped the notion of knowledge management?

The regulators don't like it

Quite apart from the comments of the chief executive of the Legal Complaints Service referred to above, legal aid is now largely distributed on the basis of deliverables, such as letters, and not the time spent on matters, reinforcing the view of Government, at least, that lawyers are homogenous. In addition, the recent Withers case, and the new requirements in the Code of Conduct to keep clients informed at all times of (escalating) costs, might be interpreted as subtle encouragement from the authorities to give clients certainty from the outset.

Staff don't like it

For staff, time recording is a distraction, a convenient tool with which management can beat people up (metaphorically) and, sometimes, the only communication they get from management! The requirement to achieve one's annual billing target is an end in itself, and actively discourages lawyers

from being efficient, and creative. Is it so surprising that many lawyers aren't happy with what they are doing?

Partners don't like it

Partners don't like it because, on the one hand, management is exhorting them to build relationships with clients and other influencers, who require them to invest (unbillable) time in them, and on the other hand, they too have targets to meet. There is also the frustration brought on by having to negotiate fees all the time, and the long and detailed arguments about whether someone's time is properly chargeable, or not, at the end of the matter doesn't endear lawyers to their clients.

Law firm managers don't like it

Time recording used to be the bedrock on which firms built their budgets, and law firm management was relatively straightforward as a consequence - everyone achieves their targets, "happiness", everyone fails to achieve their targets, "misery". However, the position is changing dramatically, and for forward-looking law firm managers the billable hour has become a bit of a millstone. Increasingly, firms are managing actual profitability month by month and so could easily dispense with measuring utilisation and still run the firm properly. It will, however, require more sophisticated sales pipeline management than firms use presently.

Law firm managers know that clients want certainty and value, "*law in a text message*" as it was described to me the other day, lawyers want a work/life balance, and ever-increasing sums are being poured into IT systems to improve efficiency, and the retention and distribution of knowledge, none of which sits well with time recording. Not only that, firms need to be more flexible, and the requirement to meet a chargeable hours target limits such flexibility.

Thus, the challenge for law firm managers brought up on the diet of the billable hour is how do you bring about a change in the firm's mindset?

The first step is to recognise that the process of change will take some time, and somewhat paradoxically, is easier the more sophisticated and rigorous the firm's approach to time recording is presently.

The second step, where the process of time recording is not rigorous, is to make it so, a sort of "no pain, no gain" mantra, as step three requires firms to take risks, and, in doing so, a rigorous approach to time recording will lessen that risk. This step should also make time recording less of a chore for lawyers too, as there will be no requirement to "manage" time recording, it is what it is (a by-product of full and honest time recording will be the ability to see which clients are most profitable, and where lawyers' skills should be developed to achieve greater value for clients).

The third step is to start charging clients entirely on a basis that doesn't rely on the billable hour. Even in areas where this is seen as difficult, such as litigation, it isn't if you are a little more imaginative.

The fourth step is to evaluate the gain versus the pain, ie compare those areas where you have made money against those where you have lost money, and change prices, clients, staffing ratios or your knowledge management systems to suit!

Finally, if you are really brave, abandon time recording, and start running the business the way it should be run, and, dare I say it, the way new entrants will run theirs!

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The views expressed in this article are personal to the author and are not those of the firm.