

4 Leveraging value from external providers

It is fair to say that there are two elements to value: the fee or other remuneration paid to the provider, and what is received in return. That return can comprise both the basic work done, and what might be termed 'added value' – in other words, additional work, resources, services or arrangements.

Alternative fee arrangements are often considered, but it is not always clear what they mean. Annex 4A (fee models) is a table which provides information about many different fee structures. Whatever arrangement is chosen should reflect a mutual understanding between client and provider of the risks and costs involved, and how they are shared. For an organisation, the costs of legal advice can be substantial and the structure of fees may make the difference between whether a particular transaction or piece of dispute resolution can be undertaken, or not.

The in-house team and the legal provider will want to be clear on the overall cost of the proposed course of action – not just of the initial step – and to use the expertise of the law firm or provider to ensure the cost is properly estimated, or even fully defined. A number of firms, and particularly new providers, now say they will offer fixed fee arrangements to give absolute clarity, and that certainty may be welcome to the in-house team.

Which is written about the need to leverage value – or obtain added value – from external providers of legal work. However, there is often little clarity about what is meant by value, or added value, and it is important to work out what is meant in the context of each organisation. Annex 4B provides information from which you can decide what is valuable to your organisation, resisting the temptation just to include all the options.

There is also a simple process for eliciting what the organisation means by value and what it will pay for. This process can be used on its own or in your normal external relationship meetings with your colleagues in the organisation. Depending on the relationship with external lawyers, you may – or may not – choose to invite them into this process.

This chapter ends with a checklist (Annex 4C) which you can use to examine the concept of value in your organisation with your colleagues and external providers. It goes without saying that it is important to view added value as just that: added value; and that added value is considered and agreed once the basic service requirement from the supplier has been decided.

Annex 4A

Fee models

The 'traditional' model for legal fees is that of hourly rates, which in fact evolved because clients wanted to be sure that they paid for work which had actually been carried out. More recently, there has been a significant move away from hourly billing, and a range of alternative fee structures have evolved. Equally, some organisations now use broader structural arrangements such as sourcing significant parts of an organisation's work from a single firm.

The table below reviews a number of the alternative fee arrangements in common use, suggesting when they may be appropriate and what they involve.

Fee model	What is involved?	When appropriate
Value billing	Reflects value of the service provided and encourages focus on goals	Both parties need to understand the success criteria or value being delivered
Hourly billing	Rate for each hour of work spent; different rates for different levels of fee earner from trainee, paralegal, newly qualified up to senior partner; it provides an easy comparison between panel firms	Where it is not possible to define the extent of the work, or where the work is purely expertise-based, as in advice on a novel or very unusual problem
Discounted hourly rates	Provides an easy comparison	Sometimes with a guaranteed minimum workflow or it may be used to initiate the relationship with a one-off piece of work to assess if the relationship has a future
Blended hourly fee	A single rate for each hour spent by the firm regardless of who carries out the work. Normally based on the average rate of all lawyers	Where there is a complete range of work carried out by the firm. Care is needed to ensure the rate reflects the true balance of hours provided at each level in a sensible way
Blended hourly rates between London and regions	A single rate for each hour spent by the firm regardless of whether in the London office or regional offices (which will usually carry lower rates)	As above. The rate encourages the firm to push work to lower-cost regional offices and may achieve a lower overall cost. Care is needed to ensure that the collaboration needed between offices is not charged

Fee model	What is involved?	When appropriate
Capped fees	A fee calculated on any of the above bases, but capped at an agreed figure. The fee will be that calculated on those bases but not exceeding the cap. There are usually defined conditions to the capped fee – perhaps relating to overall hours spent, work included or the period of the project	When certainty is needed. Care should be taken over the definition of any conditions. This can also be used for stages of a major transaction as well as the whole
Fixed fees	A fee calculated on any of the above bases, but fixed at an agreed figure. The fee will be payable regardless of whether work to the value of the fixed fee is carried out	Where complete certainty is required. Care may be needed to check that it is a realistic figure for both parties
Task fees	A fee fixed for a particular piece of work or part of a transaction or contentious matter. Sometimes also known as task billing	Where there is volume work of a particular type or a major transaction can be divided into distinct parts
Contingency fees	Fees contingent on a certain event happening – e.g. on success of a particular course of action. May apply in relation to either contentious or non-contentious work, for example in relation to bidding for a project	Where the law firm is prepared to share in the risk of success or failure of the project in question
Retainer	A single payment in relation for particular work, or more usually type of work	Where there is a volume of work of a similar kind, the extent and value of which can be reasonably well ascertained. The volume risk usually sits with the firm for a particular period or subject to a particular cap
Single sourcing	All or the majority of work of a particular type or for a particular unit goes to the same firm in return for agreed fee arrangements	As for retainer, but with greater volume-related discount arrangements. Care is required to ensure that the firm is able to carry out the work types efficiently and effectively
Alternative fee arrangements	Can include any fee arrangement other than an hourly rate	
Mix of the options		Often the most appropriate scenario depending on the type and volume of work and the relationship with the firm

5 Managing the relationship

Management of the relationship between the in-house team and panel firms and other providers perhaps goes to the heart of the in-house role. The documents in this chapter together provide a framework which can be used to establish the basis for managing the relationships.

There are seven documents in this chapter which can be used in managing the relationship. It is recommended that you take and develop the ones relevant to you and your organisation.

For example, you will want to consider and develop key performance indicators relevant to your organisation, your team, and the way you want to work.

The documents in this chapter provide a framework for a protocol (Annex 5A) which can be used to define and record the relationship, as well as for a service level agreement (Annex 5B) which can be used to define how the legal team works with the organisation. There is a framework for a survey of the operation of your panel, which can be used with survey software such as SurveyMonkey to allow the legal team and colleagues within the business to give real-time feedback on the operation of the panel and to produce reports to feed back to the providers.

There is also a draft set of key performance indicators (Annex 5D) which can be used.

Finally, there are resources for meetings and arrangements between the organisation and providers. There is no substitute for communication and information for improving the way in which you work together, and reducing the possibility of misunderstanding. There are draft outlines of agendas for review meetings with your providers, for a conference for all your providers, and for meetings with the key people from each of your providers if you choose to bring them together (Annexes 5E-5G).

9 Managing the in-house team: performance and development

The role of the in-house lawyer is a particular combination of academic excellence, communication skills, business acumen, project management and the delivery of results. The competencies which go into that combination are varied, and must be considered in seeking to improve performance and drive individual development.

Many of these are skills that can be learnt, taught and shared amongst the team and beyond. The in-house team can be exposed to the wider organisation and help improve its effectiveness by tapping into the training and forums used by colleagues.

The performance and development of the in-house team are probably the critical functions of those leading the team. Irrespective of seniority or position, every member of the team must understand their individual role and responsibilities, and be accountable for their own development.

From recruitment onwards, there must be an understanding of the needs of the team and a sharing of the key requirements and competencies. It is important that self-development extends not just to keeping up to date with legal developments, but also to development as a senior member of the organisation and a key influencer.

In this chapter there are a number of plans to define responsibilities, induction and the exposure of the in-house team to the organisation, as well as a strategy for communication by the in-house team to colleagues. Also included are plans for personal development, training and workshops, as well as some tools for feedback.

Annex 9A Responsibility plan

This plan defines the responsibilities for each element of the recruitment, induction, performance and development of the in-house team, pulling together the individual constituents which need to be considered to ensure that the members of the in-house team are developed to their full potential.

In a medium to large team these elements can be apportioned within the team and the table also takes into account the role of human resources (HR).

Element	Sub-elements	Responsibility, review and commentary
Recruitment	Planning in legal strategy	General counsel, with HR and recruitment functions Review annually
	Role and job definition	
	Recruitment strategy	
	Relationship with recruiters	
Induction plan		General counsel, with HR Review annually
Discipline plan		General counsel, legal team Review annually
Communication strategy		General counsel, legal team, communications team Review bi-annually
Competency framework	Framework	General counsel, legal team, HR Review as needed depending on strategy of organisation
	Definition through workshops	
Personal development plan	Personal development plan	Individual members of legal team, reviewed by line manager and general counsel Review annually
	Training plan	
	360-degree feedback loop	
Development and training	Workshop plans	General counsel, legal team, HR Review regularly
	Training plans	