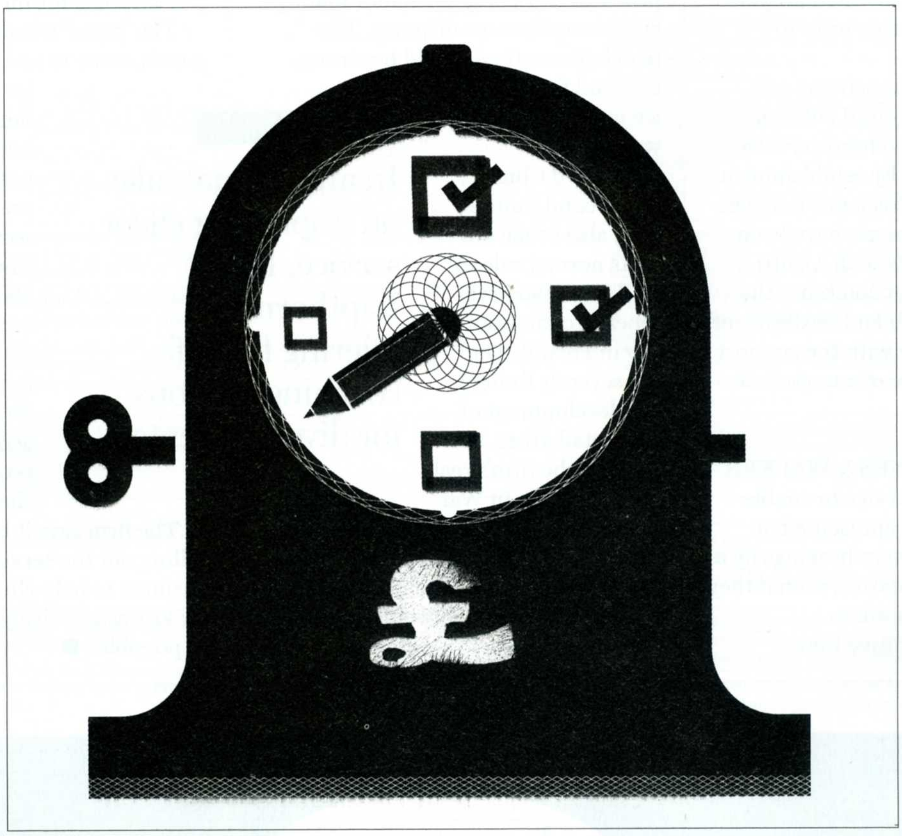
Taking charge

With inventive methods for charging clients being introduced at top firms, hourly billing may soon be a thing of the past. By *Rod Newing*



Traditional billing on an hourly basis has never been popular with law firms' clients, many of whom argue that it rewards lawyers for inefficiency. But many law firms have also become disenchanted with hourly billing, which they feel fails to adequately reward them for the value they can create for clients. A growing number of firms have responded by trying to develop more sophisticated and equitable ways of sharing risks and rewards with their clients.

Standing out among the innovators in the billing and fees category is Eversheds, which has begun offering its clients a range of *à la carte* billing options and has developed a specific arrangement with its client Tyco International.

Eversheds' performance is measured by groundbreaking comprehensive metrics. Hours for all the basic work are extrapolated from the previous year and priced at a fixed amount on the basis of breaking even. If Eversheds achieves the same level of work with lower hours, it keeps half the difference.

For litigation, Eversheds has a break-even rate. To make money on a case, the firm has to meet four criteria: time, settlement, victory and cost accuracy. If it misses the targets it loses money; if it meets them it breaks even and if it exceeds them it makes 25 per cent.

There are also three six-figure bonuses available, from global client satisfaction surveys, for diversity and for proactive litigation avoidance. The firm competes at hourly discounted rates for work on acquisitions, compliance and litigation.

Trevor Faure, Europe, Middle East and Africa general counsel at Tyco, says the billing system is unique in being specifically designed to end the "zero-sum game" between firms and clients: the tension between firms wishing to bill high and clients seeking unrealistically low costs.

"Traditional relationships mean that law firms benefit from misfortune or major litigation, which no client ever does," he says. "This [Eversheds/Tyco] arrangement is not designed to generate settlements but to proactively avoid litigation altogether by obliging the firm to analyse the historical causes of litigation and assist the business to root out such causes.

"This also reduces business disruption and customer dissatisfaction. If calibrated properly, paying a bonus for such proactivity is more financial-

'We are carrying the commercial risk, which is pretty unusual for a law firm. But this is increasingly what clients are expecting' ly profitable for both the client and the law firm than litigation itself. Eversheds has changed its DNA to become the firm a modern multinational conglomerate needs."

Allen & Overy, the other stand-out firm in the category, has developed a way of cutting its clients' due diligence costs. Conducting due diligence on potential counterparties in over-the-counter derivatives to provide legal certainty in a given jurisdiction is costly. An institution typically spends $10,000-$50,000 (£5,400-£27,000) in local counsel fees plus internal management costs.

Allen & Overy has created an online subscription service to share the costs between clients. Its Diligence product is a database of legal memoranda prepared by its local office or commissioned from local counsel. The service has a fixed annual fee of $3,000-$4,000 per jurisdiction and has attracted 11 subscribers since it was launched in August 2007. It needs about 15 subscribers to break even and has a target of 48 within five years.

"We supported it early on because we can see increasing future value," says a director in the legal department of a global investment bank. "It saves us time and money and risk."

Allen & Overy's innovation is an example of how online products can generate revenue in new ways for law firms, while satisfying clients and streamlining processes.

Marc-Henri Chamay, head of e-business at Allen & Overy, says subscription products typically require a large upfront investment in the first year before becoming available to clients in the second year and starting to make money for the law firm in the third year. "This means that we are carrying the commercial risk, which is pretty unusual for a law firm," he says. "But this is increasingly what clients are expecting from us to drive their costs down. Diligence is still in the investment phase but some products launched five or six years ago are extremely profitable for us."

Andrew Hedley, a legal strategy consultant, says research shows that the hourly rate, if not yet dead, is suffering from a terminal condition. "Commercial clients want commercial pricing," he says.

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This is reflected by the highly recommended firms in the category.

Clifford Chance has developed a cost control manager for clients on large transactions, and Addleshaw Goddard has created an unusual cost-free litigation package that includes third-party funding, conditional fee arrangements, after-the-event insurance and a hedge fund. Another innovation from Eversheds – its global account management system – marries up the firm's client service and billing initiatives with budgeting, transparent billing and crucial management information.

Start-up firm iLaw has a range of billing incentives to attract new clients. One allows clients to determine the fee, before or after the event, based on the value that they perceive to their business.

Mr Hedley points out that the biggest pricing strategy issue for law firms is that they often do not understand where they make money. Without clarity around the fundamental economics of their business, pricing will be a lottery, he says. ■

BILLING & FEES

Firm	Innovation	Originality	Rationale	Impact	Total	Description
STANDOUT						
Eversheds	Billing approach for client Tyco	8	6	7	**21**	The firm's performance is measured by comprehensive metrics. Payment is determined by client satisfaction and bonuses are payable if the firm proactively reduces litigation
Allen & Overy	Diligence: a flat fee derivatives database	7	6	7	**20**	Developed to give clients access to cross-border information through an easy-to-use interface. It delivers value for money by eliminating the initial need to instruct counsel
HIGHLY COMMENDED						
Clifford Chance	Bespoke Billing Management: using a cost control manager for clients on large transactions	7	7	5	**19**	A human, proactive solution to the challenge of project management and managing costs for clients. Has managed 30 big transactions, reducing time spent by partners on this activity and work in progress periods
Addleshaw Goddard	Cost-free litigation package to fund class action-like claimants in "Innovator" fraud case, with help from Calunius Capital	6	6	6	**18**	The combination of different elements: third-party funding, Conditional Fee Arrangement (CFA), After the Event insurance (ATE) and a hedge fund give this litigation funding arrangement an innovative twist
Eversheds	Gams: Global Account Management System	6	7	5	**18**	A system that marries up client service and billing initiatives, Gams offers budgeting, transparent billing and the ability for clients to access crucial management information
iLaw	General approach to billing in a low-leveraged law firm	6	7	5	**18**	Adaptable, flexible approach to billing, partly enabled by the firm's innovative structure, whereby it only employs senior lawyers and has low overheads
COMMENDED						
DLA Piper	Budgeteer	5	6	5	**16**	A software system that institutionalises the firm's approach to scoping and case budgeting for litigation
Wragge & Co	Using CFAs and ATE for commercial cases	5	5	6	**16**	A systematic approach where all Wragge litigators are trained in how to use these funding arrangements
Clifford Chance	Rugby World Cup 2007: swapping legal advice for sponsorship rights and tickets	5	5	5	**15**	As official law firm to the International Rugby Board, the firm used a "time bank" to receive 3,000 tickets and branding rights. An example of payment in kind with a twist
Tuca Zbarcea & Asociatii	Risk-sharing in international arbitration	5	6	4	**15**	Innovative for the Romanian market to use different rates for different types of work