



# Law Firm Resource Management...

## NCCG Article Series

### ...the next big thing?

Having applied technology and modern working practices to most areas of legal practice over the last 30 years, there are two remaining areas of law firm activity that have received little or no management attention. One of these is the actual process of 'coal-face' legal service delivery (which through Continuous Process Improvement and Lean Six Sigma is finally taking off); the other is the proper management of law firm fee-earner resources.

This has long been thought by those in the business to be irrelevant because either there was 'too much' work – in which case it was a badge of pride that no work was ever turned away and that lawyers (especially junior fee-earners) would simply work all day and all night to get the work done; or there was too little work - in which case all available resources were devoted to knee-jerk business development activities.

In the latter instance, if the trough proved to be long term then there is another classic set of knee-jerk responses: firstly, the firm attempts to save money by sacking low cost non-fee-earning resources – post room staff etc. After a few weeks or months it becomes apparent that this is achieving insufficient cost reduction; then the lawyer redundancies start to take place. Often in two or three successive rounds as the firm slowly comes to realise the extent of the downturn.

In such circumstances the legal industry exhibits its inherent inability to predict future demand by holding off far too long before making a sensible level of redundancies only to then announce significant staff reductions. This is occasionally followed some three to six months later by having to go on a hiring spree to make up for their over-enthusiastic resourcing decisions.

It could and needs to be done better. There are significant potential benefits in being able to predict and manage the likely future over-capacity or under-capacity of fee-earning staff. The underlying cost of such staff is a law firm's greatest single expense line. It follows that any ability to get this done better will result either in the ability to take on more work (without putting their lawyers under such pressure of work that they burn out, leave or even commit suicide); or the ability to cut costs by just the right amount while the work drops off. The difference in either case is a greater profit margin in relation to staff costs.

Even without consideration of such drastic instabilities in workload, proper resource management could help a firm identify likely future peaks and troughs that they can then work around to reduce the economic effects of such fluctuations. At a minimum that could mean scheduling training and holidays around forecast light workloads, and having plenty of notice to embark on a measured recruitment drive. Overall it would mean the ability

to put in place management processes to leaven out fee-earner numbers against projected workload and minimise inefficiencies.

Law firms generally do not think this way, and they have traditionally been unwilling to consider expending effort in improving this situation due to a fundamental fallacy, thus:

*We cannot – in our unique business (here we go again) – even attempt to undertake systematic resource management because that would mean allocating fee-earner resource to each matter, and having an idea of the amount of such resource that will be needed, over time. We cannot do that because it is impossible to know or predict these variables.*

This was always – mostly - a fallacy; but the fact that this Emperor has no clothes is now becoming more and more apparent due to other developments.

These other developments are the professional duty to undertake an estimate of costs on matter inception, the related requirements of the Precedent H cost management process (in the UK), and the development of IT systems that can manage the allocation of work to specific grades of (or even better named) fee-earners.

The management disciplines around better law firm costing and pricing, and budget management, have been explored extensively elsewhere, not least by me in these articles on AFA's and Matter Budgeting. In short, the only way to hope to achieve a reasonably accurate forecast of fees – and to have the information to manage the resources of the firm so as to come close to meeting that forecast – is to:

- break down a matter into its constituent elements,
- cost each element of work by relation to a forecast of how many hours (or days) of time will be required by grade of fee-earner.

This is something that accounting and management consulting firms have been doing for decades, initially with manual, and more recently with automated, systems.

It has always been claimed that it is not possible for law firms to do this, especially in relation to litigation, despite the fact that new-style law firms like Riverview operate a litigation practice almost entirely based on fixed fees. It was therefore somewhat ironic that the first area where lawyers were actually forced to undertake such costing by regulation was in the area of litigation. The Jackson Reforms have led to the Precedent H regime under which some litigators have to forecast the costs of a litigation matter by reference to ten specified phases, including counsels' costs. The penalty for getting it wrong, and not submitting a reasoned revised budget meeting the Court's approval, is that they pay for the case – a significant incentive, as in the notable case of *CIP Properties v Galliford Try* this amounted to some £5m.

This discipline has been around for several years now, and most firms are still undertaking it by means of spreadsheets and manual workarounds. This is not a good way of doing it as the work undertaken in assigning costs to the ten phases is best monitored and managed by recording time worked not just to a matter, but to the specific phase – and until the spreadsheets integrate with a firm's time recording and practice management systems, the workaround is inefficient, time consuming and error prone.

Even large firms with little or no Precedent H work are trying to improve their matter budgeting with massive complex spreadsheets, often developed for them by their auditors at great expense. However, they have the same problem (apart from training senior lawyers how to use them) the lack of integration between the spreadsheets and their PMS.

Some PMS/case management vendors (such as Eclipse and Peppermint) have developed Precedent H functionality which work well, and which lawyers are starting to get to grips with them. In addition, mainstream PMS vendors also have matter budgeting functionality.

Finally, there are also third-party solutions – such as Prosperoware’s Umbria and Newlands Horizon LHQ – that provide such a facility, and also integrate with a firm’s existing PMS and time recording solutions. No more spreadsheets.

Another key driver is the continued, inexorable and irreversible pressure on ‘time and materials’-based billing, and a consequent continued migration to AFAs, such as fixed annual charges, fixed or capped fees and so on. This has been given a significant impetus in the US by the recent fuss about the so-called Kia Attorney IT Audit. One key consequence of the Audit is the need for more lawyer IT training, and the other is for better budgeting – as the economic consequences of poor efficiency and budget management pass firmly from the client into the lap of the law firm.

These pressures towards more fixed fees or highly managed estimates are as inevitable as they are unavoidable. They mean that, over time, and sooner rather than later law firms will have to start to employ such budgeting disciplines for every matter.

On that basis, we would then be 90% of the way towards a means of proper resource management. All that is then needed in addition to such cost estimates to be able to undertake firm-wide effective resource management, is to add the element of time. Not just how many hours a fee-earner will need to spend on this phase of this matter, but *when* they are likely to be expended.

This could initially be done by identifying the likely life of a matter, and simply spreading the resource allocation *pro rata* for each month. Even better, this starting point could then be varied by the partner according to his or her best estimate of where the work is likely to be concentrated, or slack.

Will these estimates always be right? No, they will not – and they will also change from time to time, and such budgets will therefore need to be capable of being revised accordingly. However, for a firm with hundreds or thousands of matters – if each of them is managed in this way, then the overall management information regarding resource requirements are likely to be fairly accurate, even at a departmental level. They will also get better over time as partners learn how to predict, and to phase, matter workload. If the firm also institutes appropriate matter classification with associated templates of standard budgets and standard phasing by work type (along the lines set out in this article), then they will certainly improve.

They only have to be better than nothing to be significantly better than today’s ‘best guess’.

In the end, each matter is ‘resourced’ in practice by individual named fee-earners, the ones that actually record time on a matter a result of being assigned to it. At this point – the logical end point of ‘allocation’ we must be able to capture some fee-earner

resource data, and this would indeed be useful. However, how much better if we can bring the data capture forward to its logical start point - matter inception.

How will this be achieved? Let's go back to the various software applications referred to earlier. They all allow the partner creating the matter budget to break down the matter into phases or elements (Precedent H or otherwise), to create a series of resource grades (Partner, Senior Associate, Trainee etc) against each element and then to assign a time estimate against each grade (usually in hours). Once this is phased then this data is good enough to undertake an overall high-level analysis of resource allocation which, albeit generic, will provide useful management information.

But we can do better than this. The next step is to allocate specific fee-earners (or multiple fee-earners) against each grade for which there is a time estimate. So that, for example:

- 'Senior Associate - 26 hrs', becomes
  - 'John Bradley – 15 hrs' and
  - 'Jane Sweeney – 11 hrs'.

Maybe John and Jane end up having to move to another more urgent matter after a few weeks; no problem, just revise the allocations accordingly. Similarly, the initial budget may need to be revised during the life of the matter.

The ERP-based PMS systems from Fulcrum GT and LexisOne, go one step better than this and actually provides tools to help with the process of allocating the work to the most suitable fee-earners. As you seek a named fee-earner to assign to the 'Taking Instructions' task of the 'Communication' phase of

this matter you can search available resources by reference to:

- skills (like Danish – to a specific level of proficiency)
- matter experience (say, against an assigned list of work-type skills – a subjective assessment of expertise)
- certifications (jurisdictions, practising certificates)
- education (years qualified etc)
- other attributes (one I would like to see here is actual expertise as measured by the number of hours recorded against specific type of matters – an objective measure of expertise)

In small firms this may not be especially helpful, but in a medium/large/global firm it could be invaluable. It is a very useful addition to standard resource management – one could call it resource maximisation or exploitation.

Such a degree of sophistication as this may be some years away on most current law firm systems, but as described previously the process of assigning named fee-earners to resource estimates can already be undertaken in many existing systems.

If this is done for all matters – which would also bring significant advantages in relation to matter budgeting, client care and overall realisation - then firm-wide fee-earner resource management is also achievable. The system would then be capable of generating reports indicating the available capacity of individual lawyers, as well as for the overall projected capacity of each department and for the firm as a whole for many months ahead.