

Opinion: know-how is not all about precedents

Having been invited to write about a subject that gets me ranting, I elected to go for the binocular view of know-how subscribed to by many firms. When 3Kites talks to a firm about know-how, we are invariably directed towards a number of precedents, documents and articles that undoubtedly provide a useful starting point for the lawyers. However, by the time documents are being drafted, one of the main advantages of know-how may already have been passed by. I'm referring to the know-how accumulated for matters as a whole rather than the sub-atomic items from which they are made up. Not only do real matters help a firm create templates for the steps and stages that are likely to be needed in the context of a particular piece of work but, in addition, each matter will have data recorded against it in the firm's practice management system such as time captured, time billed and time written off.

After enough matters of a similar type have been completed, the firm will have a picture of how long these take on average, how much they cost, and even, possibly, what is their contribution to profits. Using this data, more informed estimates can be provided to clients about the likely timescales and costs of matters the firm is pitching for. In some circumstances, it may be this allows the firm to feel more comfortable providing a fixed price, enabling them to compete for work where clients demand it and where they are otherwise excluded. Unfortunately, the idea of fixed price still jars with many firms who see this as dumbing down or, worse still, reducing the potential for billing as many hours as possible. This view is probably correct in the case of high value, bespoke transactions however there are a number of matters for which a fixed price approach makes increasingly good sense.

If a firm is able to systemise work which is usually repeated for a particular type of matter, it could be charged at a lower overall total than previously whilst being more profitable. For example, a matter which has usually been charged out at £10k may, through effective application of past experience, now only need to be charged at £6k. But – and not least because of potentially speedier delivery (which may also be seen as an advantage over competing firms) – the firm could justifiably charge clients £8k. Clients would have work completed more quickly and at a 20% reduction over previous costs. But of course this won't happen because know-how is only about precedents and documents, right?

...Paul Longhurst, consultant, 3Kites Consulting