



Andrew Garard, group legal director, ITV

# Andrew Garard

## The campaign against hourly billing

In 2008 Andrew Garard, group legal director at ITV, transformed the broadcaster's legal panel into a trim body that operates entirely without hourly billing. He now holds court with everyone from FTSE 500 companies to the world's largest legal firms – all keen to know how he did it. **TOM WHITTAKER** reports.

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Garard knows what he wants and is not afraid to ask. For the 2008 ITV legal panel review he demanded that all the law firms should work entirely without hourly billing. The firms that acquiesced found a place on the panel. Now other clients are paying attention to Garard’s campaign.

For many companies the move was a breakthrough into a debate they had wanted with their own firms for some time. For others it was greeted with scepticism. They did not believe that a full move to alternative billing was viable.

Two and a half years later the ITV model appears to be working and Garard has become a figurehead for those general counsel who are seeking new billing arrangements with their own firms.

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#### **Starting the avalanche**

The ‘little piece of snow’ in this case was the panel review Garard set in motion after confronting the complicated situation he found at ITV. Low viewing figures and falling advertising revenues had left ITV in dire financial trouble. The completion of a number of mergers in 2005 had also left the ITV legal team with 43 firms and little organisational structure to deal with them.

“That was something I wanted to get a handle on because it’s an easy recipe for costs running out of control,” says Garard.

Michael Grade, the chairman and CEO at ITV, had already produced a strategy to get the company back on its feet. On joining ITV in November 2007 Garard knew a large turnaround would be necessary in the legal department too.

He had experience of rethinking the relationship between firms and clients after pushing the firms he worked with at Cable & Wireless and Reuters towards new billing arrangements.

Garard assembled the senior legal team and announced his plans for a radical panel review, saying: “I want to use fewer firms because I think we should be a bigger fish in fewer ponds. And I don’t know about you guys, but I’m sick of chargeable hours.” They set to work.

A ‘request for proposals’ (RFP) was released that was tough and emphatic in its demands. Either you were prepared to abandon hourly billing or you didn’t work for ITV. There was also an emphasis on providing free services, a commitment which many firms found more of a concern than the alternative billing.

“It was a mental work-out. You really had to think about it in terms of value-adds and new innovative charging arrangements,” said Paul Herbert, a partner at Goodman Derrick.

The responses to the RFP quickly separated those firms willing to accommodate alternative billing from those that weren’t. After a second round the panel had been cut from 43 firms to nine. All the firms had committed themselves to operating without any hourly billing while also offering a plethora of free services to the company including helplines offering up to half an hour of free advice, ITV-specific weekly updates from each firm, seminars, and free training for ITV’s in-house lawyers.

The surprising absence from the new panel was Freshfields. The firm had previously advised ITV on a number of high-profile cases including the £120 million purchase of Friends Reunited and NTL’s £5 billion takeover approach in 2006.

Garard says: “I was delighted to see them on the panel I inherited at ITV. Unfortunately they didn’t give the overwhelming commitment to move away from chargeable hours that I was looking for.”

While Freshfields declined to comment on the panel review, the firm was quoted in *Legal Week* at the time as saying: “We had not worked with the new general counsel during his previous in-house roles and knew he had good relationships

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elsewhere. So when he arrived at ITV and announced a pitch process, we expected change.”

Garard disagrees. “I used them at Reuters,” he says, “and they were on the other side of me at Cable & Wireless.”

#### The panel in practice

The new panel now operates on a fixed fee arrangement. This is relatively easy when it comes to basic ongoing advice that can be dealt with on a monthly retainer. And even on slightly more complex matters a fee can be arranged per project. But what about major transaction and litigation work which is less predictable?

Many think that this is where it breaks down, but Garard disagrees. He argues that it is merely an issue of applying a fixed fee at each step so both parties are aware of the costs.

For example, in a litigation case a fee would be agreed at each level as the case progressed: a fee for the initial phase of claim and counterclaim; a fee for the drafting of pleadings; another if the case is settled before the case management conference, and so on.

“The crucial thing is: we agree the scope at each stage.” Garard says.

#### Opening a dialogue

The firms on the panel say that operating on a fixed fee basis for such complex work makes an open conversation between firm and company vital, as does the possibility of re-evaluation at each point.

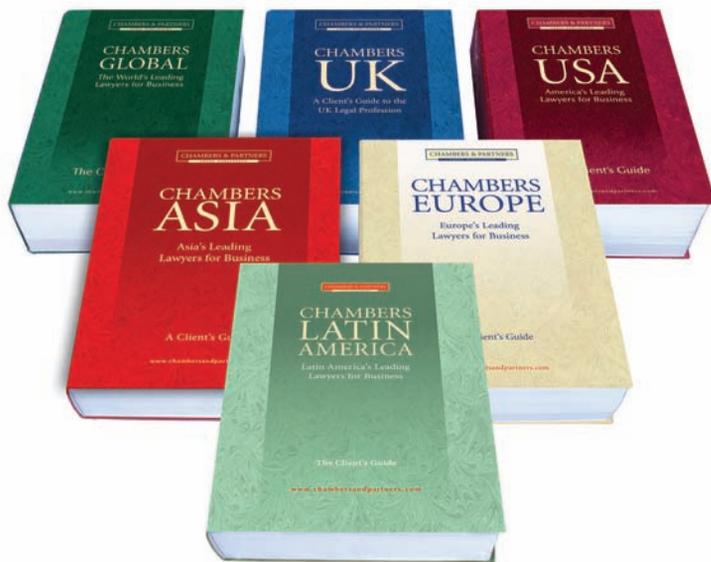
Martin Davies, a partner at Olswang, agrees: “It’s not like with hourly rates where you just send them a bill and that’s the first they know

about it. You have got to be open about these things and have an ongoing dialogue.”

When negotiating fee arrangements for one project DLA Piper supplied a questionnaire to ITV on what the company required. The firm then priced this up and agreed a price based on their understanding of how much labour would be necessary.

“ITV have always said that if at the end of a job you don’t feel that the pricing plan has worked then we need to sit down and discuss why,” says Karen Friebe, a partner at DLA.

Garard has even managed to push his off-panel firms to work under this model. For example, when he needed the expertise of Reed Smith at short notice he offered them the work on the strict condition that they operate on fixed fees. Reed Smith complied, adding that



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they would be “absolutely delighted” to work on the job.

#### **A positive example**

ITV and its firms say that this approach has been a success, with Garard passionately pushing the merits of an all-alternative-billing model to others. And other companies are eager to listen. Since first launching the panel review Garard claims to be inundated by companies and firms keen to learn more.

“Every day this week I have got a meeting with another company asking: ‘How did you do this?’” says Garard. He cites Network Rail. In 2009 the company reviewed its panel, emphasising the importance of innovative new arrangements between client and firm.

“They had wanted to do it for a long time and to hear someone else say ‘Look, I’ve done it’ gave them the confidence to say: ‘We can do this too,’” says Garard.

He also held discussions with other big companies including Shell, JPMorgan and BT. In April this year Shell slimmed down its own panel and as part of the review process has demanded a range of billing methods.

But if this model is a success, why aren’t all FTSE 350 clients demanding that their firms move all their billing away from an hourly rate? The answer may lie in time and influence – the time to actually think about this issue and the influence to carry it through.

Clive Ashcroft, general counsel at the Land Securities Group, points out that often general counsel just don’t have the time to confront the issue of alternative billing properly. “If you’re a head of corporate have you got time to think about these things? I’m not entirely sure you have,” he said.

The size of your company is also a major issue. “I think it’s easier for those larger players to focus on alternative billing arrangements. If you

have a smaller start-up business then it’s a very different commercial reality.” said the general counsel of one medium-sized company.

Perhaps the success of the model at ITV lies in Garard’s own personal character: his unapologetic demand for what he wants, combined with his willingness to devote time to the issue.

This attitude was well illustrated by his reaction to the RFPs he dismissed: “Go to the firms that we dropped, you can see estate agent puffery in it. Not interested. Give me what it says I want and we can have a proper conversation.”

It is not just clients who are discussing the billing revolution with Garard. Firms, too, want to learn more about the ITV model. He talked to “a range of mid-sized US firms, magic circle firms and some of the larger global firms, all of whom are keen to understand how it works for us.”

Even Freshfields, the firm once removed from the panel for sticking with hourly billing, has met with Garard to discuss the new system. Garard also hints that Clifford Chance has been flirting with the idea of working with ITV.

#### **Towards the future**

The question remains whether more general counsel will move down this path. Garard suggests that the recession has given companies the upper hand when it comes to dealing with their firms.

He also believes that in-house teams have become increasingly sophisticated, with many more lawyers coming in-house from private practice. This has resulted in clients being more demanding towards their panels.

ITV’s 2008 panel review showed that working without hourly billing was possible in the current business environment. Garard says: “We are driving the debate forwards about how better to engage with firms and how to get law firms to listen to their clients and get what they want. I believe the debate is really beginning to happen.” ■