managing FOR success

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Survival of the fittest

Under-performing partners can spell danger for law firms, especially in times of economic downturn. Peter Scott looks at what's involved and suggests ways to resolve the problems before it's too late.

In January this year I wrote an article for The Gazette on the issues that law firms needed urgently to address in the face of a looming economic downturn. That downturn is now here, but some firms have only recently begun to consider how to deal with fundamental issues affecting their future well-being.

As a priority, many law firms need to take urgent steps to become more competitive to stand them in good stead when times are worse. Under-contributing partners (contribution should be seen as more than just financial performance), is a key issue which firms must address if they are to survive leaner times and build a stronger base for the longer term.

This was unlikely to happen while there was enough money to go around. Many asked "Why, when we are doing well, should we go out of our way to create internal issues often involving personal and emotional difficulties with partners?" Now that many firms are beginning to feel the chill wind of recession, they must deal with their under-performing partners, if they are to survive and prosper.

Ensuring that everyone in a firm (especially each partner) is performing to agreed and acceptable levels of performance is perhaps the greatest challenge, because partner performance (or rather, under-performance) affects every aspect of the firm, its business and its very future. Under-performance revolves around two major issues in particular: management, and the role of the partner.

Management

Performance issues can bring into sharp focus the effectiveness or otherwise of management, because a close study of the performance of partners must include examining the performance of those managing the business:

- Is management facing up to (or indeed even capable of facing up to) these issues?
- Is the style and structure of the firm's management appropriate to deal with the issues which under-performance throws up? A consensus style may not be what is required for difficult decisions.
- Does the firm have the necessary leadership to see it through a partnership restructuring which harder times may demand?
- Does management have a clear brief from the partnership as to what it should achieve?
- Is there a planned career path for the managing partner which will provide him/her with the confidence to do what is necessary without the fear of being thrown out?

The role of a partner

Law firms rarely address the central issue of what should be the role of each partner. Lawyers become partners and it is assumed that they know what is expected of them. How many firms provide training to young partners as to their future roles?

Crucial to enhancing performance in firms is the need to ensure that every partner knows what is expected of him/her. Even though it may be argued by some that partners should innately know what to do, in reality life is not like that, because firms have promoted to partnership

people who were good lawyers, but nothing else. Many of the problems the profession now has arise from those mistakes of the past.
Being a partner is about being a businessman or businesswoman, and this involves at least two essentials:

- Being a manager; that is a manager of people, of the business and of oneself; and
- Being a business developer, in the widest sense, which is about being ‘hungry’.

Just being a good technical lawyer is not enough – in any case, that should be assumed.

Performance
What standards/levels of performance are required of partners and how can we measure them? Whilst it is usual to build criteria into performance development reviews (I prefer that term to ‘appraisal’, which can have negative connotations and hinder partner buy-in) by which to plan and then assess performance, more often than not performance is an instinctive thing – the ‘you know it when you see it’ approach. Instincts are very often right, but in the context of partner performance, particularly when performance levels are linked to reward, it is important that a firm is seen to have clear and objective standards and criteria by which to measure. Above all, partners must have trust and confidence in such criteria and in those who are judging performance and operating the reward system.

Any consideration of the performance of partners ought to be approached in the first place from the question ‘how can we work to ensure that everyone is maximising their potential, so as to achieve for them and the firm the very best out of their work?’ If approached in this way, a great deal can be achieved in terms of enhancing the performance of individual partners and of the firm overall. Here are some steps:

1 Each partner should prepare a business plan every year for his/her part of the practice (many will need help in doing this) which can be agreed with management and form the basis of reviewing and rewarding future performance.
2 Training can and should be provided where a partner lacks certain necessary skills, but only if it will help to enhance the partner’s performance and benefit the firm’s business.
3 Mentoring can be given if partners have difficulties in certain areas – for example, many partners find it difficult to manage their own time and to prioritise their actions.
The role of management should be to work to bring out the best performance by everyone in the firm. If, however, despite all efforts, there are partners who cannot or will not perform to agreed levels of performance or who refuse to be accountable for their actions, then management must, as its priority and for the sake of everyone in the firm, take all necessary steps to remedy the situation.

Contribution and reward
It is important to understand that what we are talking about here are ‘differentials’ in levels of performance by partners which are of such a magnitude that there is a mismatch between contribution and reward.

For example, a firm which has a lockstep reward system, with a number of partners earning equally, may take the view that equality can only work if everyone is more or less contributing (in the broadest sense) equally. They may consider that some modified form of lockstep is required in order to try to match contribution and reward, because many firms regard this essentially as an issue of fairness between partners.

Without in this article going into detail regarding meritocratic forms of partner reward systems, many firms have partners whom they wish to retain because they are contributing to the firm in valuable ways and at particular levels, albeit not at the highest levels required by the firm. Once levels of performance by these partners have been measured, then agreed performance targets for the future can be agreed and rewarded accordingly. However, persuading a partner that he or she is not ‘worth’ as much as the colleague in the next office can tax the diplomatic skills of the most persuasive of managing partners!

However some firms, for whatever reasons, resolutely refuse to move away from equality and the result is that, even if they want to do something about serious differentials in performance, there are few appropriate choices available:

- They do nothing, which is most often the case;
- The partner can move to salaried or fixed share partnership, although this may not be appropriate in many cases;
- A partner may move down the lockstep, either on a permanent or temporary basis, if persuaded to do so; or
- The partner leaves the firm.

It is unlikely in many cases that the above limited choices will really fit the bill or be in the longer term interests of the firm.

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Only if the level of performance by a partner falls very far short of what is required should the partner’s retirement be sought. This is because many partners have valuable contributions to make at a certain level, and so firms need to find ways to match remuneration to that level of contribution, if they wish to keep the partner on board.

However sometimes ‘retirement’ is the only choice available, but this is often only possible if there exists in the partnership the power to expel without cause by a majority vote. How many firms have that provision in their partnership agreements?

Ideally, reward systems should be structured with sufficient flexibility to give firms access to the services of partners profitably at many different levels, so each is rewarded accordingly.
Ultimately, law firms will only become and remain competitive if they can attract and retain the best people. That will not happen if partners performing at the very highest levels are not receiving what they perceive to be their market worth. It is arguable that the current mobility in the market place is to an extent caused by the failure of law firm managements to get to grips with this. The problem will not go away, and it may get worse, because if there is a chance that the pot may be smaller in the next few years, then there will be even greater pressure on firms to fairly match performance to reward. That is the challenge for management.