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Briefing Note October 2013

Developing effective succession plans

Succession planning is today an issue high on the agenda in many law firms as succession issues have been increasingly brought into focus due to pressures today on firms, including:

- Pressures coming from below from the ‘young turks’ who want a bigger slice of the cake sooner but see their career paths blocked by older partners.
- A trend to lower retirement ages in many firms, with older partners often seen as ‘easy targets’ but in circumstances where they cannot afford to retire, causing tensions
- Firms facing the prospect of the retirement of partners, some of whom may have been the driving forces behind their firms in the past, creating the dilemma of how to replace them to secure the future of their firms
- The need to raise performance levels to meet the ever increasing requirements of clients which can highlight the ability or otherwise of some partners to perform at a required level.
- The need to review partner reward systems to remain competitive in the talent market to enable firms to recruit and retain the best, and how this can impact on partners approaching retirement.
- The effects of difficult economic conditions and government legislation which mean that some areas of law are no longer viable
- Changes in the profession often leading to the de-skilling of lawyers as work becomes more and more ‘commoditised’, particularly but not exclusively, in areas of volume work.

These pressures can lead to sometimes hasty and short-sighted decisions being made in order to simply ‘cut up the cake’ between fewer and fewer partners, which in turn can lead to its own problems if the partner pool reduces too far and too fast, such as cash flow difficulties when required to repay capital if not replaced by new capital and loss of client relationships.

Forward planning is required to manage these pressures so that when partners do retire they can leave the firm in a healthy state and the firm is able to face the future with confidence.

What should a succession plan aim to do?

Succession planning should in an ideal world aim to make optimum use of all the productive human resources within a firm with a view to ensuring the current and future well-being of the firm and everyone in the firm by reconciling conflicting and competing interests and the future well-being of various groups, including:

- Partners approaching retirement
- Other partners particularly younger partners and those aspiring to become partners
- Managing Partners; and last but not least
- Clients

Why do firms need a plan and in particular, what kind of plan?

1. **Partners approaching retirement**

The higher the age profile of partners, the greater is the need and urgency to develop a plan to deal with succession. This is particularly the case where those partners approaching retirement have been (and may still be) the driving forces behind their firms.

There is often reluctance on the part of firms to engage with older partners on the subject of retirement for fear of upsetting them. However, unless firms openly and frankly discuss issues relating to retirement with partners they will not be able to arrive at mutually acceptable retirement arrangements which will work well for both the partner and the firm.

There is no one formula for a successful partner retirement and many partners can continue to contribute to a firm on a part time consultancy basis for many years, where they can apply their knowledge and skills acquired over the length of their careers for the benefit of the firm. A good example is the way in which some firms have usefully harnessed the experience and knowledge of retired partners to help with risk and compliance management.

There will however be some partners who are approaching retirement and who may have ‘taken their foot off the accelerator’ in that they are not performing as agreed. This should not be allowed to continue without action being taken because the effect on others within the firm may be damaging to the firm. This can be a particularly difficult issue where a firm has no provisions for retirement in its partnership deed or LLP members' agreement.

If performance is an issue then well thought through performance measures should be put in place across the whole firm and a feedback process used to make an under - performing partner aware of the need to perform better. A 360 degree or similar all - round feedback process can be used very usefully for this purpose, as a partner is more likely to take to heart comments from close colleagues than comments from a managing partner alone. This can then be the beginning of a wider discussion regarding a retirement plan for the partner.

However, for those partners approaching retirement that still have the energy, desire and ability to fully pull their weight then firms should seek ways to:

- Make those partners feel 'valued' as opposed to being made to feel that they are 'beyond their shelf lives'

- Harness their skills and experience within the firm, whether it be for the mentoring of others or for the retention and development of long standing client relationships. Good judgment born of experience over many years is often a hard to come by commodity.

- Match their reward to their contribution so that both the partner and the firm feel they are getting a fair deal. Specifically agree financial arrangements to enable a partner to plan retirement over a given period of time and which can also help the firm manage the cash flow and working capital implications if several retirements are happening in rapid succession.

- And even when a partner may have reached a mandatory retirement age (assuming this to be enforceable), thought should be given to 'not throwing out the baby with the bath water', particularly if that partner has strong client relationships and business development skills which can be used profitably in the firm's interest.

Firms will benefit if, in a creative and flexible manner, they begin to harness the skills and experience of partners approaching retirement who have the ability and desire to contribute fully, rather than losing such talent to other firms which may still value the qualities which tend to go with 'a few grey hairs'. I know someone who at the age of 56 realised that he would 'be retired' at age 60 if he stayed at his firm. Instead he moved to a US law firm in London who value his capabilities and judge him by how he performs rather than by his age.

Arriving at amicably agreed succession arrangements is important for another reason, which is beginning to be seen in partnership disputes. We now have Compliance Officers for Legal Practice (COLPs) and it is clear that there is an 'independence' requirement which it is suggested, is '*the need to maintain independence of role of the COLP'*, whether from a management team (if a COLP is not part of management) and / or from *'managers'* as defined in the SRA Handbook, namely members / directors / partners.

Over the years there have been many examples of older partners being exited inappropriately, and also younger talented partners being sacrificed to provide for a continued role in the firm for their seniors, in circumstances which have given rise to justified complaints of discrimination. Such conduct would now likely be in breach of the mandatory *Principle* requiring equality of opportunity and respect for diversity, so as to prevent unlawful discrimination taking place. Previously such issues would have been dealt with as between management and the partner and the Tribunals. Now they are a matter of SRA regulation. Indeed these issues are increasingly being raised by partners who consider they are being discriminated against on the basis of age. A COLP will not be able to avoid involvement if he or she is to properly and effectively discharge the responsibilities of the role.

What will happen in such situations when a COLP tells management that it must not implement its decision, otherwise the firm will be in breach of its regulatory obligations, which will require the COLP to make an immediate notification to the SRA?

Seeking solutions for older partners may also bring into focus the longer term issue of who or what a firm puts in their place, if indeed there is anyone or anything to fill the gaps? This can be the moment a firm realises it may be at a crossroads.

2. Preparing for tomorrow

With an ageing partner pool and several partner retirements due in coming years, it is prudent for firms to ask themselves whether they will realistically have the people and other resources to continue on their own or whether they should begin to plan an alternative strategy.

Succession planning often leads to thoughts of merger as firms realise that with no strong young partners coming along behind, the only sensible option is to throw in their lot with others. However, even if succession issues are a catalyst for merger, firms should still only merge for the right reasons. Merger is not a strategy as such – it is merely a means to achieving an end, namely the building of a more competitive law firm.

If firms are to avoid the problem caused by lack of good talent waiting in the wings to take over and are to grow, then they will need to provide **long term career paths** for their people in order to be able to recruit and retain the best talent.

Younger partners, who are the long term future for firms, will often feel the need to see a clear career path ahead of them and so mapping out their future should be a priority in any plan for the future prosperity of a firm.

It is also unrealistic to think that nowadays lawyers will throughout their legal careers do the same work and have the same roles. Instead firms need to offer their partners flexible career paths. Consider for example, the waste of talent involved by those firms who cannot or do not wish to find ways of using the skills of women who have had children and wish to return to work on something less than a full time basis. One of the best partners I ever had worked only four days a week in the office because of her need to look after children, but she certainly contributed to the firm as if she was working full time.

And as part of a plan, firms need to help younger partners to develop the skills and the experience that they will need if they are to grow into the shoes of their older partners and one day take over the reins of the firm. Older partners can help them with this by providing mentoring to younger colleagues to help them develop the necessary skills. At the same time, older partners need to ease younger partners into client relationships so come the day of retirement, the firm's position with the clients is secured.

Younger partners (here I am talking about partners between say the ages of 35 and 45) will however have their own financial issues, such as mortgages, having to provide partnership capital and growing families and school fees. Earning enough is important to them. This brings us to the issue of reward which can tend to loom large when discussing succession matters.

3. Reviewing reward structures as part of succession planning

Succession planning requires not only plans to be put into place for retirements and future career paths, but also may need to include, hand in hand with those issues, plans to fairly match reward to contribution in order to attract and retain the best talent.

A law firm that wants to be successful in today's competitive markets when faced with difficult economic times must ensure that it has access to highly trained, skilled and motivated people who are high achievers. And a firm's people will need to know in which key areas their performance will be measured, their performance goals and how their performance rates against these goals. Actively managing performance in this way will be a critical objective if a firm is to outperform its rivals.

Performance management has for long been recognised as a key component to gain competitive advantage, and two of the most common purposes for which performance is measured are ***reward and progression*** within a firm. Given the paramount importance of building high performance, performance – based reward structures are increasingly gaining favour in place of the traditional 'pure' lockstep model which involves reward and progression being by reference to seniority.

How can a law firm attract and retain key partners who are outstanding performers and who will be instrumental in building a firm's future success?

What will a firm need to do to deliver ***what those partners require***?

If a firm is unable to offer competitive rewards in its market, then it will risk losing its best people and be unable to recruit the best. Competitive rewards can however be very personal to individuals and are not always limited to financial reward. Identifying these factors can help firms to develop people retention and recruitment strategies to satisfy their lawyers' aspirations for interesting and rewarding careers.

If lack of profits is the real problem and if every partner is contributing fully as required, the problem should best be tackled by building the underlying profitability of the firm and a larger cake for all to share, instead of reducing partner numbers simply to improve profits per partner, which is the reason ‘succession planning’ is sometimes used as a polite term for ‘partner culling’.

Having said that, many law firms know they are over- equity partnered. If not all partners are performing to the standards required of them then the problems caused by those under-performing partners will urgently need to be faced up to because of the cascading damage which can be caused throughout a firm if no remedial action is taken.

4. What to do with the ‘redundant’ managing partner?

The lack of well thought out career paths in law firms becomes very evident in relation to those who have accepted the burden of management.

What does the 45 year old who has just become managing partner have to look forward to in career terms at the end of his or her, say 5-year stint in management, having passed to others his work and client base? Sometimes very little because the choices (if there are choices available) often seem stark. A return to fee earning can be difficult and there is still not a very well developed ‘market’ for managing partners although some have successfully moved on.

Given the importance of good management in law firms today and the need to attract the best managers to run them, are these attractive or realistic choices? A managing partner who has been at the helm of a firm for say five or more years will have amassed a wealth of experience. Why throw away that resource if it can be profitably used?

Undoubtedly the lack of a managerial career path in firms discourages many potentially good managers and leaders. If law firms are to attract the highest quality people to lead them, then they need to begin to address longer-term succession plans for when those who have taken on the burdensome tasks of management eventually come to hand over the reins.

5. Forget the clients at your peril

We must never forget that the reason we ultimately need to plan for succession is to secure the future of the firm – and that means making sure that the firm not only keeps the clients it has but develops strategies to build an even stronger client base and relationships.

Some firms assume (usually incorrectly) that clients have no interest in what happens internally within the firm. A law firm will have a close working relationship with its larger clients and any changes within the firm will impact upon the clients. Clients have a right to know who is to look after their matters and indeed, because they pay the bills, to have a say in such matters. So if a client asks a managing partner about ‘Partner X’s retirement plans’, alarm bells should ring.

The following experience should be a lesson to us all. A very able partner was coming up to his firm’s mandatory retirement age. He had a number of important clients but the firm had taken no steps to arrange, in conjunction with the clients, handover to other partners. Instead the firm wrote to each client shortly before the retirement date to say the partner would be retiring and that the client’s matters would be in the future looked after by another partner. One client, the chairman of a major PLC for which the firm acted, replied by return to say that his company was very happy being looked after by the retiring partner whom they would continue to instruct, whether he was in that firm or another! The partner’s retirement had to be put back several years while an effective and client- friendly succession plan was agreed with major clients and with the partner concerned.

Planning ahead is the key to successfully managing the process of succession if a firm is to be able to face the future in good shape and with confidence.