Law Firm Considerations In Attracting And Retaining Talent

By **Catriona Watt** (May 8, 2024)

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Over the last five years we have seen law firms start to move away from the pure lockstep model of partner remuneration toward a so-called modified lockstep model, or even a purely meritocratic system.

The rigidity of the pure lockstep, which bases partner profit share solely on seniority within the firm, rather than performance, has long made it difficult to deal with extreme ends of the spectrum — long-term underperformance or exceptional contribution.

Attracting and Retaining Talent

To be a serious player in the legal market, it is necessary to attract and retain talent, have an even spread of so-called finders, minders and grinders — an effective hierarchy of entrepreneurial senior partners, diligent and quality-oriented management and hardworking junior staff — and to compete with the salary wars resulting from the increasing influx of U.S. firms to the U.K. market.

This has propelled the change toward remuneration systems that can better deal with these aspects.

Firms need to be able to look holistically at overall contribution and have the flexibility to reward the stars they wish to keep. Additionally, firms need to reduce profit share where long-term underperformance indicates the partner's practice is on a downward trajectory and ultimately costing the firm.

What the lockstep lacks in flexibility, it makes up for in certainty, consistency and a sense of collegiality. Thus, moving further toward a more discretionary or merit-based system requires a deep dive into the big questions, such as a partner's contribution, the behaviors that should be incentivized, and the factors to be considered when assessing contribution and the weight that is given to each.

Achieving a fair outcome that motivates partners in the right way while supporting decision making in the face of contest does not come without challenge.

Utilizing a merit-based remuneration system inevitably results in a more opaque decision-making process. It would be highly unusual and extremely impractical for the relevant partner to be present at a meeting at which their own remuneration is analyzed, debated and decided.

Members of Generation Z in particular want and expect total transparency, and this is a difficult balance for firms to strike.

Decision-Making Factors

Decision-making bodies need to be able to explain and support their determinations. Being overly transparent about the detail of their decision can result in issues escalating and the creation of skewed narratives that they cannot control.

Conversely, having no record or paper trail of considered factors will not serve the firm well in the event of any subsequent allegations of differential treatment or discrimination.

Being clear on the financial and nonfinancial factors that are to be considered, and an idea of the weight given to each, will assist in enabling remuneration bodies to justify their decisions. These can include client origination; personal and team billings; profitability; developing the reputation and standing of a practice and its firm; training and developing junior colleagues; and participation on internal committees.

Notwithstanding the general view that the pure lockstep is no longer fit for purpose, moving to an extreme so-called eat-what-you-kill model — where short-term billing is the only behavior rewarded, since compensation is based purely on individual revenue generated in a given year — means behaviors that invest in longer-term value for the firm are jeopardized and self-interest is justified.

At least for now, firms generally remain reluctant to reward partners based on a single metric. They recognize that partners need to be incentivized to take on leadership and management roles that suit their skills; to invest in talent, development and relationships in their teams; and to maintain high standards in risk and compliance to ensure technical excellence across the board.

Committee Considerations

Transparent key performance indicators should be embedded in constitution documentation while allowing some flexibility to take a holistic view of performance and contribution over a number of years. Educating partners throughout the year as to remuneration committee considerations can be helpful.

To retain the talent, the business will need to grow and evolve. Addressing within constitution documentation what happens to a member's profit share during periods of parental leave is important to get right.

However, firms still need to be careful to manage the impact of taking leave on returners' practices and, in turn, their remuneration in accordance with equality law.

Creating a culture of trust will help result in fewer challenges, which can be done by being clear as to how financial and nonfinancial factors are considered in remuneration decisions.

Firms will also need to consistently practice what they preach when applying those factors.

This is where reliable and robust data comes in. Those making remuneration decisions need to understand and be able to explain the data available to them through practice management systems, as well as peer and 360-degree reviews.

To apply consistent decision-making across the board, thus reducing the risk of a challenge, the remuneration committee needs to be able to utilize and analyze accurately the data available to it. This means being able to clearly define and consistently apply the weighting of all metrics involved in the decision-making process — from team billing figures to personal feedback.

Single financial metrics rarely tell the whole story of a partner's value add. Ensuring robust data is available that gives a true account of origination — both directly sourced and indirectly influenced — profitability, cross-referrals and repeat work, applied consistently, will again help to foster the culture of trust that decisions will be made fairly.

As well as a general move away from the lockstep model, firms are looking at other measures that allow them to attract talent and deal with fluctuations in partners' practices.

For example, some firms that historically had only a single tier of equity-level ownership in the firm have introduced a nonequity partner tier — typically a fixed share and bonus potential or a certain number of equity points.

Allowing firms to recruit stars who may not yet be up to the revenue-generating threshold on full equity, but are seen as the talent of the future, furthers the firm's longer-term strategic objectives.

This can also act as a retention tool, allowing the title of "partner" to those coming up through the firm and an indication that they are a stepping stone away from full equity.

Having a robust infrastructure is also key, such as a trusted independent committee that is elected by partners in line with the firm's constitution documents.

This committee would be tasked with making remuneration recommendations — sometimes to be ultimately voted upon by the partners — against a clear framework, protocol and set of guidelines with the strategic objectives of the firm in mind.

The existence of an appeal mechanism can help to provide accountability and a chance for partners to voice any concerns through a controlled process.

Ultimately, where there is a culture of trust so that partners believe that as a starting point they will be treated fairly in line with their contribution, firms are less likely to face challenges to remuneration decisions or find that decisions have a demotivating effect — or even result in the partner leaving the firm.

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