Tackling Partner Underperformance in Law Firms

A new report addresses a difficult and sensitive subject.

By Nick Jarrett-Kerr

My detailed Ark Report into this difficult and sensitive subject has now been published. In researching for this 145-page report, I spoke to many law firm partners and managing partners and twenty firms agreed to participate in a specially designed survey into the issues. The vast majority of firms that agreed to participate did so on a non-attributable basis.

Around 70 firms were approached representing firms which fulfilled three criteria. They had to be known to be thoughtful, well managed firms as one of the objectives of the survey is to identify best practice. The study also needed to track global trends, and so firms were chosen in a broad range of jurisdictions. Finally, we needed fair representation across a spectrum of law firm sizes. Twelve participating firms were principally based in UK, three in the United States of America, and one each in Australia, New Zealand, Ireland, Scandinavia and Eastern Europe.

As a small-sample survey, it may of course not be totally representative of the profession as a whole, but it does reveal some interesting insights into how these issues are currently being handled in law firms to add to the more detailed case studies in the Report.

What is immediately clear is that the issue of underperformance is not "done and dusted" and remains a live issue for the profession globally - a constant and thorny problem with which firms continue to grapple.

Around 85% of firms surveyed confirm that they are likely to have to take action over the next two years in respect of this issue. This is because underperformance continues to affect law firms in many ways — not least of

which are diminished profitability, loss of opportunity, disaffection of high performers, challenges to the firm's values and falling morale.

What is more, underperformance has to be seen not just in terms of productivity but also in terms of a more holistic approach to a firm's standards. My definition of underperformance therefore includes the consistent failure of a partner to meet the firm's reasonable expectations or standards for productivity, profitability, quality, technical proficiency, client service or interpersonal relationships.

Firms seem iteratively to go through some or all of three phases in addressing issues of underperformance at partner level. The first phase, for a few firms long since concluded, has been to identify the shirkers and serially below average performers (sometimes referred to as C partners) and manage them out of the firm.

A second and more recent phase has seen firms restructuring their partnerships and slimming down the number of equity partners. This phase has usually resulted in non-core partners finding themselves in the wrong place at the wrong time and being asked to leave.

In the third phase, firms are considering how to tackle those partners who in relative terms are making a more modest contribution than the majority of their peers. Prior to phases one and two, these partners would have been solid performing B partners, ranked well away from the “relegation zone.”

As one of our case studies points out, it is perhaps a misnomer to label such partners as underperforming, but they nevertheless form the low contributing end of the performance curve.

Contact the Author, Nick Jarrett-Kerr.

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