

\$100K salaries for ex-trainees?

Fresh from his position as general counsel at ICI, Jomati's newest consultant **MICHAEL HERLIHY** examines whether the trend for associate salaries topping \$145,000 will pay off for the client.



Michael Herlihy -
Voice of the client

Julian delivered the best retirement speech I ever heard. In front of the assembled senior management he confessed that he could no longer understand anything the directors were doing and had been forced to conclude that either they were mad or he was. With heartfelt sincerity he told us that, as the directors were men of the keenest intelligence, it must be he who had lost the plot. The time had come for him to step down.

Somehow, when I heard that law firms in London might be planning to increase first year associate salaries in response to New York's new benchmark of \$145,000 p.a. I found myself thinking of Julian.

Let me say at the outset that I bear no ill will to the potential recipients of this largesse. Nor am I outraged in any moral sense. Admittedly if this were a publication aimed at normal people I would open with a set of references to teachers, nurses and soldiers in Iraq. The audience here, though, being lawyers, we can pass over all that – apart from noting that any ‘last-week-I-was-a-trainee’ assistant earning these US salaries will not be on much less than many heads of in-house legal departments.

My question is whether \$100k salaries are actually in the interests of the firms concerned or their clients. As a novelty let's start with the client. Typically, firms will argue that these salaries are in the client's interests as they enable the firm to secure the talent that clients require. In reality it doesn't matter to a client where the talent goes. If it goes to Firm B rather than Firm A, the client can go there too.

From the firm's perspective, of course, things look rather different. If they believe that clients will follow the talent, they may well feel that they need to chase it too. One problem of course is that no one believes that having better quality first-year associates is a key competitive advantage. (Mourinho to Rijkaard: “OK Frank, you

may have knocked us out of the Champions League but I really don't care because Chelsea's Under 16s are much better than Barcelona's.”) What matters is who ends up with the top talent in the first team. And that brings us to the real wager that is being made here, namely that:

1. The London market will allow replication of something close to the NY economic model where a significant number of partners in firms who support clients on ‘bet the company’ issues can comfortably clear \$2m a year.
2. The particular firm can succeed in taking a serious long-term share of this top end work.
3. Conditions 1 & 2 will endure, and the firm will retain the top talent for long enough, to enable them to recoup the additional inflation they are building into their non-equity partner salary structures.
4. In the meantime clients will pay. (Or did I miss a commitment to fund these increases by reductions in partners' earnings?)

This strikes me as quite a ballsy four-way accumulator in an industry already having to accommodate increases in property and technology costs, whose customers are tooling up with professional procurement resources, and where further consolidation amongst both buyers and sellers looks inevitable. Even so, I might be half persuaded if I thought that the firms actually knew what ‘top talent’ was. What then does this splendid bit of HR speak actually mean?

In terms of recruitment it is reasonably clear that for most firms “top talent” means people with an advanced facility for passing exams; surviving an occasional psychometric test; and flourishing in whatever version of the “is she/he one of us?” assessment the firm in question favours. In fairness, some firms have moved beyond the “not eating your peas off your knife test” my generation used to be confronted with,

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and most will have had two years to confirm their initial assessment of their trainees. Nonetheless I question whether this is an adequate basis for identifying those who are going to have to grow into the very top legal talent in London for the accumulator to pay off.

What then should firms be doing to improve the odds? Another story from the US is quite interesting. Freedom of contract in baseball, which led to an explosion in the cost of signing new players in the draft, eventually triggered a revolution in the way young players were recruited. The old approach, which combined study of a player’s High School or College record (i.e. performances against his peers) coupled with the supposed observational ‘nous’ of an experienced scout, has now been largely junked in favour of an approach based on identifying and quantifying the skills required in a major league game and measuring these in young prospects. For example, in major league the catcher (wicket-keeper) must be able to extract the ball from his glove and throw it accurately to the second baseman in under two seconds if he is to prevent the fastest runners from stealing to second base from first. Consequently any would-be catcher’s performance is now measured and anyone not consistently below this target – however good they may look in other respects – is eliminated.

Like any analogy this is not to be taken too far and, no, I am not advocating timing associates on how fast they can produce a first draft sale and purchase agreement. My real question is how seriously have firms tried to analyse the skills their partners are going to need to play at the top level in five years from now and how rigorously are they then applying this analysis? A not untypical response from firms to this challenge is some more or less polite version of: ‘We just know’. As a client and user, I would say perhaps some do, but it may also help that colleagues seem quite generous in overlooking the

weaker bits of their partners’ games. Like the catcher’s team-mates saying: “Yes he does give a lot of steals away but he can bat quite well.” The top talent by definition are surely the people who can do both.

Continuing with baseball for a moment there is another way of looking at this, captured in the expression: “You can’t steal second and keep your foot on first,” i.e. there’s no progress without risk. From this standpoint the boldness of some firms in trying to lever themselves into a leading position through recruiting what they see as the best young talent is, perhaps, to be applauded. Certainly, like those who on entering the casino make purposefully for the high-stakes games, their progress will be far more interesting to follow than those craven characters who only ever huddle around the minimum-bet blackjack table and (in my case at least) still manage to lose all their money. As a spectator I wish them well.

Finally what of the associates themselves – should they take the money if they can get it? Well if it comes with quality work and interesting people why not? But please just do us all one favour – no more whining about that work/life balance stuff. ■