

# Recruiting, Retaining and Motivating Talented Lawyers

## Recruiting

If anyone had overheard me talking about recruitment difficulties during my time as a General Counsel, I suspect that I would have been referring to the supply side of this issue. It is a fair bet that the conversation would also have involved a sceptical HR Manager, with me trying to persuade him/her of the need to flex our normal salary structures either to absorb some proposed new talent or avoid the risk losing that we already had. For obvious reasons the frequency and intensity of these discussions varied over time and in recent years in-house recruiters may have felt the benefit of law firms' (understandable) enthusiasm for extracting additional billable hours from their assistants. For reasons we shall come to, I think this position may be about to change but, whatever the prevailing economics on the supply side, I wonder now if I might not have been better off focusing more on the demand side of these issues in any event.

Across the profession, the tools lawyers use for recruitment are remarkably consistent; a review of the candidate's academic history; some form of psychometric test and an interview, or series of interviews, aimed at finally determining whether the candidate is made of "the right stuff". Whilst the first of these is relatively easily verifiable, it is, in my experience, a far from reliable predictor of success in a corporate environment. With psychometric tests, experience and views vary, but even their proponents would have to acknowledge that the technology is now more than 50 years old and under reasonably serious fire in the academic literature. As for interviews, a little commonsense, like using panels to broaden assessment styles; using them consistently to build experience and insisting on written job specs and success criteria can significantly improve their usefulness. Sadly, though, both third party research and our own experience (mine anyway) tells us we still get it wrong on a regular basis. Why?

My view is that part of the reason, at least, is that we do not analyse rigorously enough the nature of the "talent" we are trying to recruit. Look in the back of any of the legal journals and the ads will be crammed with references to the need for candidates to be "commercial" or "self-starters" or to exhibit other similarly ambiguous characteristics. How many of those recruiting have really taken the time to define these labels in terms of the precise skills or behaviours required to earn them in the context of their own particular organisation. Admittedly, this is not always straightforward, but, once you have, it makes the task of testing for them relatively easy. For example, if "commerciality" means an ability to summarise complex information effectively; to prioritise; empathise with business goals and understand basic financial statements (well at this stage it probably does not mean an ability to spot strategic marketing opportunities in global telecoms) it doesn't seem too difficult to think of ways in which these qualities could be fairly directly assessed at interview.

For some reason, though, the profession seems to have an antipathy towards testing candidates' skills. For example, drafting skills aren't difficult to test and yet few recruiters appear to bother. If an applicant for a secretarial position is routinely tested to verify their claimed 80 words per minutes typing skill I am not sure why lawyers should be treated any differently. Too demeaning? Perhaps, although to the extent that recruitment involves a two way evaluation process, wouldn't the best candidates respect a potential employer who could really define and explain what they were looking for? Put another way, would you rather ignore an opportunity to improve your odds of recruiting successfully than risk alienating the kind of person who thinks that having passed a few exams they ought to have immunity from any other kind of test?

## Retaining & Motivating

Self evidently there is a lot of overlap between the tools that are used to retain people and to motivate them, although, as we shall see later, this overlap is not complete at all stages of an individual's career.

Generally we can think of reward tools as falling into three categories; financial rewards; status rewards and learning rewards. Some employer actions can of these fall into more than one of these. A more prestigious job title, for example, might (for some people) in itself comprise a reward, but might or might not be accompanied by enlarged job responsibilities and more money. (If it were, the combination of the three being generally known a promotion!) It is not my role today to try to catalogue every one of these tools and its attendant merits and demerits. I would though like to touch on a couple of issues in the area of financial rewards in general and bonuses in particular.

## Financial Rewards

It is often said that money is not very good at motivating people but extremely effective at demotivating them. In my experience the truth of this proportion varies with individuals. What is undoubtedly true, though, is that people are extremely sensitive to financial relativities. In a large corporate organisation one employee does not normally know exactly what their colleagues are paid but they will often be aware - indeed very aware - of the grade within which someone's salary is being set and any associated non-salary benefits. Unhappiness about these relativities occupied many fruitless hours for me over the years.

Particularly in any period of boom in private practice, in-house lawyers will be understandably keen to relay news of the latest City pay increases to their managers and it is important, therefore, that managers are up to date with what is actually happen-

ing. (To give a slightly facile example, as GC of a medium sized business headquartered 50 miles from London, your 3 year PQE legal manager may be keen to let you know how their classmate in the London office of firm x is now being paid y but probably won't volunteer the fact that their mutual third classmate in the firm x Manchester office is only being paid two thirds of y. In these kinds of discussions it also essential that management can communicate a clear picture of the full value of the in house "package", including all the salary and non-salary benefits. (On a personal note I might say I did sometimes struggle with HR colleagues - armed with their Black Scholes models - trying to persuade me that terminally under water options still had value but I applaud them for trying!)

Money also brings us, of course, to the vexed issue of work life balance and working hours. I believe this needs to be approached with caution. Yes it is true that most lawyers working in-house now work extremely hard, but, equally, it is true that very few of them work the equivalent of 1800 to 2000 chargeable hours as many of their peers in the profession are now required to do. In trying to attract people out of the profession and keep them my own approach would be to de-emphasise the working hours issue and focus on some of the other attractions of an in-house career - the variety of work and breadth of opportunity; the "seeing things through" and the satisfaction of working with colleagues from other disciplines and backgrounds to overcome the challenges that business throws up on a daily basis. If those aren't attraction enough, you probably don't want them in any event.

#### **Bonuses**

Whilst monetary bonuses should, on the face of it, provide a powerful tool for motivating individual performance, the reality is that they very often end up reflecting not much more than how well the employing group performed as a whole or - in some ways worse - whether a particular acquisition or divestment happened or not. (I know it's how investment banks work but I still struggle with the concept of incentivising lawyers to make a deal happen.)

How many of us have sat through the HR Department's annual sermon on how bonus objectives should be SMART (specific, measurable etc) only to find that when we asked them if they could suggest such objectives for lawyers they were running for the exit. If there is a solution to this, my feeling is that it may lie in getting back to understanding the skills and behaviours that are key to outstanding performance and linking these to third party assessment processes (e.g. 360 degree feedback) to detach this from the ritual trading of anecdotes at assessment time. (GC: "You were meant to be being more proactive this year but you weren't very proactive when xyz happened". Lawyer: "No but I was when abc happened and anyway I thought Phil was supposed to be dealing with xyz".)

We shall come back to Phil in a moment.

#### **Learning**

Most lawyers in my experience have a fairly strong learning orientation and for young lawyers at least this has a very obvious connection with the monetary value which they are able to add to their CV. There are three principal elements from a manager's point of view (i) work allocation (ii) formal training and development and (iii) formal or informal coaching and mentoring. In the earlier part of an individual's career the most important of these is likely to be work allocation and many of us I suspect could attest to the buzz we derived from exciting "stretch" assignments in the early and middle parts of our career. (A reward, typically, with both learning and status implications). Training and development on the other hand is probably not an area which can be used in itself to create high levels of motivation or an attraction to remaining with an employer - though the absence of adequate training arrangements can certainly be a material negative in this regard. As regards coaching and mentoring I should start by declaring an interest as I do coach lawyers on a one to one basis in both law firms and in-house departments. Presented in the right way (and not as the "remedial measure" as which it is often characterised) I do believe that this can make a significant contribution to improving people's performance, levels of work satisfaction and self-esteem. At the same time I would not try to deny that the most significant coaching an individual gets (or doesn't - as the case may be) is from their line manager and head of department. In fact, I would argue that the biggest single opportunity for most GC's to improve levels of motivation (and hence likelihood of retention) amongst the team around them would be to increase the extent to which they provide colleagues with "coaching on the fly" support i.e. the quick word of support, praise, encouragement, advice or correction that comes, not in the annual appraisal, but on the way in or out of a meeting, at the coffee machine or in the pub. This - to say the least - is easier said than done and I can clearly picture the cynical smiles with which any former colleagues might read this! That said, the fact it's difficult to find the time to do it doesn't mean it isn't incredibly important and any of us, I suspect, could tell our share of stories about past bosses to illustrate the point.

#### **Status**

Status - in the sense of how an organisation makes an individual feel about her or himself - is implicit in much of what we have already talked about. Job titles; attention from the boss; external coaching and being allocated prestigious assignments, are all potentially important elements in making someone feel that the organisation values them and their contribution. Under this heading, though, I would also like to say a few words on the topic of diversity. This might seem unusual in that diversity is typically approached from the standpoint of values or rights. I was, though, very interested by a recent initiative at JP Morgan which appears to be approaching the issue of homosexuality at work from a very practical stand point i.e. does the firm have a working environment in which gay employees can feel comfortable and capable of contributing at a high level of effectiveness? This seems to me to go to the heart of diversity as a management issue - are you attracting and making best use of all the talent, which is available? In a profession which, according to one recent statistic I saw, is now 40% female it may seem strange to still be talking about women as a minority but, if you are a male

GC with predominantly male senior colleagues (as I was), I think you do need to think very carefully about the extent to which that minority is going to feel welcome, respected and valued within your organisation. To be clear, I am not suggesting for a minute that there was any deliberate discrimination in my former company, any more than I believe that there is in the vast majority of other large corporates.

What I think is inescapable, however (and the research is there to prove it if you don't) is that there are certain very common patterns in male behaviour, and particularly communication, which some women (and doubtless some men) find quite difficult. As the leader, it's your job to be sensitive to these and if necessary work on managing the team away from them. If, by the way, you don't have senior female role models around you in your company to help you with this, you may need to go out and seek some external help in the form of a network of female business leaders or, perhaps, a female coach.

### Phil

I mentioned earlier that we would come back to Phil.

Phil is approaching 50 years of age; an excellent lawyer and someone who through the earlier part of his career received regular and well-earned promotions. The last of these, however, was now some seven or eight years ago and as he is not seen as a future group GC he is unlikely to be promoted any further. He is seen as being at the market rate for his job and future annual salary increases are, therefore, also likely to be limited. Despite this, a combination of embedded share options and pension arrangements, together with a number of life style issues, mean that he is very unlikely to choose to leave the company. How though is Phil to be motivated? In many large companies up until recently the answer is that no one would have worried too much about this, as at some stage within a few years of reaching this point, Phil would make some cushioned "good leaver" exit with an appropriate package and the grateful thanks of the management. Unfortunately changes in the pensions/tax landscape and the trend to longer working lives are making this increasingly difficult.

Approaches to Phil will clearly need to vary by individual, but, with the scope for financial rewards limited, there needs to be a significant focus on the learning area. In my experience companies could be much more imaginative about giving senior people like Phil projects, temporary assignments and specific roles in coaching and mentoring younger colleagues (even outside in non competitive organisations). Support in finding suitable NED or pro bono roles could also pay dividends both in maintaining Phil's continued learning and also in "status" terms ensuring that he continues to feel good about his overall contribution. To anyone who fears all this might all distract Phil from his day job I would say -yes it might – and very valuably so if it sends him back refreshed and re-energised.

### Trends

We have touched on a few trends already in the management of in house legal staff. Longer working hours; an increasing emphasis on diversity and the challenge of managing "plateaued" senior staff for longer are all, I would say, trends of one kind or another. In a sense, though, all of these are themselves symptomatic of a larger, underlying trend which has been evident in UK business at least since the early 1980's. That, at its simplest, is the relentless drive towards greater competitiveness – an environment in which the prizes for winning (corporately and personally) get larger, whilst retribution for failure follows ever more swiftly. In this world, few managers (even those GC's who, historically, may have been "cut a bit of slack" by Chairmen or Chief Executives with whom they had established strong personal advisory relationships) will be able to afford to neglect either the development of appropriate talent or the tight management of the associated overhead cost.

As we mentioned at the outset, though, the environment in which GC's will be working to balance these competing imperatives will inevitably be heavily conditioned by what is going on in law firms. So how would one evaluate the trends there?

For me, law firms are at a genuinely fascinating juncture. In a buoyant market for corporate work, which shows no sign of cooling in the short term, well managed firms are currently performing extremely well. Having profited from a couple of years in which they were able to restrain salary increases for their assistants, whilst still moving charging rates (at least in headline terms) they are now reaping the benefits. This year salary increases have been larger, but with most City firms scrambling to find enough bodies to deal with the tide of work washing over the decks, no-one is likely to be too bothered about any slight negative movement in the associated ratio:-

$$\frac{\text{Charge out rates} \times \text{billable hours}}{\text{Employment cost of lawyers}}$$

Employment cost of lawyers

Longer term, as ever, the crystal ball gets a little murkier. The twin forces of convergence and consolidation, spiced with the continuing rise of the procurement function in most corporates, strongly suggest to me that, in line with the general dynamics in other industries, the legal market will see an increasing differentiation between winners and losers.

With regard to the famed "work/life balance" debate some commentators claim that there is already a reaction against the prevailing norms in some firms, with well qualified candidates effectively opting out of the race for partnership. My own feeling is that the prospect of £1m+ pa rewards will probably continue to interest enough people to ensure that the top firms needn't worry about running out of candidates for a while yet. That said, there is no doubt that some firms are now making much more serious efforts in terms of flexible working, career breaks, child care policies and the like, to enhance their prospects of hanging on to their talent rather than see chunks of it drift off to the in house market. It will be fascinating to see how these initiatives fare as and when the next downturn comes (assuming, of course, that at some stage it does!). Even more interesting to watch will be those firms that are currently bemoaning their own "short sightedness" in getting rid of people the last time. Will

they really be able to resist the temptation to cut staff if partners' earnings start going backwards again?

In addition to all these uncertainties, we shall be watching whatever ripples or waves may flow from the Government's proposed reform of legal services. Will these be confined, as some believe, to high street conveyancing markets or will we really be watching private equity takeovers of major international firms? My own bet is that change may well be slower than some people expect, but ultimately more far reaching. Certainly if one or more "middle tier" firms decide to try a different sort of business model (assuming the legislation ultimately allows them to) it will be fascinating to see what impact this has competitively on firms above, below or alongside them.

Translating all of this into a set of expectations for heads of in house departments, my personal guesses are that:-

1. After a relatively benign period for recruitment over the past couple of years, the environment in the short term at least at junior and "middle management" levels will get somewhat more difficult as salary expectations rise and law firms get smarter at managing the work/life balance stuff. (At senior levels, a large corporate that wants to recruit a corporate partner directly into a GC or Deputy GC position will probably always be able to find candidates interested in that sort of switch.)
2. In the medium/longer term there will be some form of shakeout in the law firm market with a consequently larger - though not necessarily much cheaper - pool of talent to choose from; the challenge at that stage being for GC's to really understand what kind of talent they want.
3. Also in the longer term, we may see more two-way traffic between corporates and law firms. Historically, of course, people have generally only moved one way and despite a few notable successes (several of them in my former company) it has been rare for successful in house lawyers to move back into the profession. With the increasing emphasis required from partners in areas like practice, project and client management, however, I think some GC's may need to be looking to their laurels in ensuring that their own top talent is not being re-recruited into the profession.

From a personal standpoint I would love to see some greater flexibility in the movement of talent between the two sectors which I suspect might be to the benefit of both - not to mention their clients.

I wonder if Phil would agree?

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