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You say tomato: the problem with lateral hiring across the pond

By Tony Williams, Principal, Jomati Consultants
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Lateral hiring has shed its former stigma and gained popularity, but mistakes are inevitable – particularly when firms from both the US and UK are involved.

Over the past 20 years, lateral movement of law firm partners has evolved from being seen as an act of betrayal to one's existing law firm to a credible and rational means of developing one's career. Many firms have grown aggressively, often largely by serial lateral and team hires of partners in a number of disciplines.

Indeed the American firms that have moved to London have used lateral hiring to enhance their English law capability and to develop their breadth and depth in their chosen areas of focus. But it has not all been plain sailing. Recruiting at lateral level is a complex and time-consuming process. Some mistakes are inevitable but an understanding of the UK legal market and the motivations behind a possible move are key to mitigating the risk of an expensive mistake.


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UK and US recruitment divide

It's unfortunate that some US firms initially assumed that the UK recruitment market worked the same way as in the US. It does not. Although even in the UK money talks (and, with some of the reported deals on offer, even shouts), it is rarely the sole or even the most important reason for a partner leaving his or her existing firm. The other reasons may be lack of recognition, loss of confidence in the management or future of the firm, client conflicts, internal tensions, being "managed out" or even boredom. Understanding these underlying reasons is key to making a successful lateral hire.

Furthermore, the major UK firms have gone to considerable lengths to institutionalise their client base, particularly their top 50 to 100 clients. These relationships rely on multiple points of contact between the firm and the client and this makes it very difficult for all but a few truly exceptional partners to move that client to his or her new firm.

This, combined with extensive notice periods, gardening leave provisions and restrictive covenants that apply even after departure, make any partner's supposed book of business far less readily transportable than is the case in the US.

Displaced work flows

Another issue US firms have often encountered is that the expected flow of work from the US did not materialise. Either the firm did not have access to the work or its UK offering was not seen as credible to the client or the partner in the US retained 'ownership' of the matter and only asked the partners in the UK for limited and specific advice on English law issues. The absence of a credible business plan to which the firm and individual US partners are committed to (with remuneration consequences for success or failure) is a strong indicator of a lack of clear and realistic expectations.

Unfortunately, there have been numerous stories of a US firm's management wishing to develop a London office and the practice group leaders supposedly supporting it but not seeing it as any part of their role to develop the team or the flow of work between offices. In one case a potential lateral was flown to the US only to be told by the practice group leader in his area that he did not know why the firm wanted a London practice in that area. Hardly surprisingly, he didn't join that firm.

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Such a practice disconnect often descends into mutual recriminations with the British lawyers complaining that the promised referrals did not materialise and the Americans questioning the work ethic and client-getting skills of the British lawyers.

A further issue has been the lack of effective due diligence on candidates. A few well-placed enquiries can reveal the real reasons for a partner's proposed move and significantly reduce the risk of failure. Multiple moves often linked to the expiry of an income guarantee are too often ignored on the basis that 'it will be different here'.

Expensive lessons to learn

Some of the lessons mentioned have been learnt very expensively by a range of firms over a number of years.

Firms from both the UK and US now tend to be more focused as to the laterals they want and the process that they should undertake to both recruit them and successfully to integrate them into the firm. The so-called 'long lists' of candidates in a particular practice area which included the name of virtually every partner who ever claimed to work in the area are now mercifully mostly a thing of the past.

Good firms are much more targeted in their approach. They have often discussed with their own partners and their major clients who they should target and focus on a relatively small number of potential candidates. Their message is much more nuanced and they are prepared to take their time to land the right candidate.

This is not to suggest that mistakes are not being made. They are. Sometimes very expensively. But increasingly, firms recognise that effective lateral hiring can play a significant part of the execution of a clearly defined and realistic strategy. This also raises the issue of how firms defend themselves against the poaching of their best partners, but that is for another day.

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