

Happiness strategy

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Stuck in the middle

Rachel Brushfield explores the impact of the associate surplus problem on the traditional pyramid career model in law firms

The days of the pyramid career structure in traditional law firms are numbered. The legal profession currently has a surplus of qualified lawyers around the five to eight-year post-qualification experience (PQE) level for the amount of work available.

The current associate surplus in the legal profession has many causes. There has not been enough movement in the legal jobs market over the past few years. Some law firms have failed to shed underperformers during the downturn, wanting to be ready for growth. Others have retained employees, believing that the legal profession will return to its pre-credit-crunch character.

Many law firms are shrinking their middle management layer as a result of cost cutting, mergers and greater use of technology. Law firms are utilising more junior and cheaper lawyers like paralegals, while partners are doing more work themselves to keep their billings up. Legal process outsourcing has stripped

away the traditional approach of using associates for all legal work and is likely to increase in future.

Charlie Keeling, global HR director at Clyde & Co, suggests that firms that are tackling the associate surplus “either have very disruptive and demotivating redundancy consultations or sign big cheques and try to fly things under the radar”. He adds that “the more enlightened ones are trying to find value-adding roles for experienced lawyers to fulfil”.

Comments professor Stephen Mayson: “In my experience, there were firms with under-utilised associate capacity even before the downturn, which was costing them in sub-optimal profits. After this prolonged slump in activity, there are few options left.”

Adds Keeling: “The real issue is less demand for too much supply, and that doesn’t even include the growth of legal services provision which will be coming from India and China over the next decade.”

Impact on staff

Performance management has been steadily introduced across the legal profession in the past few years instead of automatic pay rises for time served. Firms now have greater clarity about who is delivering and their different talent segments.

Underperforming associates with insufficient work have started competing with each other within their firm. This has created a growing feeling of disillusionment, along with a sense of being trapped and ‘stuck in the middle’. There are fewer promotion prospects for associates to achieve partner. There is also some ‘fighting for entry’ into the bonus pools.

News travels fast, especially via social media. A firm’s failure to tackle the associate surplus or poor handling of shedding associates may result in short or longer term damage to the employer brand, thereby eroding a firm’s likelihood of attracting top lawyers in future.

“The associate surplus is having a negative impact on the employer brand, with firms finding it increasingly difficult to attract and retain staff and motivate them,” comments Keeling.

Impact on clients

Clients are benefiting in a number of ways from the associate surplus. They have the opportunity to hire them to in-house roles, to demand more secondments and to exploit margin reductions.

In heavily-leveraged law firms, clients build a relationship with one or more partners and then have their legal advice delivered largely by associates with whom they have not developed such a strong commercial relationship. This can lead to frustration and misunderstanding in firms, as well as disagreement on issues such as the hourly rate.

“The associate surplus has highlighted the need for lawyers to take responsibility for their own careers and to consider new options”

“The pyramid model is an inefficient one which does not best deploy the talents and assets of the whole firm for the benefit of clients and participants in the enterprise,” says Simon Nash, HR director at Carey Olsen.

“The associate surplus is a simple and logical outcome of the leverage model. The leverage model has very successfully concentrated the benefits of a long boom cycle in legal services in the hands of those few practitioners who have got themselves in the right place at the right time.”

Nash continues: “It is a very inefficient model for training up professional lawyers, the majority of whose firms will not be working with for the long term. The attractiveness of the model will fail at the point of failing to attract the best young lawyers of their generation to put in the hard hours at the base of the pyramid.”

Adds Keeling: “With less people coming into the law in the UK and more work being done out of India and China, the career model needs totally reformulating,

with lower-cost apprenticeships and paralegal communities at the bottom and less partners/ directors/ associates at the top.”

Impact on legal careers

Historically, a career in the legal profession has had a degree of certainty

compared to other professions or market sectors, with clear job title milestones and automatic pay increases for time served. The ‘carrot’ of future partnership was dangled as a motivator for hard work and there was an assumption that promotion would happen; it was just a matter of when. The hopes of many associates have

TACKLING THE ASSOCIATE SURPLUS PROBLEM

Do

- ✓ Communicate with employees
- ✓ Look at long-term trends and take a strategic approach to talent that ties in with the firm’s strategy and vision
- ✓ Look at sectors outside professional services for possible solutions
- ✓ Challenge the viability of the partnership career model
- ✓ Invest time in crafting messages internally and externally
- ✓ Examine and redesign traditional approaches
- ✓ Consult employees on how to tackle the problem
- ✓ Make time to understand the needs and motivations of different generations and use these insights to shape future decisions
- ✓ Understand the negative impact of emotions such as fear, disappointment and anger on the firm, even though they are harder to measure than KPIs such as billable hours and revenues
- ✓ Make employee engagement a priority
- ✓ Support associates and equip them with the knowledge, tools and transferable skills they require to consider their career options now and in future

Don’t

- ✗ Avoid career conversations addressing the issue
- ✗ Underestimate the damage to reputation via negative word-of-mouth in social media
- ✗ Ignore the importance of motivation and employee engagement and the need to measure and track it
- ✗ Use ‘pushing out’ tactics to resolve the problem, as it will damage the firm’s values
- ✗ Forget the appeal of smaller-sized practices as employers for challenge-deprived and responsibility-hungry young lawyers
- ✗ Retain historic business models, career models and policies without examining them for future viability
- ✗ Allow decisions to be made solely by generation X and ‘baby boomers’ about issues affecting younger generations
- ✗ Forget to provide training for partners on how to have difficult conversations with associates, clients and each other
- ✗ Ignore employment guidelines and protocols if shedding associates becomes needed

CASE STUDY: DLA PIPER

By Carol Ashton, International HR Director, DLA Piper

Law firms need to be able to respond to client demands and market challenges like never before, and creativity is needed to ensure that we attract, develop and retain the best people. For DLA Piper, this is about having the right people in the right place at the right time, and giving them the tools and support they need to develop their careers.

As Nigel Knowles, our managing partner, puts it: “For this firm to achieve its ambition to grow our base of multinational clients and offer them a truly global platform, we must ensure that every generation is better than the last. To do so, every generation needs every possible piece of assistance available to turn them into great lawyers and great businessmen and women.”

At DLA Piper, we take a planned, strategic approach to managing our resources and talent, working with leadership teams to look at future demand and to consider the strategic benefit of any new hires, ensuring the right mix of lawyers in the firm. Our extensive global reach, with 4,200 lawyers located in more than 30 countries, presents us with opportunities to redeploy our resources where needed. New international recruitment protocols have refreshed our approach to recruitment to help hire the people needed to deliver on the firm’s strategic priorities. In the UK, a ‘One UK’ approach has smartened resource planning for all UK offices.

Generation Y lawyers have different career drivers to generation X and ‘baby boomers’ – they want challenging work, opportunities for progression and flexibility. We invest in the development of our associates in a number of ways.

Employees, including associates, are encouraged to take responsibility for their own careers, using the tools and support available to them. We have a robust performance management process, which places great focus on employees having honest career conversations with their managers.

Our people have the opportunity to develop key skills at each stage of their careers, from trainee through to partner, via a series of career academies run internationally. We place particular emphasis on the people management content of these academies, to equip associates with the required people management skills.

This is underpinned by our investment in mobility. We encourage high-performing associates to experience client and international secondments to develop their careers further. Our international secondment exchange programme, now in its second year, is designed to help high-performing associates to swap with peers at different locations for a period of six months. These secondment opportunities develop greater integration and connection between our people and practices in different regions and locations, as well as increased knowledge sharing. Pilots for agile working practices are also being developed to explore ways that we can offer flexibility at work.

since been diminished, creating a sense that all their hard work and commitment has been in vain.

A lack of autonomy and influence over decision making, combined with an uncertain future, can not only cause poor morale and demotivation, but also cause anxiety and depression in a profession which already has higher levels of mental illness and substance abuse than many other professions. Such disillusionment will leak out in subtle and not so subtle ways, including sabotaging other associates’ work and bullying junior

lawyers who are in favour because they are cheaper.

In the current depressed employment conditions for middle managers, there is a sense of being ‘trapped’, being able to move neither up nor out. For many associates, there is nowhere for them to go to maintain their current salaries, either as lateral hires or in different sectors. Risk-averse associates with large mortgages and high financial commitments such as private school fees may find that self-employment or locum lawyering are the only options available to them for the foreseeable future.

The associate surplus has highlighted the need for lawyers to take responsibility for their own careers and to consider new options. A high proportion of associates, especially in larger firms, contemplate a career change, but at least 50 per cent enjoy being a lawyer. Thinking about a change in career direction and doing it are two different things, especially in uncertain and unstable economic times.

“Portfolio careers may, in future, become the norm for lawyers currently employed as associates”

Possible solutions

Many law firms are not tackling the associate surplus because of an avoidance of making difficult decisions, guilt about having to let employees with long track records of hard work go, and fear of what message redundancies will send out to the marketplace and clients.

Firms are tackling the associate surplus in a number of ways. Some have made associates redundant early in the post credit-crunch years; this pruning has led to the growth of healthy shoots and a firm fit for purpose (see box ‘Case study: DLA Piper’).

“The traditional partnership career model is no longer viable for any but the largest and most global law firms”

Others are ignoring the issue and holding onto associates who are unlikely to be needed for many years, if ever. With salary costs the highest overhead, it is the partners’ pockets that are likely to be detrimentally affected. Secondments are useful as a short-term measure, but this is only a temporary fix. Moving to part-time work and redeployment of associates for emerging new roles are potential solutions.

“For law firms, ignoring the issue of the associate surplus risks the loss of the better associates and possibly loss of better partners, too, because the firm’s profitability is depressed by carrying underutilised capacity,” says Mayson.

Firms such as Allen & Overy have a pool of alumni talent made up of previous employees. This strategy ensures consistency of the firm’s approach and non-dilution of its culture, providing a high-quality resource which can be flexed according to demand.

Providers of contract lawyers such as Lawyers on Demand, Obelisk and Capability Jane also have a flexible pool of high-quality vetted and experienced lawyers with a proven track record and specialism to meet fluctuating demand without increasing headcount.

Portfolio careers may, in future, become the norm for lawyers currently employed as associates, with a variety of work strands through necessity as well as choice. Law firms should offer career development and management support to associates to help them to understand their transferable skills

and think through their career options and choices.

“The long-term impact of the associate surplus problem is a disrupted and inverted pyramid model”

Long-term impact

The traditional partnership career model is no longer viable for any but the largest and most global law firms. The world of work is changing at an exponential pace and, whilst having the best talent is vital to a law firm’s competitive advantage, flexibility of human capital for peaks and troughs of demand is essential, with economic uncertainty and growing competition being the ‘new normal’.

Generation Y and the newest ‘Generation Edge’ who are coming up through the ranks want flexibility

and are less loyal than previous generations. Firms which fail to address the issue are in danger of missing out on the best legal talent.

The long-term impact of the associate surplus problem is a disrupted and inverted pyramid model, reduced profits for partners and reduced motivation of staff. Law firms will need to invest in their employer brands and understand what makes a law firm compelling compared with alternative career choices to attract and keep the cream of future legal graduates. Failure to address the associate surplus might cause the structure to collapse.

As Robert Birkett, founder of Leaving Law, says, “necessity is the mother of reinvention. The pressure on the pyramid model and the advent of alternative forms of practice (e.g. virtual firms and alternative business structures) will reinvent the structure of private practice away from the partnership.”

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