

Expert analysis 1: Energise – The shifting sands of law firm talent management

RACHEL BRUSHFIELD, director at talent management consultancy Energise, looks at the state of talent engagement within the legal profession.

The legal profession is facing seismic change and the very structures that have underpinned its business model have been shaken to the very core by the downturn. The profession has historically been sought after as a career choice with high perceived security and status, but redundancies, an oversupply of lawyers, a narrow definition of talent and institutional changes ahead present challenges like rapids in a river that are rocking – if not threatening to capsize – the boat.

Legal talent is the profession's greatest cost and asset, and yet projects to motivate and engage people are rarely at the top of the partnership's agenda. The drivers that engage people are lacking in law firms and this is being magnified by the changing values, beliefs, needs and wants of the younger generation.

How people feel affects what they do – or don't do – and with less lawyers doing more work, in what is a stressful and high pressure role with stretch targets, law firms need, more than ever, to motivate their staff to get more discretionary effort. Law firms are excellent at contracts, but people are not black and white in nature, they are many shades of grey and the psychological contract is the most important contract that doesn't get given enough attention. To be fair to partners, they

often get given minimal support about how to motivate and engage people, either at law school or as they progress through the ranks, and are promoted primarily on their fee-earning ability.

Factors affecting engagement in law

Factors affecting engagement are well documented and consistent, and have a positive effect on profit. Drivers for creating engagement are:

- Inspiring leadership;
- A clear vision;
- Challenging work;
- The sense of making a difference;
- A lawyer understanding the impact of his/her role on the firm's objectives; and
- A feeling of control and autonomy.

Just as an Englishman's home is his castle, a person's job is often central to their self-esteem. To not have a job is a challenge, but to have a job with repetitive work, no clear sense of when promotion will happen and to have the pressure of making money as the primary objective, is out of touch with what more and more people need and want from their work.

*"Knowledge speaks, but wisdom listens" –
Jimi Hendrix*

Research by The Institute of Employment Studies (IES) shows that feeling involved and job satisfaction are the top two drivers for

creating engagement. Many law firms don't make internal communication a big enough priority and much legal work, especially at the more junior levels, can be repetitive and mundane, something trainees are ill-prepared for when they leave law school. Research also shows that it is the profession not the organisation that professionals attach engagement to, so if the very foundations of the law are being shaken, and the rewards are not as great as they once were, what are the implications for engagement? A common language and style also helps engagement, and lawyers are an individualistic group of bright people, so achieving this in reality, rather than on paper, can be like herding cats. How many law firms feature their support staff on their websites and what message does this send?

At its simplest level, engagement is about making people feel special as an individual with unique talents and qualities. It's about acknowledging them, plus giving them time and attention in an inclusive culture where fear is low and trust high, and giving them regular and constructive feedback. How many firms can honestly put their hands on their hearts and say that they make this a priority through their policies, procedures, leadership and management?

The law firm model

The LSA will rewrite the rules of law firms with increased competition. A partnership decision-making collaborative process does not create the nimble decision making necessary in this fast-changing world, nor does it give younger employees who haven't reached and, indeed, may never reach partnership, a sense of control, autonomy or interesting work. The path to achieve success in law is long and takes a lot of hard work and financial investment. With many trainees unable to get a seat or having their contracts

deferred, they stand to have huge debts and little certainty as to when they will be able to pay them off, which is a heavy burden. It does not make an engaging advert for law as a career of choice.

It takes firms a long time to fund years of training before lawyers are profitable. In the golden years of pre-recession abundance, they have passed on these costs to clients hidden in fees. But clients are no longer prepared to accept this, understandably, and are asking for more transparency about fees. This gives law firms a real problem with the sums no longer adding up. Self-funded law school in a challenging market, followed by years of firm-funded training, is not an equation that gives a sustainable, viable and motivating proposition for either the lawyer or firm.

"When the winds of change blow, some people build windmills, others build walls." – Anon

Lack of focus on human capital

The very model of success in law firms puts rainmaking first and everything else second. Performance appraisals are often done reluctantly or not at all and yet, they are vital to engagement and give staff an opportunity to have career conversations and get feedback so they can see how they are doing and where they going. Margins are being squeezed, putting partners under more pressure and, therefore, they are likely to spend less time on non-fee-earning activities, just when they need to be spending more to lift their tired, stressed and worried lawyers up.

Impact of the downturn

The downturn has shaken complacency in the profession and it has experienced redundancies for the first time, something that has a big impact on how engaged

people feel in any profession, but especially so for lawyers where everything was clear-cut and dried – and the profession felt solid in its tradition and heritage.

As a result of redundancies, fewer lawyers have been doing more work in an already high-pressure profession. Billable hours are measured, but the same priority isn't given to the metrics that impact on net profit – sickness and absence, associate attrition, etc. The legal profession is about individual success and accolade, and the position of lawyers in *The Legal 500* and *Chambers* – and when the pressure is on, it is natural to seek survival with every man out for himself. Client business is a lawyer's competitive advantage, and in a profession where lawyers are naturally cynical and suspicious, this will have heightened the grip on their controlling their own clients, resulting in the de-motivation of associates hungry for work. Add to this a backdrop of the younger generation wanting more control and collaboration, and you have a recipe for disengagement and talent drain.

Generational changes in values and beliefs

The contrasts between the generations are especially strong in law firms. The current partnership has had to 'serve their time' in what has been a traditional, resistant-to-change hierarchical profession. The younger generation have seen their parents work hard and have poor work/life balance. Technology, affluence and the scope of the internet have given them more career choice and a 'want it now' mentality. They expect to be consulted, values are important to them, they want to be developed and they do not see their job as a job for life, but more a job for now. This world view does not fit with senior partners' requirements, nor does it fit with the traditional law career path. The younger generation

are less loyal than their predecessors, and while the downturn has put cold water on this free-spirited nature for now, it is likely to return from dormancy. Cuts in learning and development are not helping either.

Law firms need to be more flexible and adaptable in reviewing career structures, so that they make the most of their talent in the here and now, as well as keeping in touch with talented alumni while they go off to do something else – whether an entrepreneurial venture or travelling. The growing notion of a portfolio career is an anathema to law firms and yet, it is a huge growing trend, not just fuelled by the necessity with a shortage of full-time jobs, but by desire for variety and better work/life balance.

It has taken the downturn to get the legal profession to embrace the concept of flexible working, not the desires and wants of their employees.

Changing career paths

In a nutshell, the legal profession isn't as attractive a career choice as it once was. What used to be its 'ace' of job security is wearing thin and the hard work without high rewards is no longer as palatable, nor is entering the law as compelling a career choice as it once was. The pyramid structure means that with partners retiring later, less partner places available to protect PEP and the gradual shift away from lockstep to performance-related pay (PRP), changes its attractiveness to tomorrow's school leavers.

The younger generation like to know where they stand in their careers. Career success is often subjective, however, and in many firms, control and influence only happen once partnership is reached. Some firms are starting to recognise this and offer learning and development at an earlier point. It is a profession where you have had to 'serve your time' with a long road to win

the 'Holy Grail' of partnership. Now, after all those years of hard graft, the 'Holy Grail' may not be there at the end.

There is a raft of new careers emerging and younger people seek variety and challenge. Debt collector, counsellor, marketer, sales person, as well as being a technical expert, is not necessarily what sold them into law in the first place, and these tertiary roles are likely to grow not shrink.

Definition of talent

This expert analysis is about talent engagement, and different professions and organisations define talent in different ways. In law, talent equals rainmaking ability, pure and simple – this is the premier league of lawyers. Other attributes and competencies crucial to the success of the firm – for example, the ability to manage, motivate and engage, and project management, are not prized in the same way because of the very structure of the firm and business model that underpins the law. Billings are black and white and tangible, the ability to influence lawyers to increase their discretionary effort is less quantifiable, and the benefits of not doing so is hard to measure.

Lawyer mindset

Managing partners are appointed because of their rainmaking ability and not because of their ability to define a clear vision, communicate it, and inspire and motivate their staff. Leadership is a crucial factor in engagement, and egotistic leadership does not engage. In many firms, employees are walking on eggshells, fearful of their jobs and behaviour that would not be tolerated in other sectors is rife. All these small things disengage, have a negative impact on trust, and slowly but surely disintegrate the psychological contract.

Law, like engineering, is a very left-brain profession, and a left brain often isn't good at making people feel good, because the focus is on thinking not feeling. Lawyers are hugely bright and have incisive minds, but these can 'cut' and disengage as they can solve a client's problem.

To fundamentally increase engagement, the very structure of law firms needs to change, as well as beliefs about what talent means. The focus on human capital and what engages people needs to be heightened, or partnerships are going to start feeling the pain where it hurts – in the equity they receive. In a profession where people are everything, how can human capital not be the number one priority? If you put people at the heart of decision making, profits follow. If you put people's needs last, what do you expect if they start to jump ship for a better shore, that is if they decided to climb on board in the first place?

The downturn has been like an earthquake, opening cracks that were there but unseen or hidden, and they are widening. Courage and new ways of thinking are needed.

Predictions for the future

The pressure is likely to increase with clients becoming more demanding and price conscious, law firms needing to make marketing and the creation of a unique brand more important, and all the changes that the LSA will bring. There has never been less spare time to spend on engagement and yet, the need to invest in it has never been greater. If law firms fail to make engagement of their talent a priority, they will see the very source of their competitive advantage in an increasingly competitive market haemorrhage in front of their eyes.

An investment of £120,000 per lawyer to get them to ripe fee-earning ability is

a huge loss to bear. There will be many unemployed and underemployed lawyers hungry to join firms and fill the gaps lost, but fundamentally, the model of law firms need to change and any out-of-date thinking, slow decision making and resistance to change extinguished. Or the legal profession of the future will no longer be a sought-after aspirational career choice.

Introducing more flexibility in roles, creating new roles that play to people's strengths and introducing some high-status, people-focused roles will help to increase engagement.

Talent engagement is not rocket science. If partners reflect on what has disengaged them in their own careers, the factors are clear to see. Increasing the focus on what engages and motivates lawyers, and assessing how the firm may unwittingly be getting in the way of that, is time and money well invested. Forward-thinking firms which grasp the nettle, stand to attract and keep the cream of the talent and will be well rewarded by the hard work and billings they receive in return.

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