

Managing Partner Performance

An underperforming partner will have an impact not just on the financial resources of a firm, they may also affect the morale of the team as it can be de-motivating for productive members if underperformance of fellow partners and colleagues is effectively ignored. Often significant levels of management time will have to be spent dealing with the issues, and the partner's own feeling of worth, wellbeing and confidence may be negatively impacted over time.

Firms should therefore address performance issues as soon as they arise as a partner is more likely to be able to turn their performance around if concerns are highlighted at an early stage than if matters are left. Effective performance conversations are key in maximising partner potential and safeguarding the investment firms have made in recruiting lateral hires or training individuals to become partners through the partnership track.

Performance Management

Issues should not be left to be addressed just at annual appraisals but on a more regular basis to ensure that the partner is receiving the support that they need and the underlying causes of the poor performance can be identified and discussed. There could be issues such as ill health or disability, frictions within the team or problems with child care or caring responsibilities which are causing the poor performance. By offering support and addressing the underlying issues, this could resolve the matter fairly swiftly in a positive way, which would be less time-consuming and costly than removing a partner and recruiting a replacement.

If the performance concerns remain in place despite support, a more formal approach may become appropriate. Some LLP or firm documentation provides for a formal performance management process and this should be followed if this is the case.

In the absence of a formal documented process, firms on occasion offer a specific time period to a partner in which to improve together with specific expected targets. If these targets are not met they then may move to the next stage in the process.

De-equitising/Reduction in Profit Share

The firm's or LLP's documentation may also allow for de-equitisation or a reduction in profit share as a response to reduced performance levels. The firm should follow any process prescribed in the LLP and firm documentation and in any event provide the partner in question with an opportunity to respond to the proposed changes.

Disability Discrimination

Partners are protected by the Equality Act 2010 and therefore where poor performance is caused or exacerbated by disability, for instance, anxiety or depression, the firm should ask the partner to see a medical expert in order that the firm can be fully informed regarding the partner's health. A medical report should be produced, which sets out information regarding the condition which the partner is suffering from, the impact of the condition on the partner's work and what support and adjustments the expert recommends the firm can make to assist the partner.

The firm has a duty to put in place reasonable adjustments to accommodate the partner's disability so it needs to consider what support it can offer to the partner taking into account the medical report and meet with the partner to discuss this. Reasonable adjustments could include the provision of coaching and flexible working arrangements.

The firm also has to ensure that any action it takes because of something arising in consequence of the partner's disability is a proportionate means of achieving a legitimate aim. If, for instance, the firm decided to reduce the partner's profit share because of poor performance and this poor performance arose as a consequence of the partner's disability of depression, the partner would have a claim for discrimination arising from disability. This is unless the firm could show that this reduction in profit share was proportionate in achieving the firm's legitimate aim of requiring its partners to perform to a certain standard.

The Ending of the Relationship

If a partner continues to perform at a level which is below the standard that the firm would expect, the firm may have reached a stage where it feels it has no option but to remove the partner from the partnership.

The partnership deed will set out the provisions which apply for removing a partner. These provisions usually cover: (1) expulsion - where the partner can be compulsorily removed by the other partners for cause (usually on an immediate basis); and (2) compulsory retirement - where the partner can be required to leave without cause on the expiry of a given period of notice (often between three and twelve months). These provisions should be checked as to whether the reason for the potential departure falls within any of the grounds for cause and the process which should be followed.

Partners are not employees and so do not benefit from the protection of the unfair dismissal legislation. However, expulsion or compulsory retirement could be attacked on one or more of the following grounds:

- The ground which is relied upon for expulsion is not made out.
- The proper procedure was not followed.
- The expulsion or compulsory retirement is vitiated by bad faith.

- The partner has been treated less favourably because of a protected characteristic, for example, disability, sex or age; the firm has failed to make reasonable adjustments in relation to the partner's disability; or the firm has treated the partner less favourably because of something arising from the partner's disability and it cannot justify this.
- The decision is because the partner blew the whistle.

The firm should therefore ensure that:

- It compiles supporting evidence of the areas of concern before it commences the expulsion or retirement process, such as the financial performance of the partner and any related concerns raised.
- The procedure set out in the partnership agreement is properly followed.
- The partner is given reasonable prior notice of the concerns that the firm has and is given a proper opportunity to make representations, which are taken into account before the decision is made.
- The decision-making process is well documented and the decision is carefully drafted.
- If the partner has a disability, the firm has obtained an up-to-date opinion from a medical expert regarding the partner's condition and it has given careful consideration to whether the proposed departure is proportionate, for example, by considering alternatives to departure such as a reduced profit share or de-equitisation, before reaching its decision.
- Partners are treated consistently to minimise any claims of discrimination.

Taking legal advice before commencing the process can ensure that any risks are considered and an appropriate strategy is put in place. Compensation for discrimination claims is uncapped and as these types of claims are high value claims, particular care should be taken where a partner has a disability or there are other protected characteristics which potentially may be relied on by the partner.

The partner may make a Data Subject Access Request (DSAR) under the Data Protection legislation so it is important that other partners are careful regarding what is written in e-mails, text

messages, instant messages and documents as these are disclosable through a DSAR and could also be disclosable if there is a dispute.

Treating an outgoing partner with dignity may facilitate a smooth departure and minimise any instability caused by the partner's departure. The firm may wish to consider entering into an agreed settlement with the partner to keep matters as amicable as possible and minimise the loss of management time, damage to reputation and potential legal costs.

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