The Partnership Track and Moving for Immediate Partnership

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This article is written as a guide for senior associates or senior non-partner lawyers to assist you in securing immediate partnership at another firm. It also explores the nature of the assistant partnership track and looks in detail at the criteria which you can use to determine where you realistically stand in relation to partnership at your current firm.

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Introduction

For top assistants at commercial law firms there used to be a rebuttable presumption that if you were intelligent, hardworking, good with clients, and avoided unduly upsetting your colleagues, then after a suitable qualifying period, you would be invited to join the partnership. That is, at least, if you were male.

Today in top firms even the highest performing assistant can no longer rely on the presumption of partnership. Over the past ten years, the drive for increased profits per equity partner ("PEP") has seen top firms elongate the partnership track and significantly increase the ratio of assistants to partners. Put simply, partnership, and certainly equity partnership, has become much more difficult to attain. It is a cold hard fact that today only 10% of trainees will become partners at their firm.

If you are a senior associate or counsel reading this article, then you will know that your chances of partnership rest almost entirely on the strength of the business case, not just for yourself, but also your department as a whole. Happily for you, one firm's "insufficient business case" can be another's "strategic necessity", and immediate partnership at another firm of equal standing can sometimes be achieved through a careful process of informed arbitrage.

Definition of partnership

Before we get too embroiled in the minutia of how you go about obtaining partnership at another firm, it is probably worth us clarifying what partnership actually is, because the term "partnership" connotes different things in different firms.

The term "partner" is a relatively well understood term when dealing with a law firm - it denotes a senior lawyer, usually an expert in a certain field, having the authority to represent and bind his or her law firm. Matters can become a little more complex from within a law firm as, in particular with

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respect to remuneration, not all partners are the same. There is no single model of law firm partnership as law firms are constituted under a bespoke Deed of Partnership or, in the case of a limited liability partnership, Members' Agreement. Such constitutions are likely to have been developed and amended over the years as the management of such firms structure their respective partnership models on an ongoing basis to balance the reasonable (and occasionally not so reasonable) remuneration requirements of individual partners against the needs of the partnership as a whole, whilst also seeking to ensure the allocation of profit is fair and partners are appropriately incentivised.

Nevertheless, there are certain general classifications of partner that can reasonably be made and which can be helpful in assessing and comparing remuneration. I have summarised these classifications below:

“Equity Partner" denotes a partner whose entitlement to income is wholly dependent on the profits of the firm. Usually, this will either be structured in such a way that each Equity Partner receives a pre-determined proportion of profit depending on their level of financial seniority within their firm (often described as a "lockstep" partnership), or a mixture of such a pre-determined proportion plus a performance-related element amounting to a further share in profit based on an assessment of their contribution and performance in the year just ended (such partnership arrangements are typically called a "modified lockstep"). Typically, an equity partner will also be required to provide working capital for his or her firm, the amounts and arrangements for which can vary materially from firm to firm but examples include providing a direct cash contribution, or entering into a preferred loan or co-signing a bank guarantee. Equity partners are sometimes also called a "Full Equity Partner" or an "A Equity Partner" usually in circumstances where the partnership model of their firm includes other types of partner, such as those described below.

“Fixed-Share Partner” denotes another classification of partner which is, in essence, a reduced form of Equity partner in that such fixed equity partners' income will normally be dependent on the profits of the firm, but their proportional entitlements to share in profit will be less than the lower levels of the full equity partners. This has become increasingly common in recent years. Such partners will often be subject to "underpinning" or guaranteed minimum payments in case the profits of the firm in any year should fall, and their limited rights to share in total profit would result in an unusually low outcome. Fixed-equity partners can also be called "Fixed-Share Partners" or "B Equity Partners". Again, the arrangements of the relevant partnership could include bonus or commission arrangements for fixed equity partners.

Over the past ten years the trend among commercial law firms has been to have decreased or abolished salaried partnership in favour of fixed-share equity partnership for their non-equity partners. In the UK this has enabled firms to benefit from a more favourable tax position, as well as significantly reducing their employer/employee legal liabilities. Fixed Share Partners have self-employed status for taxation purposes and are taxed under Schedule D (employees, including salaried partners, are taxed under Schedule E). Because fixed-share partners are deemed to be self-

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employed, they are liable for Class 2 and Class 4 National Insurance Contributions (1) (and they also forgo any rights to National Insurance sickness benefits, statutory redundancy pay, and payments for unfair dismissal). By providing some equity, law firms have alleviated their future legal obligations to make pension provisions to "employees" so, unlike salaried partners, very few fixed-share partners are provided with pension contributions by their firms. Furthermore, unlike salaried partners, fixed-share partners are required to make a capital contribution to their firm.

"Salaried Partner" or **"Income Partner"** denotes, as the name suggests, a partner who is in fact employed by the firm under an employment contract and paid a salary subject to PAYE in the UK. Such partners' incomes are accordingly not determined by the profits of the firm but will be paid out as a contractual amount ahead of the firm's profits. Like any employment contract, the remuneration paid under it can include a bonus or commission element. Aside from compensation, the difference between a salaried partner and a well-paid senior assistant can be largely a matter of semantics.

Although, as we will discover, not everyone these days wants to become a partner, for the majority of assistants committed to a career in private practice, it remains the primary goal.

Why partnership should be important to you

If you are successful in moving from a non-partner to a partner position, the overwhelming likelihood is that you will initially be appointed as a fixed share or salaried partner. If, as explained above, the only real structural difference between this and the alternatives of "Senior Associate", "Managing Associate", "Director", or "Counsel" is titular, then one might reasonably ask if there is any point at all in your becoming a partner on these terms. This question may seem even more apposite if you are a counsel or senior associate at a Magic Circle or US firm because moving for partnership will often result in flat, or even reduced, compensation.

Nevertheless, in all but the most peculiar of circumstances, the reason partnership must remain your objective is that it is essential for the development and long-term retention of your practice, and hence job security. To potential clients, whether or not you are an equity partner is nearly always irrelevant - it is partnership itself which conveys an objectively positive message as to your level of ability beyond that of other fee earners at your firm. Most in-house institutions like the perception that their outsourced legal work is "partner-led". For this reason, even if you are presently secure with your own clients, as a non-partner, you run the considerable risk of losing instructions if the key people at those clients should change.

Partnership promotions – some unsettling statistics

Having hopefully convinced you that partnership is something for which you should be aiming if you intend to remain in private practice, it may be useful to calibrate your expectations.

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Promotion prospects have always varied from firm to firm and department to department. Prior to 2008, in Top 25 firms, the typical range was between seven to nine years post qualification experience (PQE); today it is rare for lawyers to achieve partnership before 10 PQE. The overwhelming likelihood is that the partnership track will continue to be stretched as the "Big Law" firm model narrows its partnership structure in order to maintain profitability in the face of the disaggregation of legal services driven by a cornucopia of new legal service providers.

How to determine if you are currently "on track" at your current firm

So, against the backdrop of promotion prospects for UK assistants being statistically the worst they have been for decades, how can you tell if you are currently on track at your current firm?

(i) Indications from your firm

It seems obvious, but a good starting point is to sound out partners in your department. Some firms purport to make a virtue of letting you know where you stand - although in my experience, almost without exception, there is an inverse relationship between the candour and preciseness of a given law firm's pronouncements on partnership track and the current overall demand for expertise in a given practice area.

That being said, as a rule of thumb, if you are beyond 6 PQE and your firm has not spontaneously made some form of encouraging noise to you, then you are probably not a first-tier candidate for partnership.

Even where you have been given positive assurances by the partner(s) in your department, you may still be miles off track. At worst, some unscrupulous partners dangle the vague carrot of future partnership as a cynical ploy to retain you through a period of elevated demand. Much more commonly, sponsoring partner(s) are thwarted in their genuine attempts to make good on partnership promises by a phalanx of business and internal political obstacles which they simply do not have the power (or departmental business case) to overcome.

The result is, intentionally or not, assistants often remain at their firm in the expectation of securing partnership when the reality is that their prospects are practically hopeless. Often these hapless assistants are financially compensated in lieu; but without the shield of partnership, the positions of these very expensive senior fee earners are acutely vulnerable to adverse market conditions.

(ii) Partner to assistant leverage

Regardless of whether or not you have been given positive indications, you should be able to determine a lot from the departmental structure at your firm. Firstly, look at partner to assistant

leverage. Of course this will vary from firm to firm and department to department but if, for example, usual leverage of at your firm is 1:3 and your department averages 1:1.8, you can be pretty certain that, regardless of how good you are, your department will have a political fight to elevate you ahead of equally worthy candidates in other departments.

(iii) Departmental structure and organic growth track record

Consider also the competition within your own department and the firm as a whole. Even if you feel you are objectively "better" than your peer competitors you should ask:

- do they have a client relationship or skill set which is currently more in demand;
- would your promotion leave a gaping hole in the spread of assistant coverage and if so, has your firm being trying to fill this by recruiting below you;
- has your department hired an assistant of equivalent seniority to you in the last two years;
- does your firm/department have a track record of internal promotions;
- when did the department last promote one of its own and how successful was that promotion;
- on average how many assistants are promoted to partnership each year?

(iv) Political shenanigans

In addition to the above there are a number of other crucial variables which are often much harder for assistants to assess. These include:

- the strategic importance of the practice area to the firm as a whole;
- the internal political power of the department in relation to others;
- the individual internal clout of your sponsoring partner(s) – often evidenced by how high within the equity they sit;
- the relative profit margin of your department;
- whether other departments, which previously missed out on the promotion rounds, have first dibs on partner promotions;
- whether there are any, objectively stronger, candidates in rival departments.

(v) The economy and market demand for your practice area

Although one or two firms purport to persist in the preposterous fiction that the strength of the candidate, rather than the wider economy, determines the number of promotions, there is no doubt that the market demand for your practice area is a crucial determinant. Throughout most of the 2000's, non-contentious real estate was a boom area; in 2008 it constituted 15% of all partnership promotions; by 2010 this had fallen to just 3%. By contrast, the inverse relationship between litigation and the strength of the economy, saw the promotions in this field rise from 9% in 2008 to

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25% in 2010 {1}. That being said, most firms will always try to make long term investments in exceptional candidates in core business areas.

(vi) The ratio of equity to fixed share/ salaried partners at your firm

With one or two famous exceptions, firms with all equity partnerships are more parsimonious with the partnership title than others. This makes complete sense because (at least in theory) these partners are co-business owners with voting rights, more security of tenure and a direct profit share. As such it is only natural that they should be subject to a more stringent vetting procedure than an employee – albeit an elevated one. By extension, it is easier to make partner at a firm which has a higher proportion of fixed share to equity partners (although the corollary of this is that it is also harder to move into the full equity, once in). For assistants at US firms in London there is an additional gloss; the UK operation of the US firm is often constituted as a separate partnership and it is common for a UK-based partner to be an equity partner in the UK entity without being an equity partner in the worldwide LLP.

Nevertheless, even if you are clear as to the partnership structure at your firm today, you may not be when your time comes for promotion. In recent times firms seem to be forever tinkering with their partnership structures. My completely cynical view is that during economically robust periods, law firms increase junior partnership promotions as a relatively inexpensive means to retain quality fee earners without diluting the PEP. In times of economic hardship some firms pronounce their intention to, either shift back towards an all equity partnership, or reduce their proportion of fixed share/ salaried partners. I suspect this is partly because senior associate attrition is less of an issue, and partly because, by definition, the compensation of partners within all equity partnerships will automatically adjust to reduced profits (and equity partners can of course be compelled to provide cash calls).

Your “sell-by date”

However unfair it may seem, in most instances, there is a relatively narrow window (currently between 9 and 13 PQE) when partner promotions occur. Beyond this there appears to be an unwritten rule that, however good you are, or whatever the extenuating circumstances of your previous failure to be promoted, your time has passed. Whilst there are of course many exceptions to the above, you should always be mindful that your partnership clock is also ticking.

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Your options

(i) If you have a following

Needless to say your options will be considerably wider if you have a following (for guidance on how to determine this and write a business plan click here). As a general rule of thumb, if your portable following is at least three times your proposed level of compensation, then most firms, below the global elite, will at least consider you. This "three to one rule" of course also assumes that your practice "fits" with that of your target firm and passes a minimum fee threshold. Remember, unless you are moving from a firm with high charge outs, you are likely to lose some of your following because, as a partner, you will probably be required to elevate your rates. This last point is nuanced if the firm you move to has lower assistant charge outs of which you can take advantage by pushing the work down.

If you have a following which is likely to be less than three to one, a firm may still be interested in you, even if it does not have an immediate or strategic need, provided you have trophy clients or relationships which will assist it in securing, enhancing or protecting panel appointments ("PSL's"). Hence, in the absence of your being courted by firms with a pre-existing need, you could do worse then compile an initial short list based on firms with whom you share clients.

(ii) If you do not have a significant following

You'll probably be glad to know that is reasonably rare for assistants to have followings that satisfy the "three to one test". Generally, in the absence of a following, you will require the target firm to have an immediate or strategic need for your technical expertise. This will often arise when there is a succession issue where a departing partner is leaving a significant case load for you to take over. Other examples include highly technical corporate support practice areas, such as financial services regulatory and corporate tax, which rarely require followings with ratios of 3:1. Happily for you, in a rising market, some firms consider that increasing partner critical mass is, in itself, a strategic necessity.

General factors to consider in a target firm

On the assumption that you do not have a sufficient following to make an overwhelming business case, your options are likely to be restricted to a reasonably small number of potentials. In drawing up a shortlist of these potentials, or to the extent that you eventually have the luxury of choice, factors which you should take into account include:

- the global structure of the partnership (discussed above);
- the criteria required to both enter into, and progress within, the equity;

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- the typical length of time taken to become an equity partner {2};
- the average PEP over, say, a three year period {3};
- the relative strategic importance of your practice area to the firm as a whole;
- any potential client synergies, shared PSL relationships (or conflicts);
- the strength of the brand;
- the strength and quality of support departments.

Looking for consistent statements on firm and departmental strategy

Before and during the interview process you should also try and determine independently what the firm's true medium-term strategic goals are. The "official view" can often be gleaned from press statements by the firm's top brass and may differ materially from utterances to you by members of the department. Needless to say, if the strategic visions contrast widely, it is likely indicative of a politically weak department or a dangerously muddled firm strategy – both of which can be pernicious to you.

Departmental confusion over strategy is a surprisingly common occurrence; many partners, and even departmental heads, overestimate the importance of their offering to the firm, assuming (wrongly) that, because their practice is profitable, it is secure. However, in recent times brand aware firms, looking to move up the food chain, have become increasingly ruthless in spinning off whole practice areas which they view as brand contaminants. Surprisingly this can, and often does, happen after recruitment drives.

Look at how billings are attributed

Another matter crucial to your long-term progression is how client billings are attributed by the firm. This can differ widely in relation to clients you introduce from firm to firm. Some firms will credit you, in whole or in part, as the originating partner for all matters undertaken by any department in the firm, others will limit this to just those matters undertaken by you or your own department. The importance of this on your partnership progression will vary according to the firm's ethos – theoretically at least, in an all equity lockstep, it will not matter but, for firms with more of an "eat what you kill" mentality, it will be all important.

As most large firms today are modified locksteps (a blend of the two extremes above) you should carefully determine the firm's attitude to client integration - in some your progression will be dependant on your successful cross referral and integration of clients; in others you would be wise to ensure your client's instructions to departments, other than yours, are funnelled through you.

It may very well be that the above is of limited concern to you in the short term if you do not currently have a following. For those of you that do, beware of partnership offers which (even

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though financially attractive) have high upsides based solely on your clients introducing work. Although these "commission arrangements" can be very attractive in the short term, they are often indicative of a firm which is exhibiting symptoms of being not at peace with its own partnership, or not serious about integrating you into the equity, or unlikely to cross refer much institutional work to you.

Other factors which tend not to overly concern first time partners, but certainly should, include:

- drawings policy;
- partner tax provisions;
- how capital loans work;
- restrictive covenants and post termination obligations;
- capital contributions;
- the financial health of the partnership (in particular its debt and how this is being serviced);
- and basic financial metrics such as: profit margins, lock up and revenue per lawyer.

"Trading up" and "trading down"

Generally, if you are an assistant working in a higher class of firm, you should find it much easier to trade down into a lesser brand for partnership than the converse. However, if you are at an elite firm with an institutionalised client base, you will often be hampered by your lack of following and the perception that, thanks to your firm's powerful brand, you will not have needed to have developed any marketing or client development skills.

If you are at a firm with a particularly strong reputation in a given field, you may also have an opportunity to "trade up", albeit to a department with a lesser reputation and more peripheral significance to the target firm in question.

For those of you with client relationships, you must also be aware of just how far you can safely "trade down". For example, a Magic Circle real estate or employment lawyer can move to a good regional or (fairly small) West End firm and still legitimately hope that some client relationships will follow; whilst a corporate lawyer will have less flexibility but may still retain a meaningful client relationship at a mid-tier firm with a good reputation; whereas a derivatives lawyer will have few options, outside a handful of US and Silver Circle firms, because their client base, likely sophisticated financial service providers, will simply not risk instructing firms below a minimum reputational level, no matter what the financial or personal incentives.

All this may seem obvious, but law firms will often expend a great deal of blood and treasure on attempting to grow new high-end practices (and so hire in partners) before they discover that their plan is fundamentally flawed because of brand. The lesson being, even when a firm is actively

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looking to hire in your specialism, be mindful as to whether you think they can actually succeed in growing the practice.

As discussed above, always bear in mind the effects of altered charge out/recovery rates on any practice you may have; generally if you "trade up" your following will fall; if you "trade down", then subject to your new firm having the brand and capability to undertake the work, your following will solidify.

How to make the move

(i) Writing a business plan

Before you embark on any process which involves you marketing yourself to other firms, you should be aware of what it is you are selling. Whilst this will undoubtedly consist of a mixture of some or all of: your technical skills, market reputation, potential client relationships and following, it is essential that you set this out clearly, and in detail, in a business plan. I have written another detailed article which deals with how to both quantify your following and write a business plan (click here to view article).

Even if, for valid tactical reasons, you do not initially present the plan to potential firms, the reason this exercise is so important is that it concentrates your mind and enables you to spot, and remove, any inconsistencies in your offering. It also enables you to both understand and practice your sales pitch in advance of any meetings. In view of what you are trying to achieve, there are likely to be very few genuine opportunities, so every first meeting you have will count. It is almost inevitable that you will have to write up a business plan at some point in the process, so I strongly suggest that you gain maximum advantage from it by writing it up at the start.

Of course any business plan you write will be a draft and, to be most effective, will likely undergo some revisions during the recruitment process. This is because you will gradually gain more information, particularly after interviews, which will enable you to bespoke elements so that they more exactly fit the needs of your target firm.

(ii) Contacting firms yourself

During your career to date you have (hopefully) made some good contacts in other firms and it may well be that your first instinct is to approach these yourself, particularly if a partner has previously indicated that they may be interested in you. If you do this then make sure that the partner(s) that you approach are of sufficient seniority to progress matters and that you are clear that you are looking for immediate, or at least imminent partnership. To do otherwise wastes time and risks

unnecessary breaches of confidence. You should also be aware that some firms have an absolute moratorium on hiring laterals who are not already partners in their own firm.

One of the main difficulties with taking matters into your own hands is that, unless you are directly collared by a sufficiently senior partner at a rival firm, you are unlikely to know if a given target is serious about hiring at partner level.

(iii) Recruitment consultants and head-hunters

As a recruiter you would, of course, expect me to tell you that this is the best method of exploring the market. An undeniable benefit of using a connected recruiter is that they are likely to know which firms are either actively seeking, or are most likely to consider, a lateral as an immediate partner. They should certainly know which firms to dismiss out of hand.

A good partner-level recruiter should be able to work with you by exploring options and, if required, pre-qualify an opportunity by making a "no names" approach on your behalf. In addition to confidentiality and convenience you should also benefit from:

- a reality check;
- market information;
- advice on process;
- advice on compensation;
- back office support (in typing up or laying out and re-drafting your business plan);
- a process catalyst;
- negotiation on your behalf
- and, of course, the effective "selling" of your candidature.

Using a recruiter does not preclude your simultaneously using your own contacts, and indeed a dual approach can be the most effective method, providing you always make clear that you have formally mandated the recruiter in question.

Recruiters vary in quality and methodology - your greatest difficulty with recruiters at this level is finding an individual or consultancy, amongst the hundred something options, which has the depth of experience necessary to add real value to your search.

That being said, at first meeting it is occasionally true that even a very good recruiter may know less about the recruitment market in your specific legal discipline than you, particularly if you have yourself been involved in recent hiring on behalf of your firm. Nevertheless, from the get-go a good recruiter should be fully versed in the principal moves and market developments in your practice area. If they are an ex-lawyer, they may also have some cognisance of recent developments in the

particular area of law and, armed with this knowledge, be able to make meaningful comment on how this will impact your practice area at a given target organisation in the medium term.

The consultant should also provide an accurate assessment as to the importance and commitment to the practice area by a target firm and contextualise this by drawing on analogies from rival institutions. Ideally, they should be able to flag up synergies or conflicts with other practice areas within the firm, together with any relevant political shenanigans, which may positively or adversely affect the role or your candidature. If you have a potential book of business the recruiter will, in many instances, have knowledge of relevant clients and panel appointments and therefore be able to highlight potential in-house client conflicts.

Summary

Over the past decade partnership in Top 50 firms has become much harder to achieve and it is likely that the next few years will see the entry bar raised even higher. Regardless of any undertakings you may have been given by your firm, you should not assume that these will come to pass, no matter how well intended.

In considering your position, your decision-making process should be determined by an assessment of risk and rewards. On the principle of “better the devil you know”, your first thoughts will likely be to determine whether, and when, you will make partner at your existing firm, and just how much this is worth in comparison to other potential opportunities. You must remember that in practice you have a relatively narrow time window to achieve this and, once passed, your marketability to other firms will be hobbled by the question “why didn’t they make partner at their last firm”?

In considering other opportunities the potential negatives of moving to a firm or department with a lesser reputation must be balanced against the marketing and security benefits of becoming a partner sooner. Juggling these competing criteria will always be highly subjective.

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{1} Legal Business, June 2010.
{2} In the absence of an exact answer to this, as discussed above, you will have an indication from the proportion of non-equity to equity partners; the higher the proportion of non-equity to equity, generally the longer it will take to join the equity.
{3} It is wise to take a look at PEP over more than one or two years because sometimes extraordinary “one off” events can distort this, both positively and negatively.

Related article: The Partnership Track and Moving for Immediate Partnership