

Has the lawyer transfer market stalled?

VINCENT BESNAULT / PHOTOGRAPHER'S CHOICE

City firms are taking a strong line with solicitors who want to move on, reports **Jonathan Ames**

Top-flight footballers and the cream of London's commercial solicitor set do not share many life experiences, but they do have this in common: until about a generation ago, they were generally stickers, staying with one club or law firm throughout their careers.

But over the past 20 years the days of partner loyalty have gone out the window. Individuals, and indeed whole teams, chop and change in the premier division of global law firms like... well, like footballers bouncing between Manchester United and Barcelona.

Now, though, as the ramifications of the financial crisis continue to bite, the big law firms could be fighting back. Over recent weeks, the professional press has highlighted two potential legal actions. First, Clifford Chance, one of the world's biggest law firms, was reported to have threatened to sue its four-strong funds team when they an-

specialist partner at Russell Jones & Walker, who acts for individual senior lawyers looking to transfer between firms. "If someone wanted to leave and had a good client relationship, it would be assumed that the client would want to go with that person. There was a reluctance to get heavy when there was very little chance of keeping the client."

But leading partnership lawyers say that the continuing fallout of the recession could be forcing firms to adopt a tougher stance. "Firms generally are becoming much more corporate," Morris adds. "Now, with the pressure of competition and on margins because of the economic conditions, firms are being more ruthless."

And the stick they can invoke is heavy, says Betina Bender, a specialist partner at CM Murray. "The potential penalties for the departing partner or team can be huge," she says. "The firm could sue them for an account of profits for the income stream they get for taking its clients and/or issue an injunction for misusing confidential information or acting in breach of restrictions. There is also the possibility of a claim for damages, so the threat is great."

Indeed, in principle, it is not difficult for departing teams to fall foul of common law fiduciary duties, their own partnership agreements, or, as is more likely now, limited liability partnership agreements. Any action that works to the detriment of the wider partnership — such as discussing a potential move with a rival firm and with fellow team members — is likely to be a breach.

Lawyers with itchy feet can press suitor firms for an indemnity against future claims, but while those firms may be keen to lure the partners and their teams, wheedling an effective insurance policy from them can be a struggle.

But are angered law firms likely in practice to see through to court threats over breaches of fiduciary duty? And if so, will a new hardened approach stop the 20-year bonanza of lateral partnership moves across the City? Absolutely not, says one of the sector's most established partnership specialists, Ronnie Fox, of Fox Solicitors.

There are two crucial factors at play that will ensure that the partnership



The recession has meant that some firms want to slow down lateral hires

merry-go-round continues, he says. First is the important human element: "If people are working somewhere that they don't want to be, how much value will you get out of them? Also, it is not helpful to have someone around who is not committed to the firm's future — especially if they have continued access to confidential information."

Secondly, Fox explains, is perhaps the most important element — client power. "The big investment banks will say to a firm losing a partner: we want that partner at his new desk next week working on this transaction. And because the big investment banks tend

to instruct several firms, they have a lot of clout."

There is an irony in suggestions that law firms are increasingly playing hardball with departing partners, considering there is probably no practice in the Top 100 that has not actively poached lawyers in the past few years. Bender says wryly: "We have had departing teams ask us to act for them saying that their firm has always aggressively approached other teams to try to poach them, and so assuming that the firm will be relaxed about their leaving. But it doesn't necessarily follow."

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nounced that they were moving to Weil Gotshal & Manges, the US-based firm.

Then, only a few days ago, reports suggested that Barlow Lyde & Gilbert, the City-based insurance specialist, was taking a similarly dim view when an eight-partner team said they were heading to Holman Fenwick Willan.

It is not clear whether either jilted firm will resort to the ultimate weapon, an action for breach of fiduciary duty. Officially, Clifford Chance says it is not suing, while Barlows has distanced itself from media reports about a lawsuit, commenting that "any matters between the firm and its partners are confidential".

The firms may not be the only ones recently to have produced a big stick to threaten departing partners — and it is a move that could profoundly affect the fluidity of the personnel market around the UK's top-tier law firms.

"Firms are getting a lot more ruthless," says Julie Morris, an employment