

Legal disciplinary practices offer career opportunities for non-lawyers and a means of rewarding senior colleagues. So why the slow start? *Jon Robins reports*

Race for the title?

On the face of it, Nick Hanning, a legal executive from Dorset; Clint Evans, chief executive at City firm Barlow Lyde & Gilbert; and John Durcan, practice director at a large legal aid firm in Yorkshire, have little in common apart from their membership of the extended legal family. But they are at the sharp end of a modest but significant moment in legal history. As the *Gazette* went to press, these three were set to be among the first non-solicitors to make partner in their firms.

At the end of last month the new regime of legal disciplinary practices (LDPs), allowing up to 25% of partners to be non-lawyers, came into being. 'It's always been slightly irrational that perfectly able, talented and professional people haven't been able to join a partnership,' reflects Hanning, who has been an integral member of RWPS Law in Poole from its beginnings in January 2000.

According to the Institute of Legal Executives, Hanning was its first member to make a request for the certificate of suitability to become partner. On a personal level, the legal executive notes that his change in title is 'helpful', removing the 'slightly awkward' distinction between him and his fellow solicitor-partners. But Hanning, an ILEX council member, adds: 'From a wider point of view it is fantastic for ILEX. I'm sure that there are lots of very talented legal executives who will make fantastic partners. They deserve the opportunity.'

John Durcan, a chartered accountant, joined Yorkshire legal aid firm Switalskis in 2001 and has been managing partner 'in all but name' since 2002. He reckons that being formally made partner of one of the largest publicly funded firms in the country might put 'a small spring in my step'. 'I am reasonably happy and proud about it,' he says. 'I feel I will be called by the right name.'

What does being partner mean? As Durcan puts it, the change in title will 'make my life a bit easier when I go to conferences' where people quiz him about being 'practice director'. In Switalskis, staff regard him as the managing partner, 'although I don't call myself managing partner'.

'There will be a lot of people who are like me – whether they're in IT, HR or marketing – who are senior within their organisations and have been effectively filling a partnership role,' he says. There is 'still a degree of snobbery within the legal profession,' he reckons. 'They think they can just do it themselves. Obviously, a lot of lawyers are very bright individuals. But we're in the 21st century, and in all other industries you see a lot of CEOs being appointed who don't have direct industry experience.' Law firms have 'just been in the dark ages' which, Durcan adds, is 'why we're having so many reforms'.

This is a sentiment echoed by Clint Evans. He became Barlow Lyde & Gilbert's first CEO in 2007. 'I think the law firm model has moved on to the point where there needs to be a close working relationship between lawyers, who know how to deliver legal services to clients, and professional managers, who know how to run a firm,' he says. Evans, a chartered accountant by background, was previously head of branding at Clifford Chance in 2001, following its merger with US firm Roger & Wells. 'I will be a non-lawyer partner as soon as I can prove there are no hurdles or barriers in terms of our firm's set-up,' he says.

As momentous as the Clementi reforms might or might not be, events have been overtaken by the spectacular collapse of the global economy, which has hit firms from the City to the high street. As a result, the profession has more urgent concerns to occupy partners' time than new business structures or partnership appointments. As of March, the Solicitors Regulation Authority had

received fewer than 20 applications. Though that is not the rip-roaring start many foresaw, the SRA's Alison Crawley reckons that the profession's response hasn't been as 'lukewarm' as some observers have suggested (see [2009] *Gazette*, 12 February, 1). She says there have been around 1,500 queries about LDPs and non-lawyer partners.

'People

have to download the forms, read the notes and get their Criminal Records Bureau check, and we did not have the forms on the website until early January,' she says. 'I'd have been concerned if people had got their application forms in overnight, because that would have meant they wouldn't have read them properly.'

Solution without a problem?

Some observers see the lack of take-up so far as a rejection of the Clementi vision. Ronnie Fox, the partnership law expert and principal at City firm Fox predicts the arrival of LDPs will be a 'non-event'. 'It's a solution for which there is no problem,' he reckons. He predicts 'a few chief executives or practice managers might be invited to take an equity stake, but at the moment there's a lot of pressure on law firms to keep the equity tightly controlled.'

'Once you have given away

equity you can never get it back.'

Fox reckons that the lifespan of non-lawyers in senior executive roles 'tends to be fairly short' owing to the culture clash between non-lawyers and lawyers. 'I have heard the same story again and again,' he says. 'People don't last. The expectation of coming in from outside is that there'll be lots of responsibility and powers needed to do the job, but lawyers are reluctant to give those powers up to somebody who is not also a solicitor.'

Tony Williams, founder of the management consultancy Jomati and former Clifford Chance managing partner, does not agree. 'Why shouldn't non-lawyers have equity?' he asks. 'They have been doing that for years through quasi-equity arrangements where they have remuneration or bonuses linked to the profits and so, to some extent, it is only regularising what



Photographs: Alamy

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firms have done for years anyway.' Williams admits to being 'slightly surprised' about reports of a slow take-up but reads them as 'more a sign of the economy and conservatism rather than anything else'.

and then you have a mutual arrangement between the businesses.'

Tina Williams, senior partner at Fox Williams, has been advising a number of law firm clients on LDPs, including 'some of the largest City practices', and a number of private equity houses.

External investment will very much benefit those firms with strategies that 'require investments beyond the means of the partners and, topically, beyond their means to borrow from banks.'

'Some firms have strategies that are simply impossible to achieve without a good chunk of external investment,' she says. However, she reckons firms could also benefit from an injection of management skills into their businesses.

'Private equity houses are used to managing firms that produce high returns on investment,' she said. 'Firms could benefit massively.'

The firms she has been talking to are 'high-end firms whose strategies are either to expand geographically, to expand quickly, or both'. She added: 'Another benefit is that private equity houses don't invest their money lightly. Those who do seek external

investment will undergo an external check as to whether or not the strategy is right. This could be a huge comfort in this uncertain environment.'

However, such relationships aren't going to be straightforward. Firms are fooling themselves if they think that any external investor is going to invest money except to make a good return, and ultimately to have an exit route. 'If the profits are not there, the investor is going to force change in ways in which the members may not have anticipated,' she says, adding that underperforming partners 'are not going to be tolerated'.

In-house pressure

ITV sent shockwaves through the legal community when it became the first big British company to ditch the billable hour and cut down its panel of legal advisers from 50

firms to nine. That panel includes the likes of Slaughter and May and Lovells.

Andrew Garrard, ITV's general counsel, is an enthusiastic supporter of non-lawyer partners in top management positions. But what about the argument that sharing equity dilutes the law firm model? Unsurprisingly, he gives that short shrift. That attitude is 'symptomatic of the reason why lawyers haven't been as successful at getting into their clients' boardrooms as other professions. It's because they think that they are somehow different.'

'To say that you cannot share money with anybody who is a non-lawyer is frankly an elitist, outdated attitude,' he says. 'I would not want to sit on the fence about that one.'

Paul Gilbert, chief executive of LBC Wise Counsel and a former in-house lawyer, reckons change will be client-driven. 'The client won't care less about the dilutions of equity – all they care about is the quality of service delivered for value, and whether it's on time and on budget.'

Garrard agrees. He argues that, because there has been 'such an overwhelming demand for legal services in the last few years', law firms have not had to apply 'normal business principles' and have developed 'lazy' ways of looking at the world.

George Bull, head of accountancy firm Baker Tilly's professional practices group, reports that the previous 'moderate level of interest' in LDPs has been 'almost completely erased by the current recession'. But, he stresses, it is 'important to remember what LDPs are about – the idea that very senior non-lawyers, who have an invaluable role in managing and running a practice, should be able to become partners'.

Historically, all professions have looked rather like technocracies, Bull reckons. 'The best technocrat gets the top job – whether it's the best lawyer, architect or surveyor – but they may not make the best practice leader,' he says. It seems 'sensible to widen the pool of individuals from whom choices can be made' but, the accountant argues, for the legal profession it is 'critically important'.

LBC Wise Counsel has conducted 30 or 40 panel reviews in the past two years. 'We know what firms are

Q&A: LDPs and non-lawyer partners

● Can anyone be a non-lawyer manager* of an LDP?

Any individual who is not legally qualified will be able to be a manager in an LDP, provided they are approved by the SRA (this will include a Criminal Records Bureau check), and provided there is not more than 25% non-lawyer ownership of the firm.

● Can a non-lawyer practice manager be a partner now?

The new regime came into effect on 31 March. Use form NL1 on the SRA website to apply for approval of a non-lawyer manager.

● How many non-lawyer managers can a firm have?

The restriction on the extent of non-lawyer ownership is by proportion rather than number. Non-lawyers must not make up more than 25% of the ownership of the firm. There is an additional restriction in relation to the number of managers – non-lawyers must not make up more than 25% of the number of managers.

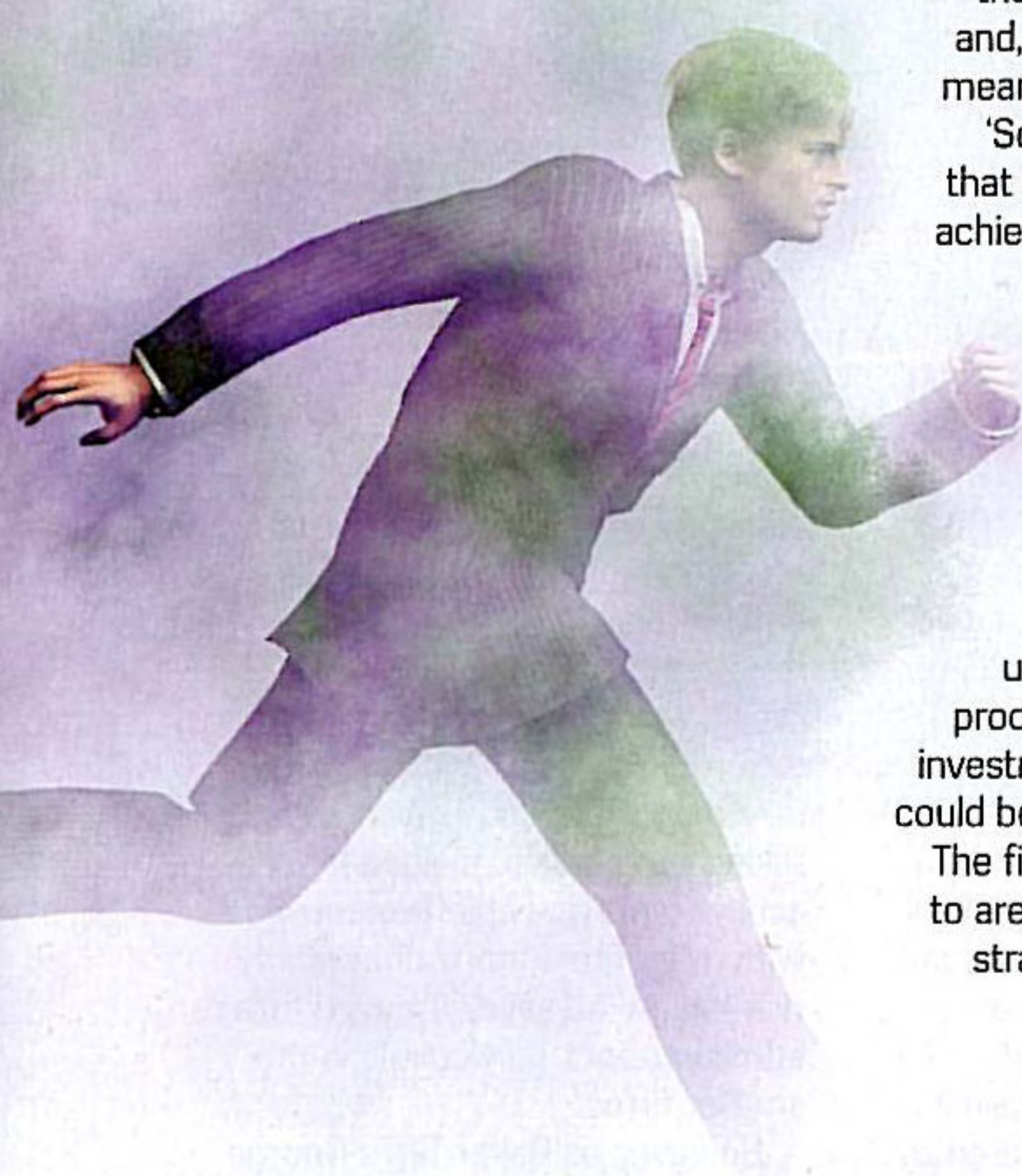
● Will there be compulsory training on the SRA's rules for non-lawyers? Non-lawyers will not be required to undertake training.

● How much will it cost to get approval for a non-lawyer manager? The fee is £250 plus the cost of a Criminal Records Bureau check.

● Can, for example, a sole practitioner have his son, who is not legally qualified but works for the firm, as a partner? No. Non-lawyers can't represent more than 25% of the ownership of the firm, or more than 25% of the number of managers.

● Which other legal professionals can join an LDP? Licensed conveyancers, barristers, notaries public, legal executives, patent and trademark agents and law costs draftsmen will be able to be managers of LDPs.

* The Legal Services Act uses the term 'manager' to cover a partner in a partnership, a director of a company or a member of an LLP.



Both Evans and Durcan had such pre-existing arrangements. Without giving too much away, says Evans, his was 'constructed so that to all intents and purposes I would be treated as a partner although not a member of the LLP'. Durcan has a fee-sharing agreement in place that is 'very akin to an equity share'.

The big limitation on the City's interest in LDPs is the extent to which the brave new world of the Legal Services Act clashes with other jurisdictions. As Williams puts it, he can't see City firms being 'early adopters' until these issues are ironed out.

There are two solutions, reckons Colin Ives, a partner at accountants BDO Stoy Hayward, who has been advising firms on LDPs. 'One is to say that it is all too difficult and give up,' he says. 'The other is effectively to hive off the UK or the international business into a separate entity in which the non-solicitor is either a partner or not,

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being judged on and one of the things is innovation – evidence of which is relatively scant,' Gilbert says. The lawyer argues that a non-lawyer leader in a firm could be 'a significant point of differentiation'. 'If the person the firm takes on board is a relatively well-known, successful business person that's bound to create a noise,' he says.

Garrard agrees. 'When I say to law firms that I want to be account-managed and here are specific terms and conditions that I want you to sign up to, I don't expect them to be ignored,' he says. 'But nine times out of 10 they are, because firms are trying to get their partners to perform as work generators and managers and then they have to meet their chargeable hour quotas as well. Something has to give.'

Regulatory conflict

Law firm management consultant Simon Young believes that one reason for the slow start is the temporary regime regarding non-

lawyer managers which will be superseded by the alternative business structure framework in two or three years' time. ABSs will allow lawyers to form multi-disciplinary practices, offering legal services together with non-legal services, and enable non-lawyers to own firms. 'One would hope that the regulatory regime would be no worse under ABSs – however, it does obviously create uncertainty,' he says.

Crawley at the SRA stresses that legal service delivery should be regulated in the same way, whether the provider is a traditional firm or an ABS.

'It shouldn't matter if Tesco owns it or a bunch of lawyers,' she says. 'Our view would be that, if regulation of LDPs is OK, why then would there be changes for the regulation of ABSs?'

Young reckons that the aspect of LDPs that allows for different types of lawyers to join together is 'much more important strategically than allowing the odd non-lawyer to come in'. For example, firms considering an expansion of their conveyancing practices (though the

idea might seem improbable at the moment) could opt for regulation by the Council for Licensed Conveyancers (CLC). 'We can now be the up-front managers of licensed conveyancing bodies, which we couldn't before,' says Young. He argues that some solicitors 'might prefer to operate as licensed conveyancers and cease to be part of an entity regulated by the SRA'.

Richard Barnett, chairman of the Law Society's conveyancing and land law committee, and senior partner at national volume conveyancing firm Barnetts, reckons LDPs are a challenge for the SRA.

'It is an issue that the SRA should be very focused on. There is a very strong argument to say that they should have silos dealing with separate sections of the marketplace.' In other words, he argues that the City firms should not be regulated in the same way as volume conveyancers or sole traders on the high street. 'There are different issues that arise. One thing that should be pertinent among all regulators is that there should be a level playing field, so I should not be penalised as a volume conveyancer being regulated by the SRA as against a volume conveyancer regulated by the CLC.' He predicts the test will come under the ABSs regime if a 'blue-chip commercial organisation' opts for CLC regulation which, in his view, would be 'an incredible slap in the face to the solicitors' brand and the SRA'.

The CLC reports interest from solicitor firms looking to hive off some operations into a practice regulated by the council. 'We have noticed a feeling that has come from parts of the profession that solicitors are looking around because they are so dissatisfied with their current regulatory regime,' reckons the CLC's Simon Blandy. He says the CLC's rules offer a much more straightforward regime especially on the thorny issues of referral fees and conflicts of interest.

Time to commit?

Andrew Otterburn, a chartered accountant and management consultant with 20 years' experience advising solicitors, turns the question of LDPs and non-law

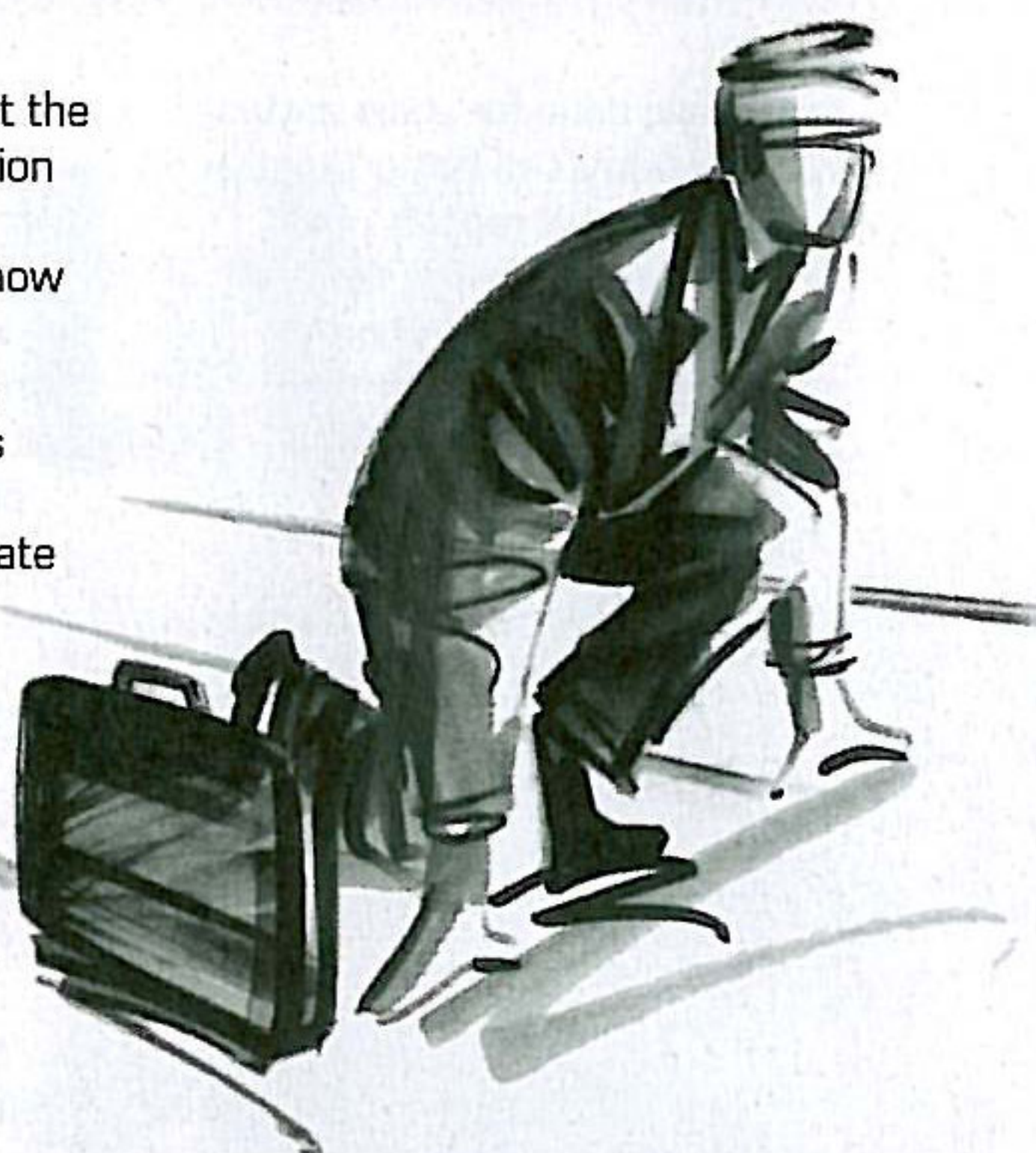
partners on its head. What would it say about a firm if a non-lawyer with a management function did not want to be a partner? If a manager didn't want to share the equity then 'there would be a question mark' concerning the other partners' view of him, he reckons. But, he adds, there might be a perfectly good reason for not taking partnership. 'Quite a lot of accountants and chief executives within law firms aren't necessarily risk-takers,' he says. 'They are often administrators, particularly in the smaller firms.'

However, as Baker Tilly's George Bull notes, there might be good reasons for not wanting to sign up, the recession being the big one. Even if an individual is 'known to the firm; works within it and gets on well with the partners as a key decision-maker', very few people want to become partners in an LDP and put capital in at present, he says. 'The timing, in terms of the economic cycle, means that LDPs will be off to a very, very slow start.'

Hanning readily admits that it is 'not an ideal time' for anyone to move to partnership. 'It is not something to go into lightly,' he reflects. 'People are going to have to look more closely at the financial information which they might not have [done] in the past.'

'Many firms, I suspect, are trading on the back of overdrafts or other borrowings. All of those things need to be looked at before you take the risk. There is a downside, because equity brings with it liability. You need to know what you are letting yourself in for.' ■

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