



LLP departure lounge – getting ready to board the exit flight

Management

Written by Ronnie Fox, Principal, Fox

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Your role as a member of an LLP in a professional or financial services firm has been identified as at risk.

What should you do as a prudent member who has been asked to pack their bag before heading for the departure gate?

Flight information

You should take the trouble now to read the members' agreement that you signed on arrival at the LLP.

There may be helpful provisions in the agreement, such as formal procedures and voting requirements to be observed.

Look out for hidden traps as your exit route from the LLP may not be confined to the sections of the members' agreement headed "Expulsion" or "Retirement".

Indeed your exit route could lie in another document altogether. For example, your LLP may be a member firm of an international group.

A provision in the members' agreement stipulating that you shall cease to be a member of the LLP on ceasing for any reason to be a principal of the international group will mean that you need to study carefully not only the members' agreement but the articles and regulations of the international group too.

Be wary of post-retirement consultancy agreements that are conditional on you relinquishing your membership of the LLP.

Such agreements may change your status to that of a worker or employee and subject to unilateral termination by the LLP (or an associated service company) long before you qualify for the right not to be unfairly dismissed - now 2 years.

Destination

You should think carefully about your objectives before boarding the exit flight. Most members want to be allowed sufficient time to find another role and to have as large a financial parachute as possible before joining another firm or retiring from the LLP.

Money cannot buy happiness but it does allow a member heading for the exit to be miserable in comfort.

The fact that you have left the LLP is not necessarily the end of all potential problems in the eyes of the law. Loose ends will need to be tidied up.

A key but often overlooked objective is to ensure you are released from any lease obligations or personal guarantees and that you remain fully indemnified (preferably by all of the remaining members of the LLP) pending your release.

Ideally the remaining members should be obliged to use their best endeavours to procure your release from any lease obligations and a long stop date by which this must be done should be included in your retirement deed.

Personal guarantees have a nasty habit of coming back to haunt. Banks and landlords love personal guarantees which can be dusted off and called upon years later.

Turbulence

You may feel powerless in exit discussions piloted by senior management determined to force your departure as quickly and cheaply as possible.

However, senior management may have to prepare for a bumpy ride. For all exit flights the law provides for life jackets to be found under departing members' seats.

For example, members may petition the court that the LLP's affairs are being conducted in a manner that is unfairly prejudicial to their minority rights under section 994 of the Companies Act 2006 (unless the members' agreement excludes the right of recourse to the court).

Section 44 of the Equality Act 2010 prohibits discrimination, victimisation and harassment by firms against members. The service (or threat of service) of a discrimination questionnaire coupled with a data subject access request will invariably be perceived by senior management as a hostile move but may encourage settlement on your terms.

For solicitors, Principle 9 of the SRA Handbook (4th edition) stipulates that it is mandatory to "run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity."

Reminding senior management of the rules and principles of their relevant professional body may result in an upgrade to business class.

Oppressive and unacceptable conduct by the senior management team may give rise to a claim for damages or an injunction under the Protection from Harassment Act 1997.

Recently the Employment Appeal Tribunal has held that a member of an LLP was protected by whistleblowing legislation (see *Bates van Winkelhof v Clyde and Co LLP*).

An unforeseen consequence of this decision is that if, as an LLP member, you are now deemed to be a worker then senior management may be obliged to auto-enrol you in the National Employment Savings Trust (generally known as 'NEST').

Senior management may not take too kindly to being reminded of this potential but no doubt unforeseen obligation and may choose instead to add to your duty free allowance in the departure lounge.

In summary you need to think outside the black box about what remedies may be available to you and to utilise these to navigate your way to the objectives you have identified. A litigation dogfight with senior management should be avoided, if possible.

Safe landing

Seeking independent legal advice at an early stage is sensible. Your solicitor will probably have flown many times before and encountered situations similar to your current predicament.

Try to get senior management to agree at the outset of negotiations that the LLP will be responsible for all of your reasonable legal and professional fees and not simply the fees for being advised on the terms and effect of a retirement deed which the LLP will probably seek to cap at just a few hundred pounds.

This could leave you seriously out of pocket. Outplacement support, prompt return of your capital and an agreed form positive reference will make for a smooth landing.

Have an enjoyable flight.

Ronnie Fox is the Principal of Fox. He qualified as a solicitor at the City of London law firm, Herbert Oppenheimer, Nathan & Vandyk. Ronnie founded and became the first senior partner of Fox Williams in 1989. He decided to leave that firm in 2006 in order to found Fox. He is well-known for his expertise in negotiating departure arrangements, acting for employers and for employees, for professional firms and for individual partners.

Fox are a boutique law firm based in the City of London, specialising in contentious employment and partnership issues swiftly and effectively.