

THE LAWYER

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Preparing to make a smooth exit

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At times like these, when partners are being asked to leave firms, it's wise to ensure you're prepared



Profit per partner dismal? Lateral hire a costly mistake? Whatever the reason, your role as a member of your firm's LLP could be at risk. So what should you do if you're ordered to bail out?

First, take the trouble to read the members' agreement you signed upon arrival. There may be helpful provisions 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 'expulsion' or 'retirement' sections of the document. In fact, your exit route may lie in another document altogether, especially if the LLP is a member firm of an international group.

Beware consultancy agreements that are conditional on you relinquishing membership of the LLP. Such agreements may change your status to an employee or worker and expose you to termination by the LLP long before you qualify for the right not to be unfairly dismissed (now two years).

Consider carefully your objectives. Most members want sufficient time and as large a financial parachute as possible before joining another firm or retiring. Money cannot buy happiness but it does allow you to be miserable in comfort.

Leaving the LLP is not the end of your problems. Loose ends need to be tied up. A key objective is to ensure you are released from any personal guarantee and that you remain indemnified the remaining members pending release.

You may feel powerless in exit negotiations piloted by senior management. However, they may have to prepare for a bumpy ride. For example, members may petition the court that the LLP's affairs are being conducted in a manner unfairly prejudicial to their minority rights under Section 994 of the Companies Act 2006. Section 44 of the Equality Act 2010 prohibits discrimination, victimisation and harassment by firms against members. Service (or threat of service) of a discrimination questionnaire coupled with a data subject access request will be perceived by senior management as hostile, but may encourage settlement on your terms.

Principle 9 of the SRA's handbook stipulates it is mandatory to "run your business [...] in a way that encourages equality of opportunity and respect for diversity". Reminding senior management of this principle may secure an upgrade to business class on your exit flight.

Oppressive and unacceptable conduct by senior management 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*).

You need to think outside the black box about the remedies available to you. Seek legal advice at an early stage and try to get senior management to agree that the LLP will meet all of your legal and professional fees. Outplacement support, prompt return of capital and a positive reference can all make for a smooth landing.