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Feature

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Hard lessons learnt

By Clare Murray, managing partner, CM Murray LLP

With a new year comes the hope of a brighter outlook for many professional practices, and for some, closure on possibly the hardest financial years that some practices have ever faced.

Yet there are many valuable lessons to be learnt from 2008/2009. During this time many professional practices saw an unprecedented upheaval in their firm, and consequently the forced retirement of a substantial number of partners – difficult times for both the firm and individual partners alike.

A number of firms handled the exit of their partners extremely well, offering those partners what they needed most: time to plan their next steps and a financial cushion, along with a sensitively managed and confidential exit process. Others handled the situation less deftly; ignoring exiting partners' rights, and so consequently leaving them aggrieved and the firm exposed to potentially costly claims and stored problems for the future.

Key issues that many partnerships and LLPs failed to consider fully in their retirement discussions, if at all, included:

- Determining at the outset whether an individual was a genuine partner or, in fact, an employee with potential employment rights on exit;
- The grounds on which the firm could lawfully ask a partner to leave and the formal process required. Such detail is usually set out in the partnership deed or articles, which many firms failed to review prior to commencing partner exit discussions;
- Whether the partner had cause to allege that their forced exit was unlawful discrimination on grounds of their sex (including marital status), race, disability, age, sexual orientation, religion or belief. Often overlooked by firms was the unfair prorating of female partner pay, or asking older partners to leave without proper justification;
- Agreeing and recording all retirement arrangements and payments in a detailed retirement deed. Retirement arrangements should cover a number of issues including if and when capital is to be repaid; the payment of profit share balances; release of the partner's tax reserve; and releases from liabilities such as overdrafts, loans and premises.

Failure by some firms to consider the above partnership law issues in advance of approaching a partner to exit often made an already potentially volatile and distressing situation worse.

While entering a new year is often time for firms to look to the future, it is perhaps also a time for some firms to reflect on where improvements in their partner exit arrangements can be made. In strained times, partners who are approached to leave have often known for some time that the writing is on the wall, so if the process is managed considerately and fairly partner exits can, and do, run smoothly.

For a useful summary of the key legal and practical partnership issues for LLPs and general partnerships alike, readers can access CM Murray LLP's Little Book of Partnership at: <http://cm-murray.com/Pages/LittleBookOfPartnershipLaw.pdf>

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