

CM | MURRAY

The Little Book of  
**Partnership Law**

There are many  
sacred laws along  
the journey to  
becoming  
a partner...

Please reference our  
scriptures: The Limited  
Liability Partnerships  
Act 2000 and related  
Regulations, and our secret  
text known only to  
the chosen few, the  
Members' Agreement



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## Welcome

We thought it would be helpful to create a Little Book which sets out the basic partnership principles in a practical and accessible manner for our clients and contacts.

It features the work of talented illustrator, David Orme.

This is very much a brief overview, as partnership law is a complex area. It aims to touch on just some of the key legal and practical issues relevant to modern partnerships under English law.

Where we refer just to partner or partnership agreement, this also includes LLP member and LLP agreement where the context permits.

We hope you like it!

The Team at CM Murray LLP

This booklet is only a brief overview of English partnership law, and is for general purposes only. We would be pleased to help you with specialist legal advice for specific circumstances. Information correct as of April 2016.

## The pros and cons of partnership – an overview

Partnership typically provides direct participation in the success and profits of the business, involvement (to one extent or another) in the running of the firm, and favourable tax treatment.

But it also brings fiduciary duties and potential liability, depending on the type of partnership structure.

Partners also have fewer statutory rights than employees and are more likely to be bound by restrictive covenants.

## Partnership laws and liabilities

Partnerships are governed by the relevant partnership agreement and the Partnership Act 1890. A partnership is a collection of individuals in business with a view to a profit. Partners in a partnership have unlimited personal responsibility for the debts, liabilities and losses of the firm.

LLPs are governed primarily by their Members' Agreement, the Limited Liability Partnerships Act 2000 and related Regulations. An LLP is a legal entity separate from its members (unlike a partnership). An LLP member's liability is (except in certain circumstances) limited to their capital contribution.

## Partner duty of good faith

This is the fiduciary duty owed between partners in a general partnership and, depending on the circumstances, from LLP members to the LLP.

In essence a partner must act in the best interests of the firm.

A breach of this duty could result in the partner or LLP member having to account for profits unlawfully earned as a result of any breach.

Are you sure the duty of good faith requires me to do this?



Yes, I'm sure, now release the dogs!

The duty of good faith therefore prevents an exiting partner, even during their notice period, from e.g.:

- competing with their current firm
- soliciting clients and/or colleagues
- diverting business opportunities
- misusing confidential information.

They must provide full information to the firm, including on any material changes likely to affect the business.

## Due diligence for new equity partners

Prospective partners should consider requesting the following information and documents when offered equity partnership by a firm:

- current partnership agreement
- accounts for the last three years and current year management reports
- major liabilities current or planned, e.g. office move
- capital contribution required and financing options

- how profit shares and drawings are determined
- level of professional indemnity cover
- details of current major claims and partner disputes and
- the age profile of the firm, succession planning and existence of an up-to-date business plan.

## **Partner or employee? Spotting the difference**

It is often important, especially on partner exits, to ascertain if someone is a genuine partner or employee.

An equity partner is usually a genuine partner, whereas a salaried partner is more likely to be an employee with employment law protections.

A fixed share partner's status will depend on the nature of the relationship, rather than the title.

Relevant factors include whether they:

- receive fixed pay or participate in profits and losses
- are indemnified against losses
- contribute capital
- share in the firm's surplus assets on a winding up and
- participate in management decisions and control.

If a firm expels a partner who is in reality an employee, without a fair reason and process, the firm may face statutory employment law claims, including unfair dismissal.

## Partner remuneration structures

Partners receive a share of profit, the size of which depends on the structure of the profit system.

Simply put, some firms share profits based on a lockstep system which allocates additional points in the profit share pool for every year of partnership service (but often subject to gateways and a plateau). This system essentially rewards longevity, collegiality and performance across the firm (although this can create an indirect age discrimination risk for the firm, if not properly structured).





Some firms share profits primarily on a merits basis, recognising the individual performance and introductions of the partner (and their team).

Other firms have a hybrid system, with elements of both of the above including a discretionary element reflecting individual and team contribution.

## Partner protections from discrimination

Partners are protected against unlawful discrimination because of sex, marriage and civil partnership, pregnancy and (possibly) maternity, race, disability, age, sexual orientation, gender reassignment, religion or belief.

A firm may not discriminate against a partner in the way in which it makes an offer of partnership, in the terms of any such offer or by refusing to make an offer of partnership.

Nor, where someone is already a partner, can it discriminate as to the terms of partnership, in the way it provides access to any promotion, transfer, training or partnership benefits, by expelling a partner or by subjecting them to any other detriment.

Harassing or victimising a partner (or prospective partner) is also unlawful.

Strict time limits apply (subject to the rules on mandatory early conciliation).

**Disabled partners:** Firms are also under a duty to make reasonable adjustments where a disabled person is placed at a substantial disadvantage in the work place because of, for example, a provision, criterion or practice applied by the firm or a physical feature of its premises. A partner can be required to contribute to the cost of any adjustment in line with their profit share.

**Age discrimination:** The compulsory retirement of older partners could be potential age discrimination. The firm must be in a position to show, with evidence, that the compulsory retirement age is a proportionate means of achieving a legitimate social policy aim.

## Pregnancy and sex discrimination

Female partners have the right not to be treated unfavourably by their firm from the point at which their pregnancy begins to the end of the two weeks after pregnancy. The partner may have sex discrimination protections after this time if they suffer less favourable treatment because of their pregnancy or maternity-related absence.

A firm will also owe specific health and safety obligations to pregnant and breast-feeding partners.

## Family-friendly rights

Partners are not entitled to statutory maternity leave; nor are they entitled to statutory paternity, adoption or unpaid parental leave.

Partners are not usually entitled to statutory maternity pay, although are likely to be entitled to statutory maternity allowance. Some firms offer maternity pay and leave packages to their partners in any event.

Partners are not eligible to make a request under the statutory flexible working scheme which applies to employees. However, a failure by a firm to properly consider a flexible working request from a partner and objectively justify its refusal, could give rise to possible discrimination claims depending on the circumstances.

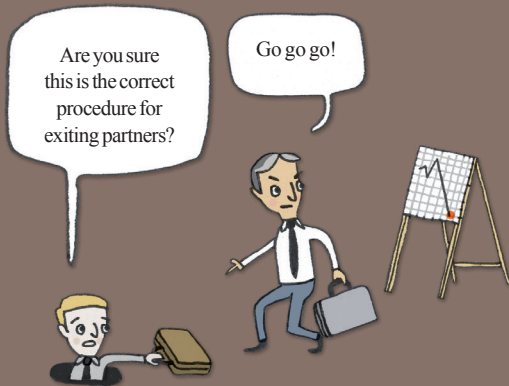
The shared parental leave and pay scheme does not apply to partners. However, a father or parent (who is employed elsewhere) may be entitled to shared parental leave (and pay) where the mother is an LLP member and satisfies other conditions.

## Worker protections for LLP members

In principle an LLP member is a 'worker' and qualifies for whistleblower protection as well as other 'worker' rights (although it is not clear that these rights also apply to a partner in a general partnership).

To qualify for whistleblower protection the LLP member would have to fulfil a number of statutory requirements. Strict time limits apply (subject to the rules on mandatory early conciliation). Typically a successful whistleblower is awarded uncapped damages, based on actual and future losses.

Other 'worker' protections for LLP members include (but are not limited to), part-time worker and working time protections, national minimum wage rights, the right to be accompanied to a disciplinary or grievance hearing and protection from unauthorised deductions. LLP members may also be considered 'workers' for the purpose of automatic pension enrolment.



## Partner restrictive covenants

Exiting partners may be subject to post-retirement restrictive covenants in the partnership agreement.

The restrictions must be no more than reasonably necessary to protect the firm's client connections, workforce stability and/or confidential information.

However partner restrictive covenants are far more likely to be binding than employee restrictive covenants. A separate body of case law has built up around partner restrictive covenants.

The leading partnership case of *Bridge v Deacons* (1984) upheld a five year prohibition on a partner soliciting any clients of the firm.

Partner post-retirement restrictions typically include prohibitions on:

- joining a competitor within a geographical area
- soliciting certain clients of the firm
- dealing with certain clients of the firm
- soliciting partners and key employees.

Occasionally agreements also include specific restrictions on team moves.

Modern partner restrictions typically last between 3–12 months (and sometimes longer) following departure.

In some agreements credit is given for time spent on garden leave.

Breach of restrictions may result in proceedings against the partner seeking an injunction and/or an award of compensation for losses sustained.

It may result in proceedings against the partner's new firm where, for example, they are alleged to have procured and/or induced those breaches.



## Key issues in partner retirement discussions

On leaving a firm, a partner may be asked to sign a retirement deed, to record the terms of departure and to receive any enhanced payments.

Careful thought needs to be given in the retirement discussions to issues such as:

- the actual right of the firm to remove the partner and the majority required
- notice period
- whether garden leave applies
- if and when capital is to be re-paid
- payment of profit-share and release of tax reserve
- releases from liabilities such as overdrafts, loans and premises

- indemnities which will apply post-retirement
- internal and external announcements and agreed reference, if required
- whether restrictive covenants are binding and apply, or should be waived or modified
- payment of legal fees

plus other issues relating to the partner's position and rights, including potential breach of the duty of good faith and of the partnership agreement and discrimination claims.



## About the team:

The Partnership Law Team at CM Murray LLP advises partnerships and equity partners, most notably in the professional services and hedge fund sectors.

We have a particular focus on partner exits, disputes, restrictive covenants, team moves and discrimination claims.

For more information and partnership law articles please visit our website:  
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**CM Murray LLP** is a specialist UK Employment & Partnership law firm.

**Chambers and Partners:**

"Top-notch boutique offering excellent counsel to, in particular, professional services and hedge fund clients. Maintains an excellent reputation for partner exits and team moves, and recently completed a very successful engagement regarding the work status of LLP members."

**Legal 500:**

"CM Murray LLP's managing partner, Clare Murray 'combines effortless charm with an incisive mind, displaying when necessary, the steely determination of an expert litigator'. The team, which also includes the 'highly likeable' Bettina Bender and Esther Martin, stands out for its contentious work."

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