

CM | MURRAY

The Little Book of  
**Partner Exits and  
Team Moves**

A team move  
you say?



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# Welcome

Partner team moves are a regular feature of the professional and financial services markets. Usually they are resolved commercially and confidentially.

However, they can bring with them a great deal of risk and litigation does occasionally follow. Often the partners and firms involved do not appreciate the extent of that risk at the outset and the steps to take to minimise it as far as possible.

It aims to touch on just some of the key legal and practical issues for both partners and their firms relevant to team moves under English law. It features the work of talented illustrator, David Orme.

Where we refer just to partner or partnership agreement, this also includes LLP member and LLP agreement/deed.

Very best wishes

## **The Team at CM Murray LLP**

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This booklet is only a brief overview of relevant English partnership and LLP law, and is for general purposes only. Specific legal advice should be taken on particular circumstances – please do contact us and we would be pleased to help you. Information is correct as of January 2021.



# Breaking Away is Hard to Do

Partner team moves are a risky business.

It is very difficult for partners to move as part of a team without being in breach of their obligations to their current firm.

This includes possible breaches of the duties which apply while they are a partner, as well as of restrictive covenants which may apply after exit.

The acquiring firm can also be at risk, including (amongst other things) for procuring and inducing the partner's breaches.

In practice litigation is fairly rare and issues are typically resolved on a commercial basis.

However it is important to understand in advance the risks related to partner and team moves.

# Duties Whilst Still a Partner

Usually a partner owes significant express and implied duties to their firm, including often a duty of good faith (even during their notice period).

These typically prevent a partner from eg:

- speaking to clients about a proposed move to see if their work will follow the partner
- speaking to colleagues to ask if they will move too
- diverting potential business opportunities to their new firm and
- divulging confidential information to their new firm (including in a business plan).

Partners are also normally under a duty to provide full information to their firm, including any major changes which are likely to affect the firm (eg clients or staff planning to leave).



A team move you say  
Mr Squiggles,  
but who do you think  
would be interested  
in that idea?



# Partner Notice Periods and Garden Leave

## Notice of Resignation

Partners usually have to give a specified period of written notice to resign from their firm.

This is typically 6 to 12 months in professional services firms, and can be longer in financial services partnerships.

There may be additional provisions which delay the date of departure to the financial year end or if a number of partners resign close together.



## Garden Leave

Garden leave is the period of paid suspension of an exiting partner during their notice period. It effectively locks them out of the market, typically for a 6-12 month period.



It will usually restrict the partner's ability to attend the office, undertake client work and marketing, communicate with clients and colleagues, and participate in partner meetings and decisions.

The firm will normally need an express right to place an exiting partner on garden leave.

It can give rise to client management issues from a regulatory and commercial point of view.



# Partner Restrictive Covenants

Partner restrictive covenants of 1-2 years after departure are common, typically preventing a partner from:

- soliciting and dealing with certain clients
- solicitation or hiring of certain colleagues and
- participating in a team move with colleagues.

Non-competition restrictions are also common.

Partner covenants must go no further than is reasonably necessary to protect the firm's business interests; they are far more likely to be enforceable than employee restrictive covenants.

Early advice on the extent and enforceability of partner restrictive covenants is strongly recommended.

I'm merely  
administering a  
restrictive covenant!







# Key Risks for Partner Breaches

A partner faces a risk of significant liability and remedies if they breach their duties to their firm, including:

- An order to account for any profits earned as a result of breaches of any fiduciary duties
- Compensation for losses suffered by their firm and/or
- Injunctive relief to prevent further breaches and deprive them of any unlawful head start.

The partner's capital, profit share and other outstanding balances may also be at risk depending on the partnership agreement.

The acquiring firm (and potentially any recruiter) can also be exposed to claims, such as procuring and inducing partner breaches, conspiracy and/or breach of confidence.

# Key Points for Departing Partners

- Be aware of your partnership obligations which apply whilst you are a partner (including during your notice period). This will not only influence your conduct but will usually help scale back any hiring firm's requests of you which could put you in breach of your obligations if you were to comply
- Take early advice on the extent and enforceability (or otherwise) of your restrictive covenants
- Consider the extent to which overseas professional ethics rules may impact the enforceability of partner obligations
- Be careful not to divulge confidential information to recruiters and any hiring firm

- Avoid speaking to clients and colleagues about your departure without your existing firm's knowledge (and be aware of the potential risks of asking clients to be referees)
- Consider the extent to which there may be positive opportunities for your current and new firms to work together in future to soften the blow of your departure
- Consider if it is appropriate to seek an indemnity from the new firm against fees, potential liabilities and any losses you may suffer.



# Key Pointers for the Hiring Firm

Key steps in hiring partners include (not exhaustive):

- Engage head-hunters who understand the usual obligations and risks involved in hiring lateral partners and teams
- Review the partner obligations of any preferred candidates especially notice, garden leave, confidentiality and restrictive covenants (subject to confidentiality of those terms)
- Request that the partner(s) seek independent partnership law advice on their obligations and restrictions (typically the hiring firm pays for this)
- Be circumspect when asking partner candidates to prepare business plans, to minimise the risk of inducing breaches of confidentiality obligations

- Be aware of the risks involved in asking to speak to the partner's clients to find out if they will move with the partner
- Avoid making partnership offers conditional on clients or colleagues transferring with the candidate
- As far as possible minimise risk by focussing your recruitment on the lead partner rather than their partners and associates
- Understand at the outset the full extent of the risk and potential liability for the firm and partner candidate(s) and consider whether legally and commercially you need to modify your plans accordingly.

# About the Team



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