

Article for Insider Magazine Midlands

Sacking a director

The decision by a business to sack a director is a step that should not be undertaken lightly. Taking early legal advice is essential, given the need to comply with any relevant provisions of the Company's Articles of Association and the Companies Act 2006. The business will also need consider potential risks of unfair dismissal, unlawful discrimination and breach of contract of claims. In addition, if the director is a shareholder, the Company will need to understand what happens to the director's shares once their directorship has ended. A written Shareholders' Agreement may well determine that issue, assuming one is in place.

An often-overlooked aspect of the dismissal of a senior employee is the impact of the decision on other staff members and, more generally, on the culture of the business. When relationships in the boardroom break down any such tensions can spill over to the wider business and impact how a director is removed. It may be perceived that there is ample justification for simply handing the director their P45 and a cardboard box. But, when taking advice on the strategy and process to be followed in parting company it is essential to ask:

- What does this say about your business?
- Is the process in line with your organisation's values?
- How will employees and other stakeholders be impacted?
- How will the decision be perceived internally and externally?
- Who will announce it and how?
- can we protect ourselves from any reputational damage?

Case study

How TypMids has a major issue among its leadership team. Its head of marketing Paul Sellers simply isn't performing. The £20m turnover manufacturer has failed to hit its sales in seven of the last eight quarters, and the consensus among the other directors is that it is largely Sellers' fault. Chief executive Sanjiv Boss has reluctantly decided he has to go: repeated discussions about how to turn around sales have not resulted in improvements. Sellers, in his mid-40s, has been with the business for ten years, is dedicated, hard working, liked by his team – but is clearly drowning. He is paid £60,000 and has 3 per cent stake in the business. What should Sanjiv do?



“Taking early legal advice on terminating the employment of a senior employee is essential given the complexity of the issues to consider and so that a strategy can be developed. Assuming Sellers’ has a written contract of employment it should set out how much notice he will be entitled to upon termination and whether the Company can make a payment in lieu of notice. Any post-termination restrictions in the contract (e.g. relating to non-competition) are only enforceable to the extent that a Court deems them to be reasonable; as a result it will be important to ensure that they are reviewed at an early stage by a specialist adviser.

If Sellers has over two years’ employment, he will be entitled to claim unfair dismissal at an Employment Tribunal. Although the other directors feel that the Company’s poor results are largely Sellers’ fault, he may well take a different view. If he has not been formally warned that his performance is lacking and afforded a reasonable opportunity to address his co-directors’ concerns, then he may well be entitled to compensation for unfair dismissal.

Sellers has a 3% stake and therefore Sanjiv should carefully consider the terms of any Shareholders’ Agreement which will, hopefully, detail what happens to Sellers’ shares once his employment is terminated. In addition, as a minority shareholder, Sellers may have the right to make a claim of ‘unfair prejudice’ if he considers that his interests, in relation to the running of the business, have been unfairly prejudiced by the majority shareholders.

The dismissal of a senior employee (and the way it is done) can often send a powerful message to other employees about the culture and values of the business. Aside from any legal risks, Sanjiv may want to give careful thought to the process of bringing Sellers’ employment to an end and what effect that will have on the morale of other employees or their attitude to the business.

Another option is entering into a Settlement Agreement with Sellers. Such Agreements typically bring an employee’s employment to an end on agreed terms including an agreed payment, reference and confidentiality provisions. Certain non-contractual payments up to £30,000 can be made on a tax-free basis, which often provide a powerful incentive. Settlement Agreements are in full and final settlement of most claims and therefore provide reassurance that costly and damaging litigation will be avoided”.

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Simon Bond, Director, Bond Legal Limited

