

## When can a good leaver be a bad leaver?

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The recent case of *Richards v Speechly Bircham LLP* [2022] EWHC 935 (Comm) is a stark reminder to the sellers of a business (and their solicitors) of the importance of getting the drafting right, especially where the seller is to be employed by the business going forward.

In this case the claimants owned a cloud-based technology company that was sold to a private equity firm in 2014. As is common in private equity deals such as this part of the consideration was linked to the future performance of the business, with the sellers being employed by the new holding company and incentivised by a 30% shareholding (each).

Months after the deal concluded, the sellers were summarily dismissed triggering an automatic purchase of their shares, with nominal consideration being paid as a “bad leaver”. The sellers later challenged this termination and won a claim for wrongful dismissal. In these circumstances the sellers would typically expect to be “good leavers” and to be paid a fair value for their shares, but in this case they were only awarded £1 as the judge concluded that this was all they were entitled to under the terms of the Share Purchase Agreement and the Articles of Association that were negotiated and agreed at the time of the sale.

Seeking redress, the sellers then issued a claim against their solicitors and were awarded combined damages of £1.454 million with the judge commenting that the firm “*fell short of the standard of care required of a reasonably competent solicitor practicing in the field of private equity transactions.*” The judge also rejected the solicitor’s argument that they could not reasonably have been expected to anticipate this outcome, commenting “*It is one thing to say that it cannot reasonably have been expected to predict a future misalignment of the stars. It would be quite another to conclude that it would be imposing an unduly onerous and unwarranted duty of care upon the firm to say that it should have undertaken a cross-check upon the meaning and effect of a provision on which it had drafting input.*”



## How we can help

It is not uncommon in transactions such as this for the seller's employment to be terminated, but if this dismissal is unfair the seller would normally expect to be compensated by being paid a fair value for their shareholding and the terms of the agreement should be carefully considered by the seller's solicitors so as to ensure their client's position is protected.

If you need help or advice on similar topics, please do get in touch with [Tom Bourne](#).

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