

TheBusiness_{Opinion}

Help, I've been compromised!

A guide to compromise agreements and what your options are if your contract is terminated

It started at 9.05 am at the water dispenser. 'Have you seen Barry?', people asked, whispering with fear and dread. Then came the realisation that Barry's desk was empty, no sign of his usual mug, pictures of his daughter or the football pennant that hung from his computer screen.

Word travelled fast around the building. Speculation grew, until mid-morning when it was confirmed by the office 'know-it-all'. He'd been compromised. 'Oh no!', his colleagues said, wondering if they would be next.

Barry, in the meantime, was in shock. His world as he knew it had suddenly been blown apart. One minute he was in a career for the long haul with a company he had given the best years of his life to, the next he was emptying his belongings into a box in a daze. He had had no time to think and now he was in panic mode – the school fees, the mortgage, the need to tell his wife. How was he going to cope?

It had started as a normal Friday. He was even looking forward to completing the report he was working on when the HR manager asked him to come to her office. He assumed it was about the holiday leave he had asked for in October. It was at a busy time of year, but this was his silver wedding anniversary, after all.

His manager, Geoff, was with her. Barry was just about to tell them that the holiday was a special one when the HR manager said: 'Sit down, Barry, we have some news to give you. I'm afraid that the company has taken the decision to terminate your employment with immediate effect. This is no reflection on the hard work you have done for us over the years and is purely a business decision. This letter explains everything you need to know and I suggest you take it to your lawyer for advice.'

Lawyer? Why? The last time Barry needed a lawyer was 16 years ago, when he bought his house, and he couldn't even remember who he used.

His manager accompanied him back to his desk carrying a box and together they put his belongings into it. Thank goodness he had an office of his own.

Back in his car he thought for the first time about what had just happened. The HR manager had asked if he was all right, but on automatic pilot he said yes, he was fine, and no, he would call his wife later.

It was like a bad dream and he had no idea what to do first.

He had the letter that he had been given in his pocket. It was crumpled and stuck to an ancient, sticky sweet. With shaking hands he opened the envelope. It was a mass of words and numbers that made no sense – compromise, sums owed, no liability, confidential, reference provided, restrictions.

What now? He remembered an organisation that helps employees. Leaving the car in the car park, he headed towards JACS (the Jersey Advisory and Conciliation Service) at West's Centre. He had been on one of their training courses a year or so back, ironically called unfair dismissal. Some of what he remembered came back – fair process, right to be accompanied, automatically unfair reasons. If this was not unfair, he didn't know what was.

He saw a member of JACS straight away. He kept repeating himself, as he still could not get his head around where he was, and why.

The adviser looked at the letter and said it was a compromise agreement, that his employment had been terminated and a payment would be made to him in consideration of all rights he might have under the law. 'But it's unfair,' he said.

'Yes, it is,' she replied, 'as there has been no process, but you are to be compensated for that by the sum of money identified here.' She pointed to the letter and one of the figures, explained that given what he had said about his employment, all monies that might be due to him were accounted for. There would be little point in taking a claim to the employment tribunal as he would not get any more money than was being given, and that it was very unlikely that he could justify being reinstated.

He would have to take the agreement to a lawyer, as JACS could not advise him. It contained restrictions on his future practice, which fell outside of their own law. They could give him names of those who practised in that area of law.

None was familiar to him, so he picked the first on the list. As he made his way down the stairs he made an appointment for Monday. Just the weekend to get through he thought... oh, and his wife to tell. That holiday in October might have to wait.

June Summers Shaw, managing director of Clear Concepts Ltd



● **Compromise agreements – What are they?**

They are a legally binding agreement between two parties in which a consideration (usually money) is paid by one party to the other in recognition of settlement of all rights the other party may have.

● **Why is a compromise agreement used?**

They are used for a variety of reasons, but often where there is a business reorganisation which requires quick action which precludes long protracted processes. The other main reason is where the trust, faith and confidence in the employment relationship has been destroyed, but there is insufficient evidence to justify going through a particular process.

● **Can someone sign a compromise agreement and then take a claim?**

They cannot take a claim for anything covered in the agreement. In particular they should be careful to not sign a compromise or full and final settlement agreement if there is any question they

may wish to pursue a claim in the future, perhaps for a personal injury sustained at work which might later get worse.

● **Can JACS prepare a compromise agreement?**

JACS has their own version of the agreement which is called a full and final settlement agreement in accordance with the Jersey Advisory and Conciliation (Jersey) Law 2003. Where one party wants to impose obligations that are not within their remit – such as non-competition clauses etc – they will refer the person to a lawyer. The law prescribes who can and cannot give advice about the different agreements.

● **Who can be given a compromise agreement?**

Absolutely anyone from the chief executive to the car park attendant. The only difference will be the content of what the agreement says.

● **Can I refuse to sign an agreement?**

Yes you can, but you should take advice first. If you decide not to and make a claim, you need to be aware that there may be costs associated with taking the claim (eg legal costs if you choose to be represented) that you can't recover and may end up worse off. If you are also being offered all that you might be awarded in the tribunal, there is a possibility you could be viewed as a vexatious claimant.

● **What should I do if I am given a compromise agreement or asked to sign a full and final settlement?**

Take advice! Every case is fact-sensitive, so no two situations are the same. The first thing that an adviser will want to establish is if the offer being made is fair and has taken into consideration all the monies or benefits that might be due to you.

● **Are compromise agreements used much?**

In the financial downturn where businesses wanted to shed staff quickly they were very common.

They are less common now, although there is some anecdotal evidence that they have been used in the public sector recently.

● **Are they considered good practice?**

That is a matter of opinion. They are a pragmatic solution to certain employment issues and are also known as the nuclear option.

Funding growth to maximise business potential

It's great to see targets being met or exceeded – but how do you make the most of things when the time is right to scale up your operation?

SO, your business is either ahead or on plan but you know it has much greater potential. However, you also know that to accelerate the growth of your business you will need additional investment in capital equipment, premises, people, IT systems or most likely all of the above.

While the business may be generating a good level of free cashflow, it will probably take a long time for this to generate the level of cash that the immediate investment requires. Additionally, you feel that the opportunity for growth is right now and you don't want to delay, as it will let your competitors steal a march.

Many businesses face this welcome, if often challenging, predicament. So, where do you go to seek finance and who can advise you?

Banks historically have been the principle source of local finance, and although the crash in 2008 has meant

they are more risk averse, a strong business with a good profitable track record is still likely to find that the bank is a good source of lending, be that any high-street bank or asset finance firm.

Lenders will naturally look to assess the historic strength of a business's cashflow, the confidence this gives them on how realistic the business's future projections are and whether they need to seek additional comfort through security against company or personal assets. Banks tend to offer the cheapest form of finance and they won't normally look at taking an equity stake in your business, so you retain full control.

If, however, the future growth opportunity is many times greater than the historic performance of the business, an alternative option may be to seek a suitable equity investor. Do not think of this route as a way of just getting a cash injection. Instead, the most successful entrepreneurs think of equity investors

Graeme Smith, chief executive at Jersey Business



as bringing 'smart money' into their business. Along with the investment itself, the input that the individual or company investor brings can add additional value, advice and knowledge well beyond the funds that they put into your bank account. For that expertise, guidance and, of course, cash, they will want a good return and will usually get this from the potential 'upside' that the equity investment will bring.

Giving up equity is always quite painful for any entrepreneur, but for 'smart money' it will pay dividends, literally, in the long run.

Any lender or investor you look to for help to fund your growth will expect to see a clearly articulated business plan. This will open the door for you, because it's all about them believing the growth story and that you are the right individual with the right team to deliver on that opportunity.

At Jersey Business, we are here to help you to develop your plan, acting as an independent sounding board. In addition, we have good relationships with a number of investors and banks, so do give us a call or visit our website – jerseybusiness.je.