

LAW FIRM HOMOPHOBIA

Law firm Clifford Chance has paid out an undisclosed sum in settlement of what is believed to be the first claim against a law firm for discrimination on grounds of sexual orientation. The case is the latest brought under the sexual orientation legislation to hit the City and could have cost the firm up to £1m.

Last year Peter Lewis, a former head of global equity trading at HSBC, claimed £5m for unfair dismissal from the bank after a colleague alleged he made unwelcome sexual overtures while showering in the gym.

Lewis lost the case but has won leave to bring the case again later this year. In this latest case, Michael Bryceland, a former partner in Clifford Chance's competition department, sued the so-called "magic circle" firm in November. It is understood that Bryceland alleged both direct and indirect discrimination.

The claim never made it to a full hearing and was withdrawn in April. Bryceland, said to be one of the firm's rising stars, left shortly after winning the settlement. The firm said that he was "taking a break from the law".

Although the settlement and original damages sought remain confidential, experts suggest a claim would seek to mitigate lost earnings and future ones: for a magic circle partner, this could run into seven figures.

A Law Society report in 2006 found that gay and lesbian lawyers working for major City firms were reluctant to disclose their sexuality because of a culture of homophobia. Bryceland's experiences may confirm that this is the case, say lawyers.

Steve Willey, a legal consultant at solicitors Last Cawthra Feather, says that compensation in cases of sexual orientation discrimination is unlimited. He adds that the number of claims accepted by Employment Tribunals has risen from 61 in 2003/4, the year that they were first available, to 395 in 2005/6. Average compensation in 2005/6 was £10,807 and the highest award was £217,961.

"Clearly, large numbers of claims are settled before a hearing takes place," says Willey. "In fact, 80% of claims of this type never come before a Tribunal. Since settlements are invariably confidential no data exists on what payments are actually made in these circumstances," he says.

Tribunals calculate compensation under two heads: loss of earnings and injury to feelings. "Senior lawyers like Bryceland would have not only high current earnings but also high expectations of future earnings," says Willey.

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“If he successfully argues that his future earning capacity has been damaged by his experiences a Tribunal could award him compensation for that. It may be that he has suffered depression and other emotional and mental symptoms which make it difficult or impossible for him to work at a level of seniority in the future. There may also be stigma attached to him having made his complaint which has received extensive publicity even though the settlement is confidential,” he adds.

Michelle Chance, a senior associate specialising in employment, discrimination and partnership law at city law firm Fox, agrees that discrimination cases on the grounds of sexual orientation can be very costly.

She points out that a Bristol-based media sales manager was recently awarded nearly £120,000 compensation for sexual orientation discrimination, even though he was only employed for eight days. As a direct result of the verbal abuse to which he was subjected, he suffered severe depression for 18 months and was unable to work. The award took account of his future loss of earnings, as well as injury to feelings.

Given such large payouts, Chance recommends that “if internal investigations reveal that a potential claim does have merit and substance, and if the employer is contemplating settling at some point, then the advice I give to my clients in a similar situation is to do so sooner rather than later and certainly prior to the issue of proceedings to avoid adverse media publicity.” She adds that “any settlement agreement should include a strict confidentiality undertaking, although these can be difficult to police in practice. Once proceedings are issued, there is a tight timetable of deadlines to be met and most preparation work for employment litigation is front loaded.”