

# **New law for lawyers: get older, get fired, then sue for millions**

**From today, if a law firm wants to retire one of its partners, it must prove a lack of performance or face a claim for unlimited damages**

**By Claire Smith**

City law firms could be forced to pay out millions of pounds to partners who they want to retire, because of the new age discrimination laws that come into effect today.

Business organisations have already expressed concerns about how the Age Discrimination Act will work, and whether employers fully understand the legislation.

But City law firms, which are partnerships, could be facing a far greater threat. The Act enshrines the right of corporate employers to ask staff to retire at the age of 65, but partnerships are not included in this. It will be illegal for professional services firms to ask partners to retire at any age. The only way they will be able to ask partners to go will be to prove their performance has tailed off - and not purely on the basis of how old they are.

Dinah Rose, a barrister at Blackstone Chambers who specialises in discrimination, said: "A lot of firms ease out partners in their 50s, and that's where we're going to see litigation. We'll see the classic pale, stale male who will say 'I have been kicked out because of my age, and if I was 35 you wouldn't be treating me this way.'"

Such partners will be able to claim unlimited damages under the legislation, based on loss of earnings. "If you are 50, you might be able to claim you could have stayed until you were 65, so in some City firms you are easily looking at £10m claims," added Ms Rose.

The problem is exacerbated at firms that compensate partners on a "lockstep" basis - a common system where they get a share of the profits according to length of service, with pay increasing year-on-year. Lockstep is meant to increase collegiality and stop partners competing for work, but it also means that older partners cost the firm more and face pressure to leave early. To get round this, most partnerships have mandatory retirement ages, but from today these will be unenforceable, even if signed up to in partnership deeds.

City law firms rake in billions in fees. Clifford Chance is ranked number one in the UK, with annual turnover coming in at £1.03bn, according to The Lawyer magazine. Average profits per equity partner are £810,000 at the firm, which has more than 600 equity and salaried partners worldwide. Other law firms command even higher profits, such as Linklaters at an average of £1.06m, and Slaughter and May at £1.1m. Of the top 10 law firms, seven have some form of lockstep.

Martin Warren, a human resources partner at top-10 firm Eversheds, said: "If you want to ask an underperforming partner to leave at 58, and you haven't got a proper audit trail of that partner's performance, they may have a case. In the same way that an employee in a standard employment dismissal case will throw in sex or race discrimination to up the ante, partners will be able to throw in age."

Lawyers are divided over whether lockstep can survive. William Wastie, at the law firm Addleshaw Goddard, said: "Strict lockstep is probably now extremely vulnerable. Employment tribunals are not necessarily clear on the ownership issues that being a member of a partnership represents, so it is really about risk management."

Eversheds abandoned lockstep earlier this year, in part because of the new rules. It will now start paying on the basis of performance - similar to many US firms, which compensate people under a system dubbed "eat what you kill".

"We felt it was more appropriate, particularly given the change in the law, to reward people according to their performance rather than their years in the law," said Mr Warren.

The Association of Partnership Practitioners, founded by lawyer Ronnie Fox, lobbied without success to get a mandatory retirement age for partners as well as employees.

Mr Fox said: "It does make life more difficult for partnerships than for limited companies. But in the US, where they've had age-discrimination laws for a while, law firms have become much better at acknowledging the contributions of older partners. If we can get to the stage where people are objectively looked at in terms of their contribution, that will be a big step forward."

Lawyers have been advising partnerships to keep detailed records on individual performance, and prepare in advance to justify decisions in court, so they do not fall foul of the law should a claim arise.