

Is he the first among equals?

Top-earning lawyer Peter Bloxham's claim of age discrimination against his former partners could signal the start of an avalanche, says Paul Fontes

The highly paid male senior executive who was asked to make way for new blood was clearly going to be one of the principal beneficiaries of the new age discrimination laws that came into force last October.

The potential for substantial awards under the Employment Equality (Age) Regulations 2006 was obvious. First, compensation for age discrimination (as for other strands of discrimination) was uncapped. Secondly, well-remunerated older executives might often have problems finding alternative employment with an equivalent package.

So it is surprising that the first high-value age discrimination claim has come not from a company director or investment banker, but from a partner in a "magic circle" law firm. Peter Bloxham's claim against Freshfields Bruckhaus Deringer, the firm where he was formerly head of insolvency, began at the Central London Employment Tribunal last week.

Bloxham, 54, alleges that changes made to the firm's pension arrangements for retired partners amounted to direct and indirect discrimination against the firm's older partners, and is reportedly claiming £4.5 million in compensation. He maintains that he was forced to retire early and take a cut in his pension, the tribunal heard.

Most other big law firms swept away their own annuity arrangements for partners years ago and are no doubt following the case with a degree of *Schadenfreude*. But what are its wider implications — for employers and for the legal profession?

Under the regulations, employers can avoid liability for both direct and indirect age discrimination if they can show that their actions were objectively justified. This means that the firm can mount a defence that the treatment was a proportionate means of achieving a legitimate aim. The firm might therefore succeed, even if Bloxham can show that he was treated less favourably on the ground of his

age or that the firm applied a provision, criterion or practice that put partners of his age group at a particular disadvantage.

Acas guidance on the regulations and European case law suggest that, while economic efficiency may constitute a real aim, saving money because discrimination is cheaper than non-discrimination is not legitimate. The extent to which the employment tribunal (and, if its decision is appealed, any appellate body) allows the firm to rely on its need to reduce costs to justify its treatment of Bloxham will give welcome guidance to employers.

As for the legal profession, the case serves as a reminder that anti-discrimination legislation in the UK protects not only a firm's employees but also its partners. Firms rarely fight discrimination cases and other recent claims have been settled out of court without ever hitting the headlines. Indeed, in recent years, only one other discrimination claim brought by a partner or former partner of a City law firm has reached the employment tribunal.

But two factors suggest that the number of these claims is likely to rise. First, as the regulations afford protection to all — including the white, able-bodied, heterosexual males who make up the majority of law firm partners — the pool of partners with potential discrimination claims is larger than ever before. Secondly, with firms moni-



Bloxham is claiming £4.5 million from Freshfields Bruckhaus Deringer

toring the performance of partners ever more rigorously and showing an increased willingness to move on underperforming partners, more of these potential claimants are going to be in a position where they are look-

ing for whatever leverage they can get in their exit negotiations.

The author is a partner in the human resources group of Eversheds LLP and specialises in employment law

A new start at 60



When President of the Law Society a few years ago I encouraged young solicitors not to become trapped by money in jobs that do not enthuse them. Given life expectations, I suggested they plan their second career well before their first was due to end. Why, they wondered, had I not practised what I preached? My excuse was that the firm I then led — and had been

with for nearly 40 years — had grown dramatically and my role changed constantly. Beyond that, my Law Society career also allowed me to reinvent myself.

Now, though, I am practising what I preached — albeit with far less planning than I recommended. What's more, I am doing so with another just-over-60s lawyer, Ronnie Fox. Law does not have to mean retiring in the mid-50s: Ronnie's enthusiasm is such that he started a whole new City law firm only a year ago. Helping him to build it into a substantial niche practice serving lawyers and other professionals in employment, partnership and regulation is an exciting challenge. It does not even feel like work. And, as somebody who gets up early and goes home late, I am not even missing the extra round of golf that was starting to be attractive.

DAVID McINTOSH

→ Wigs are out. Lawyers are miserable. Freshfields is in court. All the hot topics are sizzling on: timesonline.co.uk/business/law