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Partners over 65 can be forced to retire

When the government imposed a default retirement age in 2006, partners were deliberately excluded. But a recent Industrial Tribunal has nullified that exemption, ruling that it was proportionate to force partners to retire from the firm in order to achieve business aims.

Leslie Seldon, a former senior partner at Orpington law firm Clarkson Wright and Jakes (CJW), sued an age discrimination claim after he was made to retire. Despite existing statute, his employers persuaded the tribunal that giving associates the chance of partnership – thereby ensuring they do not leave – justified retiring partners at 65.

Forced retirement meant firms could have a realistic long-term expectation as to when vacancies will arise, thus facilitating planning, the lawyers argued. They also raised the point that a default retirement age minimised the need to expel partners for poor performance. The Tribunal concluded that the compulsory retirement rule was proportionate, its aims were legitimate, and it was therefore objectively justified.

Andrew Wright, managing partner for CJW, said the Tribunal “seems to have taken a reasonably common-sense approach.”

B P Collins, the law firm acting for Seldon, said he plans to appeal against the decision. Jo Davis, partner and head of employment at B P Collins, was careful to qualify the precedent set.

“Not only is Mr Seldon challenging the decision,” she said, “but the Tribunal sought to limit its ruling to this particular partnership, focussing on its size, location and desire to have a congenial and supportive culture.”

Furthermore, the legality of Britain’s compulsory retirement age is itself under challenge. Age Concern is currently awaiting a decision from the European Court of Justice, and many claims brought by employees are being put on hold in the meantime. Nevertheless, Ronnie Fox, writing for the Law Society’s Gazette, said the Tribunal outcome is likely to be repeated in cases that involve firms of a similar size and culture to CJW.

CJW is a ten partner firm.