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OLDER PARTNERS – A LITIGATION RISK?

The flurry of media comment that accompanied the removal of the default retirement age last year brought predictions that a significant tranche of ageism claims would emanate from senior lawyers even though equity partners are generally outside the scope of the law.

Yet so far age-related claims have been few and far between. The notable exception is that launched by Clarkson Wright & Jakes partner Leslie Seldon, who in 2008 began a long-running age discrimination claim when he was forced to retire from his partnership aged 65.

Although the case is still pending (it was heard in the Supreme Court last month), employment specialists are sceptical as to whether Seldon has a realistic chance of success. "There is certainly widespread and growing concern about the outcome of this case, particularly because there is no precedent in the UK of a partner winning such a claim," comments Fox Lawyers' Ronnie Fox.

The lack of litigation may be due to the failure of a previous high-profile attempt – the 2007 claim launched against Freshfields Bruckhaus Deringer. The employment tribunal claim was launched by former restructuring partner Peter Bloxham in relation to a partnership restructuring at the City giant.

Bloxham claimed that the overhaul had forced him to retire aged 54 and accept a 20% discount on the six-figure annual pension he had expected. He claimed this was discriminatory in comparison with partners aged 55, who could retire with the full entitlement.

Freshfields disputed this and won the case. The tribunal was satisfied that the firm's pension reforms were a proportionate means of achieving a legitimate aim and that therefore the age discrimination was justified. Many argued that the extensive research and consultation that had been undertaken before the pension reforms were implemented were crucial to successfully defending the claim.

The outlook is different in the US, where tougher discrimination laws have been established for decades and a number of law firms have had age-related cases pursued against them, most notably a case that saw Sidley Austin pay a settlement of \$27.5m (£17m) relating to its treatment of 32 former partners. "What is needed in the UK is a similar case so that British law firms become more aware of the problem and begin to adjust their retirement policies," argues Fox.

