



## briefing

Commercial - January 2009

### Age discrimination in partnerships

Employment Appeal Tribunal judgment and guidance on fixed retirement age in partnership contracts

**Partnership lawyers have been waiting for some months for the decision of the Employment Appeal Tribunal (EAT) to be handed down in the case of [Seldon v Clarkson Wright & Jakes](#) and with it, guidance on whether a fixed retirement age can be justified if partnerships are faced with applications to Employment Tribunals under the Employment Equality (Age) Regulations 2006.**

Judgment in that case has now been given and provides clear guidance on the inclusion of clauses in partnership agreements which require partners to retire at a fixed age.

We shall be happy to discuss the implications of the judgment with you in detail, as the decision as to an appropriate retirement age will not be the same for every partnership, but in summary the position is:

- partnerships with a fixed retirement age rule can, in principle, successfully defend applications to Employment Tribunals under the Regulations;
- the justification for imposing a fixed retirement age can include the need to plan for succession in partnerships, giving suitable senior employees some certainty as to when vacancies in the partnership may occur and removing the need for partnerships to impose a performance management regime in order to justify the removal of a partner;
- the fact that partners have agreed a fixed retirement age is something that can fairly be taken into account in deciding whether the fixed retirement age is justified;

- the age which partnerships choose to fix as a justifiable retirement age cannot be assumed to be 65 just because that is the fixed age at which employees can be compulsorily retired. That is the sort of stereotyping which the Regulations are seeking to avoid; and
- partnerships will need to carefully analyse the age at which the performance of partners will fall away and to fix an age which links to that analysis. That decision may be based on previous experience within the partnership or from outside, but will require “[evidence of a considered and reasoned explanation as to why a particular age had been chosen.](#)”

The advice to partnerships with fixed retirement ages is that the chosen age will need to be carefully considered to ensure that the partnership has clear reasons for having a fixed retirement age. If one of the reasons is to preserve collegiality and avoid the introduction of a performance regime, then the partnership will have to carefully analyse the age at which performance will fall away when fixing the retirement age. We are happy to assist partnerships with the processes that should be operated to achieve this.



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