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## COMPULSORY RETIREMENT AT 65 CAN BE JUSTIFIED FOR PARTNERS – A CASE RELEVANT FOR EMPLOYERS FOLLOWING PROPOSED ABOLITION OF THE DEFAULT RETIREMENT AGE FOR EMPLOYEES

In the recent case of *Seldon v Clarkson Wright & Jakes* the Court of Appeal held that a rule requiring Partners in a firm of Solicitors to retire at 65 was objectively justified and therefore lawful.

Whilst the Age Regulations currently permit employers to compulsorily retire employees at 65, this exception does not apply to Partners in a Partnership because they are not “employees” for the purpose of the Regulations. However this decision will be of particular interest to employers in light of the Government’s proposal to remove the default retirement age of 65 - under the proposal effectively the last time notice could be given to an employee for compulsory retirement would be by the end of March 2011 with an intended retirement date by the end of September 2011 (i.e. the minimum 6 months notice).

The Respondent, Clarkson Wright & Jakes, therefore had to objectively justify the retirement age of 65, i.e. show that it was a proportionate means of achieving a legitimate aim.

The Court of Appeal agreed that, in this case, retirement at 65 was a proportionate means of achieving the legitimate aims of providing promotion opportunities and workforce planning (i.e. knowing when vacancies will arise and providing more junior employees with promotion opportunities) and creating an agreeable workplace by avoiding expulsion of Partners through performance management as they inevitably deteriorated with later age.

### Practical Tips

If the default retirement age is removed as proposed, **all employers** will have to decide what their retirement age is (if at all) and have to objectively justify it, as was the case in *Seldon*.

In the absence of a default retirement age, employers will have to research and provide evidence in relation to why they need a retirement age, and why it is a particular age i.e. what their “legitimate aim” is (such as the aims approved in *Seldon* ) and why the age is “proportionate”. Any particular age is quite likely to be different for different jobs e.g. one involving physical skills (shown to diminish in later age) compared to desk jobs - a single retirement age applied to an entire workforce may not be proportionate.

As always proper planning, preparation and documentation are key. If advice or assistance is needed with any of these issues, please contact a member of the Brabners Chaffe Street LLP Employment team.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to [helen.calvert@brabnerscs.com](mailto:helen.calvert@brabnerscs.com)

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#### LIVERPOOL

Horton House, Exchange Flags, Liverpool L2 3YL  
0151 600 3000

#### MANCHESTER

55 King Street, Manchester M2 4LQ  
0161 836 8800

#### PRESTON

7-8 Chapel Street, Preston PR1 8AN  
01772 823921