The Supreme Court has held in Seldon v Clarkson Wright and Jakes that a compulsory retirement age may potentially be justified by proving that the policy is a way of achieving certain "social policy objectives".

Under the provisions of the Equality Act 2010, direct age discrimination can potentially be objectively justified provided that the act or policy that amounted to the discrimination was "a proportionate means of achieving a legitimate aim".

Mr Seldon, a partner in the respondent law firm, was compulsorily retired at the end of 2006 as he had that year reached 65 years of age. Mr Seldon’s request that he continue working was rejected and he subsequently brought a claim in the Employment Tribunal for direct age discrimination. The Tribunal dismissed Mr Seldon’s claim, holding that the firm’s policy of compulsory retirement for all partners at age 65 was a proportionate means of achieving a legitimate aim. The aims identified were the retention of associates by providing them with an incentive to stay with the firm, as they knew partnership opportunities would arise, and avoiding the need to expel partners due to poor performance that may be associated with working into older age. Mr Seldon appealed to the EAT and then to the Supreme Court, arguing that the aims identified by Clarkson Wright and Jakes were not legitimate.

The Supreme Court rejected Mr Seldon’s appeal. In their decision, the Supreme Court found that in order to justify direct age discrimination, the legitimate aims identified must be “social policy objectives”, rather than reasons particular to an individual employer’s or firm’s situation. The court detailed two different kinds of legitimate social policy objective that have previously been identified by the European Court of Justice, “Inter-generational fairness” and “Dignity”. The firm’s policy of compulsory retirement was legitimate under these social policy objectives, as it promoted inter-generational fairness by attempting to distribute employment opportunities between generations. By hopefully avoiding the need to expel a partner due to performance issues, the social policy objective of preserving dignity was also furthered.

The case may allow you to implement policies that appear to amount to direct age discrimination, but can be objectively justified in relation to a social policy objective. However, you should bear in mind that social policy objectives are of a public interest nature and will not cover aims that are related specifically to your business, such as reducing costs or improving competitiveness in a particular market.