

6 | 3 | 0 | %
AERYou have the amount
of our guaranteed rateguardian.co.uk

No country for old men

When Felix Dennis wrote his book *How To Get Rich*, little did he know that one of his own employees would use its contents to successfully contest his redundancy, says Mat Snow

The Guardian, Saturday July 19, 2008

Lawrence Court was at the top of his game in a tough market as promotions director for car magazines *Auto Express* and *EVO*, owned by the high-profile poet, forest-planter, reformed crack addict, public confessor to murder (retracted on the grounds he was on medication when he said it), ex-inmate of Her Majesty's prisons after his conviction in the notorious 1971 *Oz* obscenity trial, and half-billionaire publishing tycoon Felix Dennis.

But when Court, 55, was summoned to a routine sales meeting with his group publishing director and director of advertising, he arrived to discover a very different agenda: his redundancy, with a 12 weeks' salary pay-off after 17 successful years with the firm. "My mind was literally reeling and my heart pounding so much I thought I might be going to have a heart attack," Court told an employment tribunal nine months later.

Lawrence Court happened to get the elbow just 16 days after the Employment Equality (Age) Regulations came into force on October 1 2006. By pursuing his grievance to an employment tribunal, he set a high-profile precedent on the legal lecture circuit. He is, in the jocular lawyers' jargon, a "pale, stale male" - hitherto the most privileged group in the workforce but now armed with rights to fight workplace discrimination just like women, racial minorities and the disabled. And they have every incentive - a successful unfair dismissal claim brings maximum compensation of £63,000; but where discrimination is a proven factor, compensation is uncapped.

The legislation was not designed to benefit older male employees in particular; a few cases have been brought by young people who feel discriminated against in the recruitment process, and rather more by City thirtysomethings whose stock options when leaving employment are age-related. But hearing Court tell his story, you begin to understand why people like him are the principal, pioneer beneficiaries of a law so complex that even the concise and crystal-clear summary published by

the law firm Lewis Silkin adds up to 13,000 words.

Firstly, the business reason Court was made redundant - cost-saving in a publishing recession - provided his incentive to fight it: he knew he had no realistic chance of getting a job remotely like it, indeed of any job at all in his pay bracket. Unlike, say, a laid-off 35-year-old, Court had his entire future livelihood at stake. (Laying off your most highly-paid staff often means your older staff - "indirect" age discrimination; Court was aiming to prove "direct" age discrimination against him.)

Secondly, as Court says, "I'm in sales, always fighting against the odds"; he would not be daunted by the task of gathering evidence to support his case or the pressure he and his wife (who took shorthand notes of a painful appeal meeting with his former MD) were under. "I had known the HR director for years and had thought her an ally," he says. "In an instant these people had become my enemies. The Dennis website shows that they're one of the best 100 employers to work for. By God, that made me mad! Not only was getting rid of me a stupid business decision, I felt betrayed. That's what fires you up. To chuck me out unceremoniously after 17 years' faithful service - the macho thing to do! I was so incensed that everything I'd done all those years was so totally thrown away that I went for absolutely everything."

Thirdly, Court had not only savings but, as he discovered to his surprised delight, legal cover under his household contents insurance policy, a box he'd casually ticked on the off-chance the postman slipped on his doorstep.

Compared with, say, French unemployment legal procedure, Lewis Silkin's age discrimination expert, James Davies, maintains British justice is scrupulously exhaustive, but at an often prohibitive cost to claimants unless legally represented on a no-win-no-fee basis.

Court's career-end necessity, battle-hardened self-belief ("I knew I was right") and financial means to access Rolls Royce legal process are the factors that commonly combine in "pale, stale males" but few others in the workforce with a justifiable grievance under the new legislation.

At the employment tribunal hearing, aside from some telling comparisons with the youthful ages of team members not considered for redundancy in the cost-saving cull, what swung it for Court was a self-help book. Felix Dennis's *How To Get Rich*, signed copies of which the debonair author had presented to his group publishing director, director of advertising and MD, were all dutifully read, at least in part. (I, too, have a signed copy, as I know Dennis to be an inspirational and warm-hearted man; sadly, however, he declined to be interviewed for this article as he is racing a deadline on another book.)

Among *How To Get Rich*'s quotes read out to the tribunal was this: "By the time talent is in its mid to late forties or early fifties, it will have

become very, very expensive ... it will reach a stage when it is being paid based on past reputation alone. That is when you must part company with it."

While the tribunal accepted that Dennis himself had no part in the decision to bin Court, nor even had met him (a source of wistful regret to his former promotions director: "On Desert Island Discs he talked about Cream - I like all that music too ..."), it drew the inference that his philosophy as set out in the book "infected" his publishing company - prima facie evidence which helped switch the burden from Court to show age discrimination to his former employers to disprove it. This they couldn't do. The tribunal found for Court on the grounds of direct age discrimination, compounded by his former employer's failure to follow statutory and contractual redundancy procedure.

Court is not at liberty to reveal the compensation he received in settlement - a standard condition laid down by defeated employers anxious to conceal the targets disgruntled employees might aim for. Even when they've lost their case, former employers can argue reduced compensation, and deals were being offered to Court right up to the remedies stage of the legal process four months later which would have fixed compensation had no settlement been reached. With the three-day remedies hearing just 10 hours away, on advice from his lawyers Court finally accepted a Dennis offer at 11.30 at night, while lying in the bath. And though he continues to apply for jobs, he hasn't worked since.

According to Acas figures, the 800-odd claims going before employment tribunals under age discrimination in the law's first year in force remain vastly outnumbered by those claiming sex discrimination (by 10-to-one) and race discrimination (by three-to-one). Yet for every one case heard at tribunal, 20 are settled before they reach that stage, according to Samantha Mangwana, a solicitor for Russell Jones & Walker, the UK's biggest claimant practice. While it can be very hard for a claimant to provide "smoking gun" evidence for age discrimination, employers dread the uncapped compensation they could pay if even circumstantial evidence is found, so both parties tend to settle a dispute before it reaches tribunal. "Employers lose claims where they haven't discriminated," reveals Davies.

The future? Barry Clarke, a part-time employment judge and consultant to Russell Jones & Walker, foresees we'll be seeing more 49-year-old claimants dismissed by their local authority employers because at 50 they would get enhanced redundancy protection. Complex issues around employment and benefits after retirement age are currently before the European Court of Justice. Watch this space - after all, age happens to us all.

guardian.co.uk © Guardian News and Media Limited 2008