



12 July 2017

Supreme Court rules in favour of full equality for same sex spouses and civil partners

The Supreme Court today handed down **the final judgment** in *Walker v Innospec Limited*. Mr Walker, with support from Liberty, has persuaded the Supreme Court to overturn the Court of Appeal's decision, winning his husband the right to a survivor's pension calculated on the same basis as if Mr Walker were married to a woman.

The Equality Act provision allowing schemes to limit equality for civil partners and same sex spouses to retirement benefits accrued by reference to service from 5 December 2005 (plus contracted-out minimum benefits from 6 April 1988) was declared contrary to EU law and ineffective.

Who is affected?

This decision affects schemes that have been relying on the Equality Act limitation in deciding not to give fully retrospective pensions to civil partners and same sex spouses. The government has estimated this to be between one-quarter and one-third of private sector schemes. They must now give full equality. Trustees may also need to consider claims for survivors' pensions in respect of deaths that occurred on or after 5 December 2005 where the member had a civil partner or same sex spouse.

Those schemes which have already given fully retrospective equal pension rights to surviving civil partners and same sex spouses are not affected.

The government is considering the decision. It previously provisionally rejected calls for a change in the legislation to provide for full equality, largely due to the expense that it would entail. The government considered that if it were to give full equality to civil partners and same sex spouses in this way it would also have to legislate to remove the discrimination between widows and widowers for (a) pre-April 1988 service in public service pension schemes and (b) pre-April 1988 GMPs in all formerly contracted-out schemes. If the government decided that, following this case, legislation should be introduced to remove that GMP inequality, which is currently permitted, there would clearly be an impact on private sector, as well as public sector, schemes.

For detailed background to this case, please see our October 2015 briefing note "**Equal marriage and civil partnership**". We will update that note shortly to reflect the Supreme Court's decision.

TRAVERS SMITH

Discrimination against part-time workers

This case had been joined at the Court of Appeal stage with a claim by Mr O'Brien, a former part-time judge, against the Ministry of Justice for a fully retrospective pension notwithstanding that equality for part-timers was only granted from 2000, when EU law required it. (Prior to that, part-timers had to establish unlawful indirect sex discrimination.) The same Supreme Court judges also today handed down **a separate judgment** in that case. Distinguishing it from Mr Walker's claim, due to separate strands of case law on the different pieces of EU legislation, they have asked the European Court to answer a question about the retrospective (or otherwise) effect of the EU part-time work directive.

Age discrimination

When the UK introduced age discrimination legislation, it did so with only prospective effect from 1 December 2006. Neither judgment refers to this comparable legislation but there are questions about its cut-off date too. We hope that the European Court's decision in O'Brien will lay down clear principles of general application.

If you wish to discuss any points arising from this note, please speak to your usual contact in the Travers Smith Pensions team or to one of the Pensions partners: Susie Daykin, Daniel Gerring, David James, Dan Naylor, Paul Stannard and Philip Stear.

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