

NEWS IN BRIEF

Same-sex survivor cannot claim on partner's historical pension

A surviving same-sex civil partner cannot claim death benefits from a pension fund that was built up before civil partnerships existed, the England & Wales Court of Appeal has ruled.

The case was brought by one John Walker, who has been drawing a pension from his former employer's scheme since he retired in 2003. He entered into a same-sex civil partnership in 2006, just after the relevant legislation was enacted. He now wants his partner (who is still alive) to receive the same benefits on Walker's death that a surviving opposite-sex wife would have been entitled to claim – that is, two-thirds of Walker's own pension.

Walker lost his case in a controversial employment tribunal judgment last year. The tribunal stated that his civil partner was only entitled to death benefits accrued after December 2005 (the date that same-sex civil partnerships became legal).

Walker appealed, claiming that the pension trustees unlawfully discriminated against him because of his sexual orientation. The law should, he said, treat civil partnerships and opposite-sex marriages alike in the matter of pension benefits just as it does for most other purposes. The relevant UK legislation was in fact enacted as a result of a European directive designed to outlaw discrimination on sexual orientation (and other) grounds.

However, the appellate court has now confirmed the tribunal's decision. It noted that EU legislation does not have retrospective effect unless it clearly so indicates. Second, legislative changes only apply to the future effects of a situation which arose under the law as it stood before amendment. In short, said Lord Justice Lewison, the pension scheme trustees' conduct was lawful at the time, and cannot be made unlawful retrospectively. He stated: 'It does not seem to me that the pension trustees can be required to confer on Mr Walker a benefit to which he is not entitled' (*O'Brien v Ministry of Justice*, 2015 EWCA Civ 1000).

Pension scheme trustees are now faced with a dilemma. Although many schemes have decided to treat civil partnerships in the same way as opposite sex marriages, this has significant cost implications. The scheme trustees thus have to balance equality considerations against the effect on the scheme's funding, the benefits available to other scheme members, and the question of how to deal with members who have paid additional contributions to purchase extra survivors' benefits.

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