

Same sex couples granted equal pension rights



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The Supreme Court's recent judgement in the case of *Walker v Innospec* changes the law on the payment of death benefits from pension schemes. Opposite-sex and same-sex spouses (including civil partners) must now be treated equally in relation to pension death benefits. While many schemes will already be paying benefits in this way, others will need to review their rules and practices immediately in order to ensure compliance.

A lengthy legal battle

Mr Walker initially brought his complaint before the Employment Tribunal in 2011. His complaint was that his employer's pension scheme would not provide his husband (at that time, civil partner) with the same level of pension as would be payable to an opposite-sex spouse in the same circumstances.

In refusing to provide equal pensions, Mr Walker's pension scheme was relying on a specific exception under the Equality Act. This is a rule which permits pension schemes to calculate a same sex spouse's pension by reference only to the pension that has accrued from the member's employment after the introduction of civil partnerships in 2005. Mr Walker retired in 2003. This meant that his husband would be entitled to a statutory minimum pension of around £1,000 per year while a wife in the same situation would have been entitled to approximately £45,000 per year.

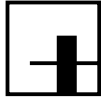
The Employment Tribunal **AGREED** with Mr Walker in 2012 but the Employment Appeal Tribunal **OVERTURNED** this decision in 2014. The Court of Appeal then dismissed Mr Walker's appeal last year but allowed a further appeal to the Supreme Court.

A landmark judgement

The main question before the Supreme Court centred on the ability to make retrospective changes to the law. Both the Employment Appeal Tribunal and the Court of Appeal concluded that, in the absence of clear evidence to the contrary, it should be assumed that the relevant EU equality legislation was not intended to have retrospective effect.

Pension that accrued prior to the introduction of civil partnerships could therefore not be made subject to a legal requirement to provide equal death benefits to a surviving civil partner (or, subsequently, a surviving same sex spouse). Death benefits for pension accrued after the introduction of civil partnership would, however, need to be equal and pension schemes may of course decide to offer equal benefits in full irrespective of any legal obligation to do so.

The Supreme Court disagreed with both the Employment Appeal Tribunal and the Court of Appeal. The current exception contained within the Equality Act could not be compatible with the "plain effect" of the EU equality legislation and should therefore be ignored. Mr Walker's husband would be entitled to a full spouse's pension in the event of Mr Walker's death.



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What is the impact for pension schemes?

The case is significant for some schemes as it alters the protection of death benefits for service prior to the introduction of civil partnerships and the anti-discrimination requirements.

Much will depend on the current rules and practices adopted by the scheme and trustees and managers should review the position for their scheme and seek advice if uncertain. Many schemes will have relied on the exception under the Equality Act in order to provide reduced death benefits for same-sex spouses and we would expect that a rule amendment together with a review of the funding implications would be appropriate for such schemes. Schemes should prepare for death benefit queries that arise in the interim.

It is not yet known whether the Government will issue a formal response to the judgement but we would expect an amendment to the Equality Act to follow in due course. One area where Government guidance may be helpful is around the treatment of unequal death benefits that have already been put in payment as it could be argued that those payments will now need to be retrospectively “topped up”.

Finally, this judgement was reached on the basis of EU law directly applicable to the UK. Following Brexit, the UK Government may seek to alter the position and Liberty, the human rights organisation which supported Mr Walker in this case, has already called for an assurance that this will not happen.

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