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Supreme Court grants same-sex survivors' benefits for pre-2005 service

The Supreme Court judgment in *Walker v Innospec* means trustees must check the benefits they provide for same-sex spouses. Many schemes will need to take action.

Mr Walker was an active member of the Innospec pension scheme from 1980 until his retirement in 2003. He entered into a civil partnership in 2006 (and subsequently married his partner). He asked for confirmation that the scheme would pay a survivor's pension to his partner in the event of his death. The company refused on the grounds that Mr Walker's service predated 5 December 2005 when civil partnerships were introduced. The Equality Act 2010 allows discrimination against an employee in a civil partnership or same-sex marriage by denying access to a benefit payable in respect of service before 5 December 2005.

The Supreme Court upheld Mr Walker's discrimination claim. It has ruled that the exemption in the Equality Act 2010 for pre-2005 service is incompatible with EU law and does not apply. On Mr Walker's death, any surviving husband or civil partner would be entitled to a spouse's pension. The right to this benefit arose when Mr Walker married his partner, even though they were not married when Mr Walker was earning benefits in the scheme.

Action for schemes

Many schemes have opted to treat same-sex couples in the same way as opposite-sex couples, and will not be affected by this judgment. Others relied on the Equality Act and imposed restrictions for service before December 2005. These schemes will need to review their rules and take legal advice. Without the benefit of this statutory exemption, the wording of the rules of these schemes will need to be considered in the light of the statutory non-discrimination rule, and benefit entitlements updated accordingly. These schemes should also review past payments which may have excluded pre-2005 service, as well as benefits secured under an annuity (including those purchased on buy-ins and buy-outs). Trustees should discuss with the scheme actuary whether this judgment affects scheme valuations.

Pensions for part-timers

On a related note, the Supreme Court has referred another discrimination case to the European Court (CJEU). The O'Brien case relates to a claim for a pension by a part-time fee-paid judge. European law prohibits discrimination against part-time workers, and the CJEU has been asked whether periods of service before this law took effect in the UK (on 1 July 2000) should be taken into account when calculating the

retirement pension of a part-time worker. Although the Supreme Court thinks that earlier periods of service should be taken into account, it was sufficiently unsure that it wanted to defer to the CJEU on the point.

It will be a while before we know the outcome, but the CJEU's ruling could have a significant impact on employers, especially those with many part-time workers. Where pension benefits have been restricted, it could be costly to increase them retrospectively. Where workers have been denied scheme membership, it may prove impossible now to locate the records establishing their employment history.

If you think your scheme may be affected by these cases, please speak to your usual Pinsent Masons adviser for more information.



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