

Supreme Court rules gay couple entitled to pension equality

12/07/2017 (*Public Law*)

The Supreme Court today unanimously allowed the appeal of John Walker and granted a declaration that, should Mr Walker predecease him, his husband is entitled to a survivor's pension on the same terms as a spouse of the opposite sex.

Mr Walker worked for Innospec from 1980 to 2003. He and his husband have lived together since 1993. They became civil partners as soon as that was possible. Mr Walker then asked the administrators of Innospec's pension scheme to confirm that they would, on his death, pay his civil partner the spouse's pension provided by the scheme. The administrators refused, relying on paragraph 18 of schedule 9 to the Equality Act 2010. On its face that provision excludes from the ambit of sexual-orientation discrimination any claim for pension benefits referable to service prior to 2005.

Mr Walker sought declarations that paragraph 18 had to be disapplied under EU Directive 2000/78, concerning equal treatment in employment and occupation, and was incompatible with his rights under Article 14, read with Article 1 of Protocol 1, to the European Convention on Human Rights.

After initial success in the Employment Tribunal [2013] Pens LR 21, Mr Walker lost in both the Employment Appeal Tribunal [2014] ICR 645 and the Court of Appeal [2015] EWCA Civ 1000; [2017] 1 All ER 1078. That Court (Lord Dyson MR, Lewison and Underhill LJ) held that paragraph 18 reflected a non-retrospectivity principle of EU law, and that the point was sufficiently clear that no reference to the Court of Justice of the EU was required.

The Supreme Court allowed Mr Walker's appeal, holding that the Court of Appeal had misconstrued the EU case law, and that the point was *acte clair* in Mr Walker's favour. Another case heard at the same time (*O'Brien v Ministry of Justice*), raising a similar point in relation to discrimination against part-time workers, was referred to the CJEU.

Lord Kerr (with whom Lady Hale and Lord Reed agreed) gave the main judgment. Lord Hughes and Lord Carnwath gave a separate judgment concurring in the result. All distinguished the recent decision of the CJEU in Case C-443/15 *Parris v Trinity College Dublin* [2017] 2 CMLR 17 on the basis that the scheme in issue there gave spouse's pensions only to those married by retirement or their 60th birthday, whichever was the earlier, without discriminating between same-sex and opposite-sex spouses.

The outcome means that Mr Walker and his husband, and thousands of other gay men and women whose pension schemes do not already provide equal pension benefits, will now be entitled to those benefits. The Government Actuary Department estimates that the cost will be £100m for private-sector schemes, and significantly less for public-sector schemes.

The judgment is [here](#).

BRICK COURT CHAMBERS

BARRISTERS

Max Schaefer (instructed by Liberty) represented Mr Walker at all stages from the Employment Tribunal to the Supreme Court, led by Maya Lester QC in the EAT and by Martin Chamberlain QC in the Court of Appeal and Supreme Court.

RELATED BARRISTERS

- Martin Chamberlain QC
- Maya Lester QC
- Max Schaefer