

14 June 2017

170714/SWINNEY, J/CK/DL

John Swinney MSP
Deputy First Minister
Cabinet Secretary for Education and Skills
The Scottish Parliament
St Andrew's House
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Edinburgh
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Dear John

Walker v Innospec Supreme Court Judgment – implication for the Teachers' Pension Scheme

I write concerning the Supreme Court Judgment on *Walker v Innospec Limited and others*, which was given on 12 July 2017. This judgment has immediate and significant implications for the Scottish Teachers' Pension Scheme (STPS).

The Judgment

I am sure you are aware the judgment related to the case of Mr Walker who retired from chemical group Innospec Ltd, where he had worked for 23 years until his early retirement on 31 March 2003.

He was a member of the company's pension scheme, which provided for survivor pensions for spouses. At the date of his retirement, Mr Walker had been living with his male partner since September 1993, and they later entered into a civil partnership in 2006, which has since been converted into a marriage. However, under the terms of the Innospec Pension Scheme, Mr Walker's partner was only entitled to be treated as his spouse in respect of the period since 5 December 2005, the date the Civil Partnership Act 2004 came into force.

Under his pension scheme's terms, if Mr Walker were to dissolve his same-sex partnership and marry a woman, she would be entitled in the event of his death to approximately £45,700 a year, but the trustees of the Innospec pension scheme would only pay his husband about £1,000 per annum.

Mr Walker brought a claim of sexual orientation discrimination, arguing that he could rely on the EU Equal Treatment Framework Directive (No.2000/78), even though his employment ended before the Directive was required to be transposed into UK law on 2 December 2003.

The tribunal upheld the claim but the Employment Appeals Tribunal (EAT) overturned the decision on appeal.

Mr Walker appealed to the Court of Appeal, which dismissed his appeal on 6 October 2015. However, the Supreme Court allowed his appeal on 12 July 2017.

The Supreme Court ruled that Mr Walker was entitled to have, for his married partner, a spouse's pension at the time he contracted a legal marriage. Moreover, the financing of the Innospec Pension Scheme should have been planned taking into account a possible change in Mr Walker's marital status. Mr Walker could not have been denied entitlement to a spouse's pension if, perfectly legally, he married a woman after he retired. As Mr Walker's marriage to his current partner is just as legal as a heterosexual marriage would be, his entitlement to a spouse's pension is equal to that of a member of the pension scheme in a heterosexual marriage.

Moreover, the Supreme Court ruled that Paragraph 18 of Schedule 9 of the Equality Act 2010, which authorises restriction of pension benefits to same sex partners, is incompatible with the EU Framework Directive and must be disapplied.

Therefore, the Supreme Court ruled that Mr Walker's husband is entitled to a pension calculated on the basis of all of his years of service with Innospec, provided that, at the date of Mr Walker's death, they remained married.

The Implications for the Scottish Teachers' Pension Scheme (STPS)

In its provision of adult survivor benefits, the STPS discriminates on the basis of sexual orientation.

In the STPS, pension survivor benefits paid to same-sex spouses or civil partners are only based on pensionable service from 6 April 1988, whereas benefits paid to widows of an opposite sex marriage are based on pensionable service from 1 April 1972 onwards.

The NASUWT has brought to the Scottish Government's attention previously the unacceptability of this discriminatory pension provision and I remind you of its continuing unacceptability now.

Moreover, the Walker v Innospec Supreme Court Ruling renders this discrimination in the STPS unlawful.

The NASUWT believes that the STPS has no alternative but to base the survivor pensions of same sex spouses on pensionable service from 1 April 1972 onwards. In addition, as civil partnership and equal marriage are comparable situations in the UK, this provision must be extended to civil partner adult survivors also.

LGBTI teachers are suffering deep anxiety as a result of the continuing uncertainty over adult survivor pension benefits.

The NASUWT, therefore, requests prompt action by you to confirm that the Scottish Government will:

- urgently bring proposals for revision of the STPS Regulations to base adult survivor pensions for same sex spouses and civil partners on all STPS pensionable service dating back to 1 April 1972;

- seek to identify cases where underpayment of survivor pensions has occurred so that retrospective payment can occur;
- publicise the procedure for making retrospective claims and invite submission of these.

The NASUWT would be more than happy to support this process and engage in the discussions on how these issues can be taken forward swiftly.

I have also written to the Westminster Government to seek an undertaking that it will ensure that, during the process of withdrawal from the EU, all rights provided in the EU Framework Directive regarding discrimination on the grounds of sexual orientation are entered into UK law. It would be helpful if the Scottish Government could also place this expectation on the UK Government.

Thank you for your attention to this matter.

Best wishes.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Chris', with a long horizontal flourish extending to the right.

Chris Keates (Ms)
General Secretary