

Ending Discrimination in Adult Pension Survivor Benefits

Introduction

1. The NASUWT opposes the continuing discrimination against women, civil partners and same-sex married couples in the provision of Teachers' Pension Scheme (TPS) for England and Wales adult survivor benefits (sometimes known as family benefits) and continues to campaign against this discrimination.
2. In the TPS, a Scheme member's pensionable service determines their benefits and those of a surviving partner. However, for survivor benefits, not all pensionable service counts.

Discrimination against women in the Teachers' Pension Scheme

3. The following pension survivor benefits are paid to survivors of men and women members of the TPS who are opposite-sex spouses:
 - benefits for widows – based on pensionable service from 1 April 1972;
 - benefits for widowers – based on pensionable service from 6 April 1988.

Discrimination against civil partners and same-sex married couples in the Teachers' Pension Scheme

4. The following pension survivor benefits are paid to survivors of men and women members of the TPS who are same-sex spouses or civil partners:
 - benefits for civil partners – based on pensionable service from 6 April 1988;
 - benefits for same-sex married couples – based on pensionable service from 6 April 1988.

The current situation is that same-sex married couples and civil partners are treated less favourably than some opposite-sex married couples in respect of survivor benefits. The benefits for same-sex married couples and civil partners are equal with those of opposite-sex married partners but only in respect of those for widowers, which include any service since 6 April 1988, rather than for widows, which include service from 1 April 1972.

5. Benefits for cohabiting partners are based on service from 1 January 2007.

The Marriage (Same Sex Couples) Act 2013

6. The Marriage (Same Sex Couples) Act 2013 requires surviving spouses in a same-sex marriage to be treated in the same way as surviving civil partners in respect of occupational pension benefits.
7. However, pension schemes are allowed to restrict civil partners' equal access to service-related benefits to those backdated to December 2005 (the implementation date for the Civil Partnership Act). Schedule 9 of the Equality Act 2010 allows this.
8. The TPS restricts civil partners' and same-sex married couples' access to service-related benefits to those backdated to 1988, rather than to 2005. However, the NASUWT still believes this to be

discriminatory – for example, the same pension contributions could be paid, but Lesbian, Gay, Bisexual and Transgender (LGBT) partners would receive inferior pension benefits. The NASUWT has repeatedly pressed the Secretary of State for Education, the Scottish Government and the Northern Ireland Executive to end discrimination and base all adult survivor benefits on service from 1972.

9. The Westminster Government has decided to perpetuate this continuing discrimination across England and Wales in respect of same-sex married couples' survivor benefits. The Department for Education (DfE) buried its announcement on this in a review of increases to pension contributions. The NASUWT strongly condemned this and demanded a genuine and full consultation on adult survivor benefits. The NASUWT continues to encourage members to contact the DfE to protest about differential pension benefits.
10. Despite the opportunities given to them to end discrimination, the devolved nations/administrations have opted to follow the Westminster Government's lead. The Scottish Government and Northern Ireland Executive followed the approach of the Westminster Government for the Scottish TPS and the Northern Ireland TPS. The NASUWT made representations to the Scottish Government and the Northern Ireland Executive to end discrimination in the provision of adult survivor benefits.

Government review of adult pension survivor benefit provision

11. The Westminster Government reviewed survivor benefit provision under the Marriage (Same Sex Couples) Act 2013 in June 2014. One potential outcome of the Review was to change the law to end discrimination. The Treasury produced an estimate of the cost of full equalisation of survivor benefits for private sector defined benefit pension schemes as £18 million. In the scale of things this is a tiny amount. The Treasury also estimated that one third of private sector schemes already pay full benefits for those scheme members who are in a civil partnership or same-sex marriage.
12. The Treasury's costings estimated that the costs to the TPS are small, with the costs of equalisation of adult survivor benefits in the TPS being less than £600 million for the whole of England and Wales. This includes backdated payments (about one third of the cost). When the Treasury spread this over 15 years it amounted to an additional 0.2% on employer contributions.
13. The NASUWT met with the Treasury to discuss the Westminster Government's Review under the Marriage (Same Sex Couples) Act 2013, demanding accurate costings from the Treasury. The NASUWT submitted a detailed consultation response to the Treasury Review, demanding equalisation for widowers, civil partners and same-sex married couples, which must involve backdating all benefits to 1972. The Union demonstrated that ending discrimination in the TPS was affordable within the cost cap set by the Westminster Government.
14. The Treasury Review was published in June 2014. The Review simply reported the current situation. The Review made no recommendations and did not change the law, claiming to support equality, but stating that pensions were 'unique', with an implication that benefits could therefore continue to be discriminatory. Following the Review, the Westminster Government failed to end pensions discrimination during the remainder of the 2010-15 Parliament. The NASUWT believes that the Westminster Government has continued to fail a key equality test.
15. However, a recent Supreme Court judgement, in the case of Walker v Innospec Ltd., marks an important step forwards in achieving pensions equality for LGBT teachers.

Case Study

Walker v Innospec

Mr Walker retired from chemical group Innospec Ltd, where he had worked for 23 years until his 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. 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.

Mr Walker brought claims 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 despite the argument that, 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 £41,000 a year, but the trustees of the Innospec pension scheme would only pay his husband around 1% of that amount.

Mr Walker appealed to the Court of Appeal, which dismissed his appeal on 6 October 2015.

Following this, Mr Walker appealed to the Supreme Court, which 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.

This groundbreaking judgement is particularly significant because it ruled that Mr Walker's right not to be subject to discrimination over-ruled a key argument of Innospec and the Government, that the removal of discrimination from pension schemes cannot be applied retrospectively.

Next steps

16. The ability of individual pension schemes to end discriminatory provision still remains. The NASUWT continues to lobby for an end to discrimination in adult survivor benefits within overarching legislation, as well as pressing the Westminster and devolved nations governments for scheme-specific changes to Teachers' Pension Schemes across the UK.
17. Following the Walker v Innospec Supreme Court Ruling, the NASUWT has written to the Secretary of State for Education, Justine Greening, to demand that the Government introduces without delay, revisions to the TPS Regulations to ensure that adult survivor pensions for all same-sex married and civil partners are based on pensionable service dating from 1972, as is the case for the widow's pension. The correspondence is available via www.nasuwt.org.uk/pensionsbenefits.
18. The NASUWT has produced a variety of campaigning materials which are on the Union's website, including a PowerPoint presentation for use in Local Association meetings. Members are also urged to sign the TUC petition: www.tuc.org.uk/survivorpensions.
19. The NASUWT leads the campaign for an end to adult pension survivor benefit discrimination. The Union seconded a motion at TUC Congress 2015, proposed by the TUC LGBT Conference, which was passed unanimously, and committed the TUC to campaigning for an end to adult pensions survivor benefits discrimination. NASUWT members are urged to lobby MPs, also using the materials on the 'campaigns' section of the NASUWT website.

The NASUWT will continue to take action, campaign and lobby until this continuing unacceptable discrimination in pension provision is ended.



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