

Pensions and Marital Status

Katherine Apps
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My 2 questions

- In light of Parris, Brewster and Langford, when can schemes lawfully treat unmarried partners differently from spouses or civil partners?
- How is market practice changing?

Structure

1. Meaning of marriage and civil partnership
2. Significance of marital status in pensions
 1. In English legislation
 2. In EU law/ ECHR
3. The cases
4. The key questions
5. Further practical points

Meaning of “marital status” and civil partnership

“Marriage”

- *Akhter v Khan* [2020] EWCA Civ 122
- *McLaughlin’s Judicial Review* [2018] UKSC 48
- *AR v Secretary of State for Work and Pensions* June 2020

Civil partnership

- *Steinfeld and Keidan* [2018] UKSC 32
- The Civil Partnership (Opposite-sex Couples) Regulations 2019 (*SI 2019/1458*)
2 December 2019

Significance of marital status in pensions

- Equality Act 2010
 - Paragraph 18(2) of Schedule 9
 - Section 61 and the “*non discrimination rule*”
- Marriage (Same Sex Couples) Act 2013
 - Did not equalise pension provision
- Finance Act 2004: Paragraph 15, Schedule 28 (although some flexibility in 15(3)): “dependent”

Cases

C-443/14 *Parris v Trinity College Dublin* [2017]

ICR 313

- only if became spouse/ civil partner before age of 60

Article 6(2) of the Framework Directive: member states could fix age-related criteria for entitlement to retirement benefits.

This was wide enough to apply to the age 60 limit relating to survivors' pensions in TCD's rules.

Walker v Innospec [2017] UKSC 47

Very important qualification

- DB pension
- survivors pension entitlement did not apply to civil partners for service prior to 5 December 2005.
- Unlawful under the Directive

Brewster [2017] UKSC 8

- Christmas Eve engagement
- Active member died on Boxing day
- Cohabiting partner of a deceased active member could only receive a survivor's pension if she had been nominated by the member before his death (even if the survivor met the remaining criteria in the scheme rules qualifying her for benefits)
- Refusal of survivors pension a breach of
 - A1P1 and
 - Article 14 of the ECHR.

Langford [2019] EWCA Civ 1271

- cohabiting survivor needed not to be “prevented from marrying or forming a civil partnership” with the active member.
- breach of A1P1 and Art 14
- wording used was very similar to para 15 of Schedule 28 to the Finance Act 2004

“substantial, exclusive and financially dependent relationship in practice”

When can't unmarried partners be treated differently?

1. Past accrual plus future benefits plus sexual orientation: the *Walker* issue
2. Public service schemes (Langford at [68])
3. What about other schemes?

Practical issues

- Nominations
- Where there is a discretion
- What if the scheme provides no pension to unmarried partners at all?
- Tax
- Reviewing provisions

Further help

Some helpful resources

- House of Commons Library briefing paper on civil partners and same sex marriage: April 2020
<file:///C:/Users/ka/Downloads/SN03035.pdf>

- House of Commons Library briefing paper on Occupational Pensions – survivors benefits for cohabitants: May 2020
[file:///C:/Users/ka/Downloads/SN06348%20\(1\).pdf](file:///C:/Users/ka/Downloads/SN06348%20(1).pdf)

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- If you have any further questions or comments please feel free to contact me on kapps@39essex.com

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