



LOCAL PENSION BOARD

4 DECEMBER 2017

REPORT OF THE DIRECTOR OF CORPORATE RESOURCES

BREWSTER RULING

Purpose of the Report

1. The purpose of this report is to inform the Board about the recent decision of the Supreme Court in the case of Brewster and the implications for the Leicestershire Pension Fund.

Background

2. The Local Government Pension Scheme provides pension benefits for co-habiting partners, should their partner die whilst a member of the Local Government Pension Scheme, if a co-habiting partner's nomination form is complete.
3. Denise Brewster was the co-habiting partner of a member of the Local Government Pension Scheme in Northern Ireland, which has slightly different rules to England, but principally are the same.
4. A Supreme Court ruling earlier this year found in favour of Denise Brewster who claimed, the requirement for the completion of the co-habiting partner's nomination form constituted unlawful discrimination and a breach of the European Convention on Human Rights. The Court agreed this constituted unlawful discrimination. A nomination form was not required for married or civil partner survivors.
5. Following the Supreme Court ruling the Department for Communities and Local Government (DCLG) issued a letter dated 17 August 2017 to all Local Government Pension Managers detailing the implications on the Local Government Pension Scheme. This is attached as Appendix A.

Implications

6. In 2014, recognising the need for a change in Regulations to deal with the position of cohabiting partners, the Local Government Pension Scheme Regulations in England changed, withdrawing the need to complete a partner's co-habiting form. This however left a position of inequality for those

co-habiting partners, whose partner died between 2008 and 2014, where the requirement for completion of a co-habiting partner's nomination form still existed. The DCLG's letter dated 17 August 2017 now considers it reasonable for Funds to make retrospective payments to cases in this category.

7. While the DCLG's letter makes it clear that it is for individual Pension Funds to determine their approach in respect of claims arising from situations they find arising that are similar to the Brewster case, the letter states that in the DCLG's view it would be reasonable for Pensions Funds to rely on the judgement as well as the wider provisions of the Human Rights Act (HRA) to make retrospective payments.
8. Section 3 of the HRA provides that legislation (including Pension Regulations) must be read and be given effect in a way that is compatible with human rights.
9. It is to be noted that the HRA also has provisions (Section 6) which effectively justifies a public authority not acting unlawfully in a human rights sense if a statutory provision could not be read or be given effect to in a way which would be compatible with human rights. It is surprising that Section 6 is not discussed in the Brewster Supreme Court and this Authority takes the view that given the fact DCLG have sought legal advice and concluded as a result the relevant 2007 Pensions Benefits Regulations do not require amendment and have written to Pensions Funds and have written the letter previously referred to, reliance on Section 6 to justify not make a payment would be disproportionate.

Leicestershire Pension Funds Actions

10. Following the Brewster ruling and the Department of Communities and Local Government's letter, the Leicestershire Pension Fund has discussed the situation with other Funds in the East Midlands region who were in agreement that in principle Funds could now make retrospective payments.
11. The County Council has investigated how many cases in the period between 2008 and 2014 fall into this category, where no co-habiting partners form has been completed. Whilst the Pension Fund cannot be absolutely certain of the historic facts of all previous cases, it has only positively identified one case which has now been resolved following legal advice.
12. Whilst the Regulations no longer require the need to complete a partner's co-habiting nomination form to gain entitlement, the Pension Section still asks for the form to be completed. This is to assist the Pension Section with the administration and so the scheme member is confident in the knowledge the Pension Section knows their personal wishes.
13. Without completion of the form, the Pension Section does not know if a co-habiting partner exists and does not know the deceased members wishes.

14. However, in the rare event that a co-habiting partner does exist and no form has been completed, the Pension Section will still allow payment of the co-habiting partner's pension if all other criteria are met.

Recommendation

14. It is recommended that the Board notes the report.

Equality and Human Rights Implications

None specific

Appendix

DCLG letter dated 17 August 2017

Officers to Contact

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