



Department for
Communities and
Local Government

17 August 2017

Dear Pensions Manager

Implications for the Local Government Pension Scheme of Brewster Decision

A number of funds have been in touch now regarding the implications of the Supreme Court's ruling earlier this year in the case of Brewster. This letter is intended to provide some guidance to those managing funds. It is not statutory guidance, as we have no power to issue statutory guidance on this point, and neither is it intended to be, and should not be construed as, legal advice. As you will appreciate, the correct interpretation of LGPS regulations is a matter for the courts and not government departments.

In the case of Denise Brewster, she successfully challenged the requirement in the Local Government Pension Scheme (Northern Ireland) that a surviving adult partner had to be formally nominated in order to be entitled to payment of survivor benefits. The Court ruled that this administrative requirement constituted unlawful discrimination and a breach of the European Convention on Human Rights. As the other underlying scheme conditions were met then it should be disapplied.

Most public sector pension schemes that have, or have had, such a nomination requirement for unmarried partners, are now taking the view that scheme managers can rely on this judgment and section 3 of the Human Rights Act 1998 as the legal basis for not requiring that a surviving adult partner be nominated in order to receive survivor benefits. This section of the Act provides that, as far as possible, regulations such as those covering the LGPS must be read and given effect in a way which is compatible with the European Convention on Human Rights. This approach is also being applied to applications which have previously been rejected. In these circumstances, schemes are also being encouraged not to require survivors to claim within any specific limitation period.

We consider that this approach is reasonable in the circumstances and that LGPS funds should give careful consideration to adopting a similar approach to relevant cases. In adopting this approach a fund accepts that a power to pay these benefits already exists in the LGPS regulations when read and given effect in a way which is compatible with Convention rights and that the tax status of them is no different from any other payments made under the scheme.

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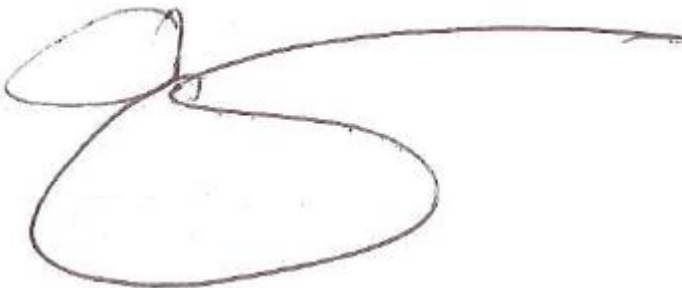
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We suggest that LGPS funds should consider the following:

- Relevant cases will be those in the period between 2008 and 2014 when a “nominated cohabiting partner” test was applied to restrict survivor benefits. Any relevant case presenting now for a survivor’s pension, who can demonstrate that they were, at the point of their partner’s death, in a relationship with an LGPS member and met all the underlying conditions apart from the nomination requirement, should be awarded a survivor’s pension, appropriately backdated;
- Funds should take reasonable steps to identify cases where an application for a survivor’s pension was rejected for want of a nomination. Such cases should be reviewed to check whether there is evidence that the underlying conditions may have been met at the time and whether a survivor’s pension should now be considered;
- Where a new claim for a survivor’s pension is accepted but a child’s pension was being paid at the higher rate (due to an adult survivor’s pension not being paid) the fund should advise as soon as possible the recipient of the child’s pension that its intention would be to reduce it once the adult survivor pension is being paid;
- In these circumstances, technically there will have been an element of overpayment in the child’s pension. Decisions on whether to attempt recovery should be handled sensitively, having regard to the need to avoid hardship or injustice, the fund’s own policy on overpayments and general guidance on the appropriate use of public money;
- We expect that funds will not be able to offset overpayments of a child’s pension against the adult survivor’s benefits given that they are separate individual entitlements.

Some cases will inevitably raise complex issues and it is not possible to provide guidance on the application of the judgment in all circumstances. Accordingly, scheme managers should seek their own independent legal advice if they are in any doubt as to how to proceed.

Yours sincerely,

A handwritten signature in dark ink, consisting of a large, stylized loop followed by a long horizontal stroke that curves back down to form a second loop.

Chris Megainey

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