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End discrimination in survivor pensions

Some widowers, surviving civil partners and same-sex spouses receive a lot less each year than widows just because of their gender and/or sexual orientation.

Sexual orientation discrimination

Until very recently, society discriminated against same-sex couples by not allowing them to marry. Surviving civil partners and same-sex married partners will continue to lose thousands of pounds a year because of this historic discrimination, unless the Government backdates rights to a survivor pension.

When the Civil Partnership Act was introduced in 2005 pension schemes had to provide the same benefits to civil partners as they provided to married partners. But this legal right to equality only applied from 2005 onwards. Same-sex married partners are treated in the same way.

Earlier this year, the Employment Appeal Tribunal ruled against a man who had tried to challenge the 2005 cut off. He had 23 years' service in his employer's defined benefit pension scheme but his civil partner would only be entitled to a survivor pension worth £500 a year. If he had been married to a woman she would be entitled to a pension worth £41,000 a year.

Gender inequality

There are women who are in their 50s or 60s today who started their careers around the time the Sex Discrimination Act and Equal Pay Act were introduced in the 1970s. They have made a significant contribution to household income throughout their working lives but only part of their employment will count towards accrual of a survivor pension for their partner.

For private sector defined benefit schemes there is a legal obligation to ensure gender equality from 1990 onwards. While in the public service schemes, only service after 1988 counts towards accrual of a widowers' pension.

In 2011, a widower of a GP challenged the inequality between widows' and widowers' pensions in the courts. He received about £3,200 a year less than a widow would have received. His wife started work in the health service in 1982 but only her service from 1988 to 2006, when she retired early due to ill health, counted. His legal challenge failed so this inequality will continue for the rest of his life unless the Government takes steps to end this discrimination.

Cost of equalisation

In both cases above, the Government argued against backdating survivor pensions for widowers and civil partners. It said it was unfair to impose retrospective costs on pension schemes.

But the cost of backdating survivor pensions for same-sex survivors is negligible compared to the overall liabilities of pension schemes. This is because only a small number of people are expected to leave a surviving civil partner or same-sex spouse when they die.

Trade union lobbying at the time of the Civil Partnership Act got rights to survivor pensions for civil partners in public service schemes and for contracted out rights backdated to 1988, putting them on an equal footing with widowers. This 17-year backdating had no significant financial consequences for the schemes.

The cost of backdating widowers' pensions is greater but it is still likely to be just a very small percentage of pension schemes' liabilities. This is because marriage rates have been declining, men are less likely to outlive their partners and pensions to surviving partners are generally paid out over a shorter period than pensions to scheme members.

The vast majority of private sector defined benefit schemes already provide full equality for widowers and most do for civil partners and same-sex married partners too. Those that have equalised have not experienced any financial difficulties. In most cases, the savings made on widows' pensions as marriage rates have fallen have paid for the equalisation.

Government review of survivor pensions

The TUC pressed for equal survivor benefits in its lobbying on the equal marriage legislation. The Government made a commitment to review the inequalities and report on the costs of equalisation by 1 July 2014.

In its submission to the review the TUC argued that the costs of equalising survivor benefits can easily be met by pension schemes. Yet, for the individuals affected by the discrimination, the financial impact can be huge. It is time the Government changed the law and obliged all pension schemes to equalise survivor pensions.

Help us end this injustice

Sign up to our campaign for equal survivor benefits and tell us what you think of this ongoing loophole in our equality law: www.tuc.org.uk/survivorpensions