

Parity of Pension Provision for Surviving Civil Partners

Survivors' Pension Rights

1. The law is moving towards the equal treatment of surviving widows, widowers and civil partners for pension purposes but over a long transitional period. Simply put a widow has the right to a pension based on all her husband's pensionable service in a contracted out occupational scheme. A widower has the equivalent of the rights of a widow but only in respect of service since April 1988. And a surviving civil partner has the equivalent of the rights of a widow but only in respect of service since December 2005, together with certain rights in relation to contracted-out service from April 1988.

2. The legal requirement for the provision of widowers' pensions for contracted out schemes was introduced by the Social Security Act 1985. When its provisions were brought into force in 1988 the Church Commissioners were responsible for clergy pensions. The Commissioners decided to go beyond the requirements of the law, backdating widower's rights so that they effectively became equivalent to those of widows. Since the first female members were only admitted in December 1988 when the scheme for deaconesses and licensed lay workers (previously in the Church Workers Pension Fund) was transferred into the scheme the financial implications at that time would have looked very small indeed. And the extent of the Commissioners' over commitment to pension liabilities more generally had yet to become apparent.

3. The legal requirement for the provision of surviving civil partners' pensions for contracted out schemes was introduced when the concept of a civil partnership was created by the Civil Partnership Act 2005. The clergy pension scheme reflects what the law requires. Over time the position of surviving civil partners will equalise with widows. But there will not be full equivalence until no scheme member has any pension entitlements earned before December 2005.

4. In the light of this in March 2007, at the request of the Revd Stephen Coles, the Deployment Remuneration and Conditions of Service Committee of the Archbishops' Council (DRACSC) considered whether to recommend that the clergy pension scheme should go beyond the requirements of the law and backdate the rights of surviving civil partners so that they become equivalent to those of widows and widowers. In discussing the issue DRACSC considered a number of points.

Disadvantage

5. Under the statutory arrangements the position at the point of retirement will not be equalised until all pension accrued before 2005 has gone into payment, at least 40 years from now. The position in respect of pensions in payment will not be equalised until there are no surviving civil partners, or pensionable children of same, of clergy who accrued pension prior to 2005. This could be more than 80 years from now if someone with pension accrued before 2005 enters into a civil partnership with a much younger partner.

Expectations

6. When considering whether a group of people is being disadvantaged it is reasonable to take into account what the prior expectations of that group were. If for example someone had an expectation, which had affected the way they planned for the future, the disadvantage if that expectation were not realised would be greater than if no expectation had been held. At the time that the pension benefits in question were being accrued there could have been no expectation that those benefits would include a pension for a surviving civil partner.

7. It is an established convention that pension funds should not be expected to pay out benefits which they could have had no knowledge or expectation of having to pay at the time they were calculating their contribution rates. This is why the Social Security Act 1985 did not grant any retrospective pension rights, and the Civil Partnership Act 2005 granted only very limited retrospective rights that relate to that part of any contracted out scheme whose members would otherwise have been contributing to a state second pension through National Insurance contributions.

Prudence

8. The advice received is that, because of the way actuarial calculations are done, equalising the pension rights of civil partners and spouses would not necessarily have a direct and immediate impact on the contribution rate. There would, however, be a real cost to the pension scheme because, over time, more pension would be paid out than otherwise would have been the case. So the increased cost would at some point need to be reflected in the triennial calculation of contribution rates.

9. Moreover, while decisions about the level of benefits provided are primarily for the funders rather than the trustees of the pension fund or the Pensions Regulator, the trustees of the pension fund have a duty to act in the best duty of existing members and to ensure that promises are adequately funded.

10. In 2007 the trustees were already preparing to go to the Regulator for approval for a fifteen year recovery plan for the then deficit. There were obvious risks in going to the Regulator with such a plan and at the same time extending the scheme's liabilities. These considerations apply with more force given the need to prepare in 2010 to go back to the Regulator in 2010 with a recovery plan for a much larger deficit.

11. The DRACSC discussion in 2007 was also just a week after the debate in which General Synod had reluctantly approved proposals to reduce the benefits of the pension scheme for both active members and pensioners in order to keep the scheme affordable. Synod is now about to consider further reductions to benefits.

Precedent

12. There is clearly an argument that since the church went beyond statutory requirements in respect of widowers it should now do so for civil partners. However, the decision about widowers must be set in context. It was made at a time when there was a prevailing but mistaken belief that the Commissioners' funds were sufficiently large to comfortably meet all their undertakings.

13. Furthermore, when the Commissioners made their decision in 1988 they are unlikely to have thought that a precedent was being set. This is not the case now. There are already calls for the legal rights bestowed on civil partners to be extended to other relationships (siblings, carers and dependent adults for example). If the church chooses to go further than the law requires for civil partners the question will inevitably be asked whether it will be prepared to be more generous in respect of others such as carers.

How have other schemes dealt with the matter?

14. The Committee asked for information about how this issue had been dealt with elsewhere. Because each occupational scheme is tailored for a particular employer comparisons with other schemes should be drawn very cautiously. We understand, although no survey has been conducted, that among those employers that still operate defined benefit pension schemes many have chosen to meet legal requirements and no more.

15. Some pension funds have provided benefits equal to those of widows for same sex partners and for opposite sex, unmarried, partners, for some time. They were therefore unaffected by the legislation. We believe that the BBC scheme falls into this category for example. Their scheme is, however, contributory (i.e. members pay in as well as the employer). The NHS pension scheme will be doing the legal minimum, though we understand they have arranged that, for a limited period, scheme members can arrange to buy extra years of survivor rights for civil partners.

16. The Civil Service has extended civil partners pensions on the same basis as widows back to 1988. However, theirs is an unusual scheme. Members pay 1.5% of salary towards “dependants’ benefits”. If unmarried at the point of retirement then those contributions may be refunded. Instead of receiving a refund, therefore, members in civil partnerships will retain the prospective pension benefit for their surviving civil partner as married scheme members do for potential widows/widowers.

17. Those who joined the Church Administrators’ Pension Fund before July 2006 are part of a defined benefit scheme which mirrors the rights of the Civil Service Pension Scheme, including in relation to the treatment of civil partners. Those who have joined since then (now more than a quarter of NCI staff) are on a defined contribution scheme where the level of pension bought for dependants is a matter for each member to decide.

The view DRACSC reached

18. The Committee felt that the argument that the rights of all surviving partners should be on an equal basis was a powerful one. Equally, it was conscious that the context was very different from that in which the 1988 decision was made. In an environment of limited resources the financial costs of extending rights retrospectively beyond what the law required had to be weighed carefully against the need for prudence, the risk of precedent-setting, and the reasonable expectations of all the scheme funders and scheme members.

19. On balance **DRACSC concluded that it could not recommend a change to the scheme rules to create additional benefits.** It informed the Archbishops' Council of its discussion and the view it had reached.

The position of the Church Commissioners

20. To extend the rights of surviving civil partners in the funded scheme would require a change to the scheme rules, approval for which is given by General Synod. This would give equivalent rights in respect of any pension earned since 1998. Rules for benefits in respect of pension earned prior to 1998 belong to the Church Commissioners. It would be wrong to prejudge their view, but no doubt their substantial existing pension liabilities, their duty to maintain fairness between generations and to balance the needs of all of their beneficiaries would be significant factors in any consideration of extending new benefits not required by law.

Cases of hardship.

21. The Pensions Board have confirmed that any widow, widower, or registered civil partner, whose spouse or partner had been a scheme member and whose annual income (after income tax) from all sources (including State pension) is expected to be less than £12,200 in 2009/2010 may be eligible for a discretionary grant, if their capital is less than £16,000. Augmentation grants are not subject to tax and are reviewed at regular intervals.

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