

briefing note

ECJ takes further step to eliminate discrimination on grounds of sexual orientation

Two recent judgments of the European Court of Justice (*Goodwin v United Kingdom* and *I v United Kingdom*), issued on 11 July 2002, are likely to have a significant impact on the lives of individuals in the UK who have undergone gender reassignment and will affect the way in which pension schemes treat dependant partners of scheme members, where those partners have undergone gender reassignment.

THE CIRCUMSTANCES OF THE CASES

The circumstances of each case reflected the fact that, historically, the UK Government has not given legal recognition to a post-operative transsexual's new gender. In *Goodwin v United Kingdom*, Christine Goodwin, a post-operative male to female transsexual, brought a claim addressing the Government's failure to issue her with a new National Insurance number reflecting her new gender. In *I v United Kingdom* the claim was based on the Government's refusal to issue the applicant (again a post-operative male to female transsexual) with a new birth certificate, recognising her new gender.

THE COURT'S RULING

The European Court of Justice ruled that, in both cases, the failure to give legal recognition to the individual's post-operative gender breached Articles 8 and 12 of the European Convention on Human Rights, respectively the right to respect for private and family life, and the right to marry and found a family.

The inevitable consequence of the judgments is that transsexuals will enjoy the right to a new birth certificate to reflect their new gender, and the right to marry. This will require a change in existing UK law and practice, effectively giving legal recognition to a post-operative transsexual's new gender.

IMPLICATIONS OF THE JUDGMENT FOR PENSION SCHEMES

The immediate impact is likely to be limited but the effect of the judgments is to enable a transsexual partner to marry. Many pension schemes provide survivors' benefits only to a legal spouse on the death of a member. A transsexual who is either a pension scheme member, or the spouse of a pension scheme member, will fall within the definition of "spouse" for the purposes of benefits payable on death in service.

The judgments do not, however, confer any rights on same-sex partners, so a pension scheme is still not obliged to pay survivors' benefits to a same-sex partner. Those partners' position is likely to be improved only when the Government has implemented as it must, by December 2003, a recent EC Directive which prohibits discrimination on grounds of sexual orientation. Once this Directive is implemented, if a pension scheme provides survivors' benefits for dependant opposite-sex unmarried partners, then it will also have to provide benefits for same-sex dependant partners.

This is only an outline of the legal position. For more detailed legal advice, please contact your usual Wragge & Co pensions contact or Glyn Ryland, head of pensions, on +44 (0)121 213 2392 or e-mail glyn_ryland@wragge.com

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