



An actuary in court: reflections on the role of expert analysis

Equality is essential for people to fulfil their potential and for the creation of a cohesive society. Individuals may challenge policies through the courts if they feel that it discriminates against them. In his role as adviser to the Ministry of Housing, Communities and Local Government (MHCLG), GAD actuary John Bayliss helped support the government's defence of one such case. It related to the payment of pensions to unmarried partners. John shares reflections from his experience of providing expert analysis and advice to assist the court process.

Background to the case: pensions for unmarried partners

Historically public service pension schemes provided that, following the death of a member, the pension would be payable to the member's legal spouse (or civil partner). However, recently schemes have been reformed to extend these benefits to unmarried partners. As an example, the Local Government Pension Scheme (LGPS) provides pension to unmarried cohabiting partners from April 2008, but this does not apply to members who left employment before that date.

The claimant, Ms Harvey, was the partner of an LGPS member who left employment in 2003 and died in 2016. So under the rules of the scheme, she was not entitled to an unmarried partner's pension upon the death of her partner. Ms Harvey contended that the refusal to pay her a pension amounted to unlawful discrimination and a breach of her human rights, as she was treated differently to a legal spouse.

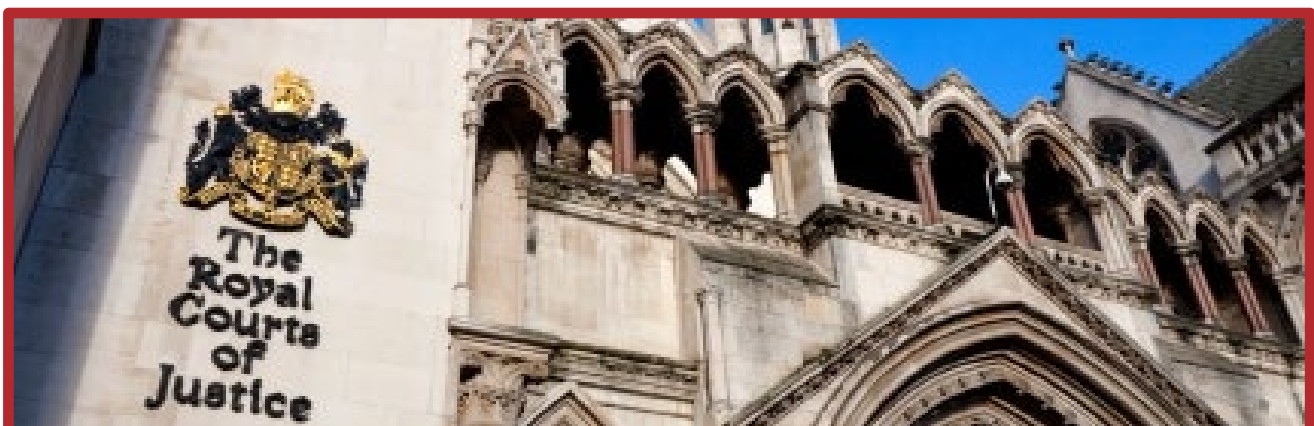
Case for the defence

A multi-disciplinary team was assembled to defend this challenge, consisting of policy officials and lawyers at MHCLG, litigation experts at the Government Legal Department and external Counsel.



The case was heard over 2 days in the imposing surroundings of the Royal Courts of Justice. We had to go through strict airport style security to get in, the building has a sense of history as you walk through the corridors and climb the staircases. Observers were able to come and go into the court room as they pleased, which surprised me; there was a strictly no mobile phone policy, which did not.

The team identified a clear trail of documentation that set out the development of the policy over the years, which is critical in justifying any difference in treatment.

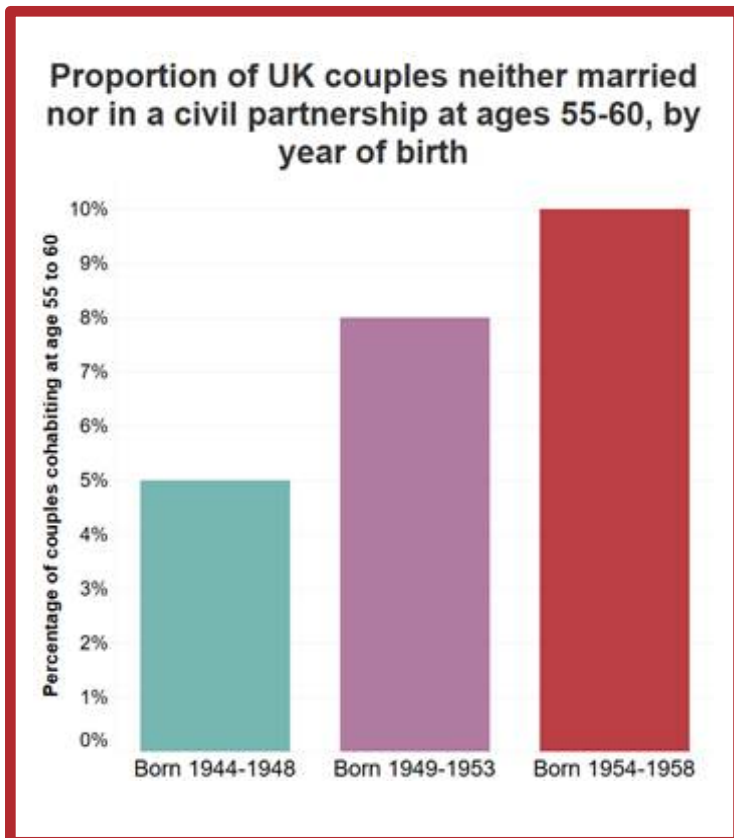




Expert witness

The claimant asserted that the costs of extending pensions to unmarried partners would be tiny, compared to the size of the overall scheme. MHCLG asked GAD to prepare a witness statement estimating the potential costs.

Successive generations tend to be more likely to be in an unmarried relationship than their predecessor generations (e.g. for people born between 1944 and 1948 about 5% are co-habiting but for those born between 1954 and 1958 that has increased to about 10%) and that proportion appears to stabilise after people reach their mid-forties (see chart).



Source: Office for National Statistics

Based on this, I estimated the potential cost (in terms of a present value) for the LGPS would be in the range of £600 million to £1,100 million on the basis described in my witness statement. This cost would rise to somewhere in the range of £2.5 billion to £4.5 billion if all public service pension schemes were affected.

Judgment

The High Court ultimately dismissed the challenge. The judge, Mr Justice Knowles, took issue with the assertion that the costs were 'tiny', stating in the judgment 'the broader impact on the public purse, and on other LGPS members, if the claimant were to receive the benefit she contends for, would be very significant'.



Reflections

Being involved in a court case is very interesting. But it has the potential to be stressful, and of course the outcomes are uncertain. I have taken the following thoughts away from this experience:

- 'an ounce of prevention is worth a pound of cure' - the audit trail found by MHCLG was crucial and shows the importance of careful consideration of equalities issues as policy is developed.
- lawyers love documents - any email you have ever written is potentially disclosable and could be used in evidence against you. It is well worth thinking twice before you hit send!
- times change - when pensions for widows and later widowers were first introduced, the possibility of legal challenge from an unmarried partner probably seemed remote. Policies need to be defensible both now and in the future.

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