

Ombudsman's Determination

Applicant	Mrs K
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	Lancashire County Council (LCC) Local Pensions Partnership Administration (LPPA)

Outcome

1. I do not uphold Mrs K's complaint and no further action is required by LCC or LPPA.

Complaint summary

2. Mrs K's complaint concerns her widow's pension entitlement from the Scheme, following the death of her late husband, Mr K, on 12 April 2020. Mr K had been a pensioner member of the Scheme prior to his death.
3. Mrs K has asserted that LCC's approach to the calculation of her pension has discriminated against her, because she married Mr K at a later stage in life.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the main points. I acknowledge that there were other exchanges of information between all the parties.
5. On 21 November 1966, Mr K began employment with Rochdale Borough Council and became a member of the Scheme through the Greater Manchester Pension Fund.
6. On 22 April 1974, Mr K started new employment with LCC and he continued his membership of the Scheme through the Lancashire County Pension Fund (**LCPF**).
7. LPPA, formerly Local Pensions Partnership, carries out administrative functions on behalf of LCPF members within the Scheme.
8. On 31 March 1995, Mr K retired from his employment with LCC; he began receiving his Scheme pension the following day. Mr K's retirement was on the grounds of ill-health and took place before he had reached the Scheme's normal retirement age.
9. On 17 May 2000, Mr and Mrs K married. Mr K died on 12 April 2020.

10. As at 6 April 2020, Mr K was entitled to an annual pension from the Scheme of £9,247.81. This comprised: his pension entitlement of £3,244.16 at date of retirement; the increases in payment of £3,838.37 he had accumulated since retiring; pre-1988 Guaranteed Minimum Pension (**GMP**) of £1,299.48, and post-1988 GMP of £865.80.
11. On 21 May 2020, LPPA wrote to Mrs K. It informed her that she was entitled to the following benefits:
 - a survivor's short-term pension equivalent to £4,555.24 per year, for the period 13 April to 12 July 2020; and
 - a long-term pension of £2,150.59 per year from 13 July 2020 onwards, payable for the rest of her life.
12. On 10 June 2020, LPPA wrote to Mrs K to set out how her pension entitlement had been calculated. It said her benefits were based on Mr K's final annual pay of £12,068.25 and his service between 6 April 1978 and 31 March 1995, a period of 16 years 354 days (accounting for six days of industrial action in July 1989).
13. On 10 September 2020, Mrs K registered a complaint under the Scheme's two-stage Internal Dispute Resolution Procedure (**IDRP**).
14. On 29 January 2021, LPPA issued its response to Mrs K under stage one of the IDRP. LPPA referred to the Local Government Pension Scheme Regulations 1995 (**the 1995 Regulations**), which it said were modified by the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (**the 2014 Regulations**), as being applicable to Mr K's Scheme membership. Extracts of the 1995 Regulations and the 2014 Regulations are shown in Appendices 1 and 2.
15. LPPA said that administration of the Scheme had to be carried out in accordance with the Regulations. It explained that under the 1995 Regulations, if a male member married after retiring from the Scheme, the surviving widow's pension would be based only on contracted-out service after 5 April 1978. It said that Mr K's benefits had included a GMP, which was provided for members who contracted out of the State Earnings-Related Pension Scheme. In Mrs K's case, the 1995 Regulations held that as she and Mr K had married after Mr K's retirement, her pension would be calculated using the service Mr K accrued between 6 April 1978 and 31 March 1995.
16. On 12 July 2021, Mrs K asked for her complaint to be moved to stage two of the IDRP. She considered that the differentiation applied to marriages which had taken place after a member's retirement was discriminatory.
17. On 19 October 2021, LCC issued its response to Mrs K under stage two of the IDRP. It said that in reaching its decision, it had considered the 1995 Regulations, the 2014 Regulations, and the Local Government Pension Scheme Regulations 2013.

18. LCC highlighted Regulation F6 of the 1995 Regulations as determining the pension entitlement where marriage had occurred after retirement, and that only service after 5 April 1978 should be used to calculate the entitlement. It added that Regulation 17 of the 2014 Regulations confirmed that the earlier provisions of Regulation F6 were still applicable. LCC said it did not have discretion to divert from the Regulations and it considered that they had been correctly followed in Mrs K's case.
19. Following the referral of the complaint to The Pensions Ombudsman (**TPO**), both parties made further representations, which are summarised below.

Summary of Mrs K's position (prior to the Adjudicator's Opinion)

20. She had expected that she would be entitled to half of the value of Mr K's pension, but she now receives only about 26% of it. She should receive redress for the historic shortfall and her pension should be uplifted to the value she expected to receive.
21. The reduction in her entitlement, compared with what she had expected, appears to be disproportionate. Mr K had been an active member of the Scheme through LCPF for 21 years, from 1974 to 1995. The only part of this which could not be counted towards her pension was from 22 April 1974 to 6 April 1978. There were roughly 17 years out of 21 that could be used in the calculation, yet her pension is around half of what she had expected to receive.
22. Mr K was contributing to the Scheme in exactly the same way as members who had married before retirement, but his benefits have been treated differently. This has exacerbated her grief in what was already a very difficult time.
23. She has been discriminated against on the basis of age and her gender, which is in breach of the Equality Act 2010. Extracts of the Equality Act 2010 are shown in Appendix 4.
24. According to Chapter 1 Section 1 of the Equality Act 2010, an authority must give due regard to the desirability of exercising its functions in a way that is designed to reduce inequalities of outcome resulting from socio-economic disadvantage. LCC breached this requirement by not bringing the Regulations up to modern legal standards.
25. Age and marriage are regarded by Sections 4, 5, and 8 of the Equality Act 2010 as protected characteristics and discrimination on this basis is prohibited. LCC discriminate against those who formed their relationship at a later stage of life. Post-retirement marriage is effectively deemed inferior to marriage between younger people.
26. LCC said that Mr K's service before 6 April 1978 could not be taken into consideration for her pension entitlement. This breaches Sections 4, 5, 8, 13, and 19 of the Equality Act 2010, regarding age discrimination, because older people will have made a higher proportion of their contributions before 6 April 1978.

Summary of LCC and LPPA's position (prior to the Adjudicator's Opinion)

27. Mr K received an ill-health enhancement, of six years and 243 days, to his final benefits. However, as per the Regulations, this enhancement was not included in the calculation of Mrs K's pension.
28. Mr K's total pensionable service for the Scheme, including the ill-health enhancement, was 34 years 256 days. His entitlement at the point of retirement was an annual pension of £5,234.81.
29. The long-term pension payable to Mrs K was calculated using the eligible period of Mr K's pensionable service, amounting to 16 years 354 days. This excluded Mr K's service prior to 6 April 1978 and his ill-health enhancement. It then divided Mr K's service by 160 and multiplied the result by his final pensionable pay of £12,068.25. This gave a starting figure of £1,279.98, as at Mr K's retirement date, to which the relevant pension increases were applied. Mr K also received a GMP from the Scheme and Mrs K was entitled to half of this pension. The result was a total pension of £2,150.59 per year payable to Mrs K.
30. The calculation of the short-term pension followed a similar process to the long-term pension, but with an accrual rate of 1/80 rather than 1/160. The starting figure was £2,559.96 and the final pension amount payable to Mrs K, with increases applied, was £4,555.24 per year (pro rata for the three-month period covered by this pension).
31. It has submitted details of the Pension Increase multipliers, provided by HM Treasury, that it used for the calculations.

Adjudicator's Opinion

32. Mrs K's complaint was considered by one of our Adjudicators, who concluded that no further action was required by LCC or LPPA. The Adjudicator's findings are summarised below:-
 - Regulation 17(4) of the 2014 Regulations provides that, subject to paragraphs (9) to (16), if the member did not accrue any membership in the 2014 section of the Scheme, as in Mr K's case, but had pension rights under what are termed 'the Earlier Schemes', the survivor's pension is calculated in accordance with the Regulations for the relevant Earlier Scheme. Regulation 17(12) then provides that where a male pensioner member dies leaving a widow, the survivor's pension only takes account of service after 5 April 1978.
 - The 1995 Regulations did not come into force until 2 May 1995. Mr K retired from the Scheme, and ceased to accrue membership, on 31 March 1995. At the time of Mr K's retirement, the applicable Regulations were the Local Government Superannuation Regulations 1986 (**the 1986 Regulations**). This was an Earlier Scheme as referred to in the 2014 Regulations. Extracts of the 1986 Regulations are shown in Appendix 3.

- Under the 1986 Regulations, the widow's short-term and long-term pensions are determined by Regulation E6. The long-term pension should be half the annual rate of the deceased member's retirement pension attributable to service in contracted-out employment immediately before the date of death. Mr K's ill-health enhancement did not qualify as contracted-out employment, because it was an augmentation of notional pensionable service, on the basis that his employment could not continue due to his ill-health, not a period of actual employment (or indeed contracted-out employment). The 1986 Regulations do not provide for any additional reckonable or qualifying service (or notional pensionable service) to be included when calculating a widow's pension.
- Mrs K's pension entitlements were calculated by taking Mr K's membership that was considered to count towards the widow's pension, then applying accrual rates of 1/80 and 1/160 for the short-term and long-term pensions respectively. The resulting figures were multiplied by Mr K's final pensionable pay to establish what the notional pensions would have been at Mr K's date of retirement. Annual increases were then applied up to Mr K's date of death. The Pension Increase multiplier tables, provided by HM Treasury, were used to determine the increases that should apply from Mr K's State Pension Age, when his GMP came into payment.
- Regulation E1(3) of the 1986 Regulations provides that Mrs K is entitled to a GMP at a weekly rate equal to half of Mr K's GMP. This meant that as part of the calculation of Mrs K's overall pension entitlement, Mr K's GMP had to be removed from Mrs K's basic entitlement, and her GMP entitlement added back in. The appropriate pension increases should then have been applied to her GMP. The Adjudicator concluded that this was the process followed in Mrs K's case.
- Mrs K's long-term pension was correctly calculated. That LCC and LPPA referred to the 1995 Regulations in their IDRPs in their complaint responses to Mrs K did not change the Adjudicator's view, because the provision was ultimately the same as the 1986 Regulations.
- Section 61(1) of the Equality Act 2010 provides that an occupational pension scheme must be taken to include a non-discrimination rule. Section 61(2) prohibits 'responsible persons', which includes scheme managers, from acting in a manner that discriminates against another person. Section 62 of the Equality Act 2010 enables managers of occupational pension schemes to make non-discrimination alterations to a scheme.
- Mrs K's complaint should not be upheld on the basis of age discrimination. Section 3 of the Equality Act (Age Exceptions for Pension Schemes) Order 2010 (**the EAO 2010**) effectively holds that it is not a breach of the non-discrimination rule for LCC to have applied the Regulations, regarding pensionable service accrued prior to 1 December 2006, in such a way as may otherwise have breached the non-discrimination rule. Section 3 of the EAO 2010 is shown in Appendix 5.

- With regard to the question of discrimination on the basis of Mrs K's gender and marital status, the Adjudicator considered if she was treated less favourably because of either characteristic, compared with a male and/or unmarried person. Neither a surviving male nor an unmarried partner, in an otherwise equal position to Mrs K, would have been entitled to a higher pension to that which Mrs K is entitled. So, it was reasonable to conclude that there had been no direct discrimination against Mrs K on the grounds of her gender or marital status.
- LCC is the administering authority for LCPF and LPPA carries out pensions administration on LCC's behalf. The various Scheme Regulations were established by Parliament. LCC and LPPA are responsible for administering the Scheme in accordance with the Regulations. They do not have the power to amend the Regulations and responsibility for any such amendments lies with Parliament.

33. Mrs K did not accept the Adjudicator's Opinion, so the complaint was passed to me to consider. Mrs K submitted further comments which are summarised as follows:-

- Neither LCC nor LPPA gave her full details of the calculation of her pension. It is apparent that TPO had a hard time to extract any relevant information from them.
- During all her communications with LCC and LPPA they did not explain that Mr K had contributed to the Scheme for a total of 34 years 256 days. They always suggested that it was only 21 years. This means that she feels the outcome was even more unfair.
- The exclusion of approximately 17 years' worth of Mr K's pension contributions is being justified by the term 'contracted-out employment', which relates to his GMP that was effective from 6 April 1978. This exclusion should have been applied to that particular element of the pension and not used as an excuse to wipe out all the other elements of previous contributions, made by an older member of the Scheme.
- It appears that TPO is relying heavily on explanations and representations from LCC and LPPA.
- LCC and LPPA have not only failed to identify discrimination but actively prevented its eradication.

34. LPPA accepted the findings of the Adjudicator's Opinion on its and LCC's behalf. It did not submit any further comments for consideration.

35. I have considered Mrs K's comments, in conjunction with the previous submissions for the complaint, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

36. Mrs K has complained about the calculation of her widow's pension entitlement from the Scheme. The Adjudicator explained in detail the reasoning for his view that LCC and LPPA had acted correctly, in accordance with the Regulations which govern the Scheme. These Regulations were established by act(s) of Parliament and neither LCC nor LPPA has the power to change them.
37. Mrs K disagreed with the Adjudicator's assessment and has asserted that he had relied too heavily on information provided by LCC and LPPA. However, Mrs K has not advanced any specific argument as to why she considers the Adjudicator's findings to be incorrect, save in stating that Mr K had contributed to the Scheme for a total of 34 years 256 days, whereas LCC and LPPA always suggested that it was only 21 years. However, I find that Mr K contributed only in respect of the period of his employment between 1974 and 1995 (broadly 21 years) and that the period of pensionable service that his pension was based on included a period of notional pensionable service included in the calculation of his pension as an ill-health pension but which was not an actual period of employment during which he paid contributions. I agree with the Adjudicator in finding no error in the calculation of Mrs K's pension.
38. I, and TPO's Adjudicators, must act impartially in the assessment of complaints. It is appropriate to consider submissions made by the parties to a complaint, but a finding of agreement with one particular party's position is not necessarily indicative of undue reliance on their submissions.
39. I find no maladministration by LCC or LPPA in the calculation of Mrs K's pension entitlement. This is for the reasons already explained in the Adjudicator's Opinion (and set out above).
40. Mrs K said she found it difficult to obtain information from LCC and LPPA in relation to her pension entitlement. Further, it was not made clear to her that Mr K's total length of Scheme membership was 34 years 256 days. The calculation of Mrs K's pension entitlement was a complex matter and while I sympathise with Mrs K's circumstances, I find no maladministration on this point.
41. Mrs K considers she has been discriminated against by LCC and LPPA. I do not find that there has been any unlawful discrimination against Mrs K or any breach of the Equality Act. This is for the reasons already explained in the Adjudicator's Opinion.
42. I do not uphold Mrs K's complaint.

Camilla Barry

Deputy Pensions Ombudsman
12 January 2026

Appendix 1 – Extracts from the Local Government Pension Scheme Regulations 1995

“Pensioner’s spouse’s short-term pension

F4.—(1) Subject to regulations F7 (remarriage and cohabitation) and G8(3), if a person who—

(a) was entitled to receive payments in respect of a retirement pension (other than a pension under regulation D19), or

(b) would have been so entitled but for regulation H6 (commutation in exceptional circumstances of ill-health) or Part I of Schedule D5 (re-employed pensioners),

dies leaving a surviving spouse or spouses, that spouse is entitled or, as the case may be, they are jointly entitled to a spouse’s short-term pension—

(i) if the spouse has one or more eligible children in his or her care, for six months after the deceased’s death, or

(ii) otherwise for three months after the deceased’s death.

(2) Subject to regulation F6 (post retirement marriages), where paragraph (1) applies, the annual rate of the short-term pension is a rate equal to the spouse’s retirement pension immediately before the date of death or the rate it would have been at that date apart from any payment under regulation H6 or the operation of Part I of Schedule D5.

Pensioner’s spouse’s long-term pension

F5.—(1) Subject to regulation F7 (remarriage and cohabitation), where regulation F4(1) applies the surviving spouse is entitled or, as the case may be, the surviving spouses are jointly entitled, at the end of the period in respect of which a short-term pension is payable under that regulation, to a spouse’s long-term pension.

(2) Subject to regulation F6 (post retirement marriages), where paragraph (1) applies and any new employment for the purposes of Part I of Schedule D5 (re-employed pensioners) was not a local government employment, the annual rate of the long-term pension is half the annual rate of the deceased’s retirement pension immediately before the date of death.

(3) For the purposes of paragraph (2)—

(a) any increase in the deceased’s retirement pension by virtue of regulation D2(2)(i),

(b) any reduction in that pension under regulation D13 or H2 or by virtue of a surrender under regulation D14, and

(c) any extinguishment of that pension by virtue of the operation of regulation H6 or Part I of Schedule D5,

shall be disregarded.

Post retirement marriages

F6.—(1) Where a widow was not her husband's wife at some time while he was in local government employment after 31st March 1972 and before the date on which he became entitled to a retirement pension—

- (a) the long-term pension under regulation F3,
- (b) the short-term pension under regulation F4, and
- (c) the long-term pension under regulation F5,

shall be calculated in accordance with paragraph (2).

(2) Where paragraph (1) applies the references in regulations F3(2), F4(2) and F5(2) to the retirement pension are to be construed as references to the part of the pension which is attributable to the period of his membership in contracted-out employment after 5th April 1978.”

Appendix 2 – Extracts from the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014

“1 Citation, extent, commencement and interpretation...

...In these Regulations—...

“the 1995 Regulations” means the Local Government Pension Scheme Regulations 1995;

“the 1995 Scheme” means the occupational pension scheme constituted by the 1995 Regulations;..

... “the Earlier Schemes” means the 1974, the 1986, the 1995, the 1998 and the 2008 Schemes collectively;

“the Earlier Regulations” means the regulations by which the Earlier Schemes were constituted;...

...3 Membership before 1st April 2014

(1) Notwithstanding the revocations effected by regulation 2 of these Regulations, and subject to this Regulation, the regulations listed in Schedule 1 continue to have effect so far as is necessary—

(a) so that membership accrued in the Earlier Schemes in respect of service before 1st April 2014, the pension rights accrued at that date, and any rights and obligations imposed on any person under those Schemes in relation to service before 1st April 2014, are preserved; and

(b) so that benefits are payable in accordance with these Regulations.

(2) In paragraph (1)(a) the expression “pension rights accrued” includes any right to any pension, lump sum, grant or other benefit due to or in respect of a member.

(3) A scheme manager responsible under regulation 2(2) of the 2013 Regulations (introductory) for the local administration of pensions and other benefits payable under those Regulations is also responsible for the administration of benefits pursuant to paragraph (1) of this regulation...

...17 Survivor benefits...

...(4) Subject to paragraphs (9) to (16), where—

(a) a member did not accrue any membership in the 2014 Scheme but had pension rights under the Earlier Schemes, or

(b) a member did accrue membership in the 2014 Scheme and has pension rights under the Earlier Schemes that have not been aggregated with the rights in the 2014 Scheme,

the survivor pension in respect of the rights under the Earlier Schemes are calculated under the Earlier Schemes notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations)...

...(10) Any calculation of the survivor pension payable under the Earlier Regulations to a person specified in paragraph (11) is only to take account of membership accrued by a member after 5th April 1988.

(11) The persons referred to in paragraph (10) are—

(a) the surviving civil partner of a member where the civil partnership took place after the member's active membership ceased;

(b) the survivor of a female married—

(i) deferred member,

(ii) deferred pensioner member, or

(iii) pensioner member,

where the marriage took place after the member's active membership ceased;

(c) the male survivor of a married same sex couple where the marriage took place after the member's active membership ceased;

(d) a cohabiting partner.

(12) Any calculation of any survivor pension payable under the Earlier Regulations is only to take account of membership accrued by that member after 5th April 1978 where—

(a) a member enters into a same-sex civil partnership or same-sex marriage after leaving active membership and dies; or

(b) a male deferred member, deferred pensioner member or pensioner member marries and dies leaving a female survivor, or

(c) a male deferred member, deferred pensioner member or pensioner member enters into an opposite-sex civil partnership and dies leaving a female survivor."

"Schedule 1

- The Local Government Pension Scheme Regulations 1995 *in so far as they have not already been revoked*;
- The Local Government Pension Scheme Regulations 1997 *in so far as they have not already been revoked*;
- The Local Government Pensions Scheme (Benefits, Membership and Contributions) Regulations 2007;

- The Local Government Pension Scheme (Administration) Regulations 2008;
- The Local Government Pension Scheme (Transitional) Regulations 2008;
- The Local Government Pension Scheme (Amendment) Regulations 2008;
- The Local Government Pension Scheme (Miscellaneous) Regulations 2008;
- The Local Government Pension Scheme (Amendment No. 2) Regulations 2008;
- The Local Government Pension Scheme (Administration) (Amendment) Regulations 2008;
- The Local Government Pension Scheme (Amendment) Regulations 2009;
- The Local Government Pension Scheme (Administration) (Amendment) Regulations 2009;
- The Local Government Pension Scheme (Miscellaneous) Regulations 2009;
- The Local Government Pension Scheme (Amendment) Regulations 2010;
- The Local Government Pension Scheme (Miscellaneous) Regulations 2010;
- The Local Government Pension Scheme (Benefits, Membership and Contributions) (Amendment) Regulations 2011;
- The Local Government Pension Scheme (Miscellaneous) Regulations 2012.”

Appendix 3 – Extracts from the Local Government Superannuation Regulations 1986

“Guaranteed minimum pension for certain pensionable employees and their widows

E1.—(1) This regulation applies if the employment of a pensionable employee in any local government employment is contracted-out employment.

(2) Where this regulation applies it overrides anything in these regulations that is inconsistent with it, except regulations E15 (reduction of retirement pension in the case of certain re-employed pensioners), E21 (power to compound certain small pensions) and M1 (forfeiture of rights).

(3) Where this regulation applies and the pensionable employee has a guaranteed minimum under section 35 of the Pensions Act in relation to benefits under these regulations—

(a) unless on ceasing to hold his local government employment he is entitled to a retirement pension at a higher rate, he is from the date on which he attains state pensionable age entitled to a pension at a weekly rate equal to that guaranteed minimum,

(b) if he attains state pensionable age while in local government employment, continues in the same employment for a further period of 5 years and does not then cease to hold it, he is (unless he consents to a postponement of the entitlement) entitled from the end of that period to so much of his retirement pension as equals that guaranteed minimum, and

(c) if he dies at any time and leaves a widow, unless she is entitled to a widow's pension at a higher rate she is, during any such period as is mentioned in section 36(6) of the Pensions Act, entitled to a pension at a weekly rate equal to half that guaranteed minimum...

... Amounts of widow's short-term and long-term pensions

E6.—(1) Subject to paragraphs (3) to (5), the annual rate of a widow's short-term pension is—

(a) where regulation E5(1)(a) or (b) applies and any new employment for the purposes of regulation E15 (re-employed pensioners) was not a local government employment, the annual rate of her husband's retirement pension immediately before the date of his death, disregarding any reduction under regulation E15,

(b) where regulation E5(1)(c) applies and the local government employment was not a new employment for the purposes of regulation E15, a rate equal to his pensionable remuneration, and

(c) where regulation E5(1)(c) applies and the local government employment was such a new employment, a rate equal—

- (i) if the retirement pension was not reduced under regulation E15, to the total of his pensionable remuneration in the new employment and the annual rate of the retirement pension, or
- (ii) if the retirement pension was so reduced, to the total of his pensionable remuneration in the new employment and the annual rate, if any, at which the retirement pension was payable.

(2) Subject to paragraphs (3) to (5), the annual rate of a widow's long-term pension is—

- (a) where paragraph (1)(a) applies, half the annual rate of her husband's retirement pension immediately before the date of his death,
- (b) where paragraph (1)(b) applies by virtue of regulation E5(1)(c)(i), half the annual rate of the retirement pension to which her husband would have been entitled if on the date of his death he had become entitled under regulation E2(1)(b)(i) (permanent ill-health, etc),
- (c) where paragraph (1)(b) applies by virtue of regulation E5(1)(c)(ii), half the annual rate of the retirement pension to which her husband would have been entitled if on the date of his death he had become entitled under regulation E2(1)(d),
- (d) where paragraph (1)(c) applies, the greater of—
 - (i) the total of half the annual rate of her husband's retirement pension and half the annual rate of the retirement pension to which he would have been entitled in respect of the new employment if on the date of his death he had become entitled under regulation E2(1)(b)(i), and
 - (ii) half the annual rate of the retirement pension to which he would have been entitled if on the date of his death he had become entitled under regulation E2(1)(b)(i) and notice had been given under regulation E16, and
- (e) where regulation E5(2) applies, half the annual rate of the retirement pension to which her husband would have been entitled if on the date of his death he had become entitled under regulation E2(1)(b)(ii).

(3) For the purposes of paragraph (2)—

- (a) the retirement pension mentioned in paragraph (2)(a) is to be taken to be the pension that would have been payable but for—
 - (i) any increase under regulation E3(2) (certain cases where additional service is reckonable),
 - (ii) any reduction under regulation E3(14) (early payments) or E15 or E31 (National Insurance), and
 - (iii) any surrender under regulation E20, and

(b) any retirement pension mentioned in paragraph (2)(b) or (d) is to be taken to be the pension that would have been payable but for any surrender under regulation E20, and if the pension would have been increased under regulation E3(2) or reduced under regulation E31 no account is to be taken of that increase or reduction.

(4) Where regulation E5(5) (post-retirement marriages) applies—

(a) the references in paragraphs (1)(a), (2)(a), (c), (d) and (e), and the second reference in paragraph (1)(c)(i), to the retirement pension are to be construed as references to, and

(b) for the purposes of paragraph (1)(c)(ii), any annual rate at which the retirement pension was payable is to be taken not to have exceeded the rate of,

the part of the pension attributable to the whole period of his service in respect of which the pension was payable which was in contracted-out employment.

(5) If greater than the annual rate calculated in accordance with paragraphs (1) to (4), the annual rate of a widow's pension is the rate obtained by multiplying one one hundred and sixtieth of her husband's pensionable remuneration by the length in years of the whole period of his service which was in contracted-out employment."

Appendix 4 – Extracts from the Equality Act 2010

“4 The protected characteristics

The following characteristics are protected characteristics—

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.

5 Age

(1) In relation to the protected characteristic of age—

(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular age group;

(b) a reference to persons who share a protected characteristic is a reference to persons of the same age group.

(2) A reference to an age group is a reference to a group of persons defined by reference to age, whether by reference to a particular age or to a range of ages...

... 8 Marriage and civil partnership

(1) A person has the protected characteristic of marriage and civil partnership if the person is married or is a civil partner.

(2) In relation to the protected characteristic of marriage and civil partnership—

(a) a reference to a person who has a particular protected characteristic is a reference to a person who is married or is a civil partner;

(b) a reference to persons who share a protected characteristic is a reference to persons who are married or are civil partners...

...13 Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.

(5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

(6) If the protected characteristic is sex—

(a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;

(b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy, childbirth or maternity...

...19 Indirect discrimination

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are—

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- race;
- religion or belief;
- sex;
- sexual orientation...

61 Non-discrimination rule

(1) An occupational pension scheme must be taken to include a non-discrimination rule.

(2) A non-discrimination rule is a provision by virtue of which a responsible person (A)—

(a) must not discriminate against another person (B) in carrying out any of A's functions in relation to the scheme;

(b) must not, in relation to the scheme, harass B;

(c) must not, in relation to the scheme, victimise B.

(3) The provisions of an occupational pension scheme have effect subject to the non-discrimination rule.

(4) The following are responsible persons—

(a) the trustees or managers of the scheme;

(b) an employer whose employees are, or may be, members of the scheme;

(c) a person exercising an appointing function in relation to an office the holder of which is, or may be, a member of the scheme.

(5) A non-discrimination rule does not apply in relation to a person who is a pension credit member of a scheme.

(6) An appointing function is any of the following—

(a) the function of appointing a person;

(b) the function of terminating a person's appointment;

(c) the function of recommending a person for appointment;

(d) the function of approving an appointment.

(7) A breach of a non-discrimination rule is a contravention of this Part for the purposes of Part 9 (enforcement).

(8) It is not a breach of a non-discrimination rule for the employer or the trustees or managers of a scheme to maintain or use in relation to the scheme rules, practices, actions or decisions relating to age which are of a description specified by order by a Minister of the Crown.

(9) An order authorising the use of rules, practices, actions or decisions which are not in use before the order comes into force must not be made unless the Minister consults such persons as the Minister thinks appropriate.

(10) A non-discrimination rule does not have effect in relation to an occupational pension scheme in so far as an equality rule has effect in relation to it (or would have effect in relation to it but for Part 2 of Schedule 7).

(11) A duty to make reasonable adjustments applies to a responsible person.

62 Non-discrimination alterations

(1) This section applies if the trustees or managers of an occupational pension scheme do not have power to make non-discrimination alterations to the scheme.

(2) This section also applies if the trustees or managers of an occupational pension scheme have power to make non-discrimination alterations to the scheme but the procedure for doing so—

(a) is liable to be unduly complex or protracted, or

(b) involves obtaining consents which cannot be obtained or which can be obtained only with undue delay or difficulty.

(3) The trustees or managers may by resolution make non-discrimination alterations to the scheme.

(4) Non-discrimination alterations may have effect in relation to a period before the date on which they are made.

(5) Non-discrimination alterations to an occupational pension scheme are such alterations to the scheme as may be required for the provisions of the scheme to have the effect that they have in consequence of section 61(3)."

Appendix 5 – Extract from the Equality Act (Age Exceptions for Pension Schemes) Order 2010

“3 Occupational pension schemes: excepted rules, practices, actions and decisions

It is not a breach of the non-discrimination rule for the employer, or the trustees or managers of a scheme, to maintain or use in relation to the scheme,

(a) those rules, practices, actions or decisions set out in Schedule 1

; or

(b) rules, practices, actions or decisions as they relate to rights accrued, or benefits payable, in respect of periods of pensionable service prior to 1st December 2006 that would breach the non-discrimination rule but for this paragraph.”