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Civil partnership spouse benefits ruling could spark ECJ challenge

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An employment tribunal ruling in favour of a gay couple fighting for pension rights could clear the way for a challenge in the European Court of Justice, a lawyer claims.

Silverman Sherlike partner Jennie Kreser said the ruling could challenge rules stating widowed civil partners are not entitled to pension benefits accrued by their partners before 2005.

Civil rights organisation Liberty brought a claim in an employment tribunal on behalf of Ian Waddy, 73, and his partner Trevor Skipp, 65, against Waddy's former employer Foster Wheeler.

Waddy worked for the global engineering firm until 1999 and receives a pension from the company. He has lived with Skipp for 40 years and the couple entered a civil partnership in 2006.

Foster Wheeler's scheme rules stated surviving spouses receive a widow's or widower's pension of 50% of the original pension, but civil partners receive nothing.

Under the Equality Act 2010, widowed civil partners are not entitled to their partners' pension rights accrued before civil partnerships became law in December 2005.

However, Liberty argued in the tribunal this contravenes the European Convention on Human Rights.

Foster Wheeler agreed to give civil partners the same benefits as heterosexual married couples within its pension scheme, but maintained its original rules were not unlawful and denies it has discriminated on the grounds of sexual orientation.

The firm will defend itself against the claim of discrimination at another employment tribunal in January 2012.

Liberty legal officer Corinna Ferguson said: "Foster Wheeler's reliance on the exemption in the Equality Act to defend the original rules underlines the urgent need for legal clarification in this area, which we hope this case will provide."

Kreser added she had expected the exemption for pension schemes in the Equality Act would be challenged.

"The exemption of civil partners does not contravene British statute, but if they wanted to push this all the way to the ECJ, they could," Kreser said.

"The ECJ may say it is not unreasonable to have the 2005 time limit in place, but sometimes it makes surprising decisions."

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