



European network of legal experts in gender equality and non-discrimination

FLASH REPORT

Country:	United Kingdom
Title:	Supreme Court ruling on discrimination in the field of Employment under Equality Act 2010
Date:	26 December 2018
Expert:	Lucy Vickers
<u>Context</u>	
Issue at stake:	Discrimination in the field of Employment and Pensions
Ground of discrimination:	Disability
Source:	National court decision, Williams v Trustees of Swansea University Pension & Assurance Scheme & Anor [2018] UKSC 65
Field:	Employment
Applicable law:	Equality Act 2010

Content

Case: Mr Williams was employed by Swansea University for 13 years until his retirement on ill health grounds at the age of 38. He satisfied the definition of “disability” under the Equality Act 2010. He was a member of the university pension scheme throughout his employment. He had worked full time for the first 10 years. He then moved to part time for his final three years of work, due to his disabilities. Part of his pension was provided on the basis of his final salary (for the years until 2009) and thereafter, until 2013 on career average earnings. As well as additional entitlements under the provisions for ill-health early retirement for a lump sum and annuity (which were not in dispute) he was also entitled to an enhancement calculated on the basis of his actual salary at the date of retirement and this enhanced element was under dispute in the case. Mr Williams claimed that the basing the enhancement on his actual (part time) salary amounted to less favourable treatment under the 2010 Equality Act because he was part-time as a consequence of his disabilities. Williams’ argument was accepted by the Employment Tribunal but rejected on appeal by the Employment Appeal Tribunal and the Court of Appeal. The decision was further appealed to the Supreme Court on the question of the meaning of the expression “unfavourable treatment” under the Equality Act 2010.

Decision of the Court: The Supreme Court dismissed the appeal. The treatment was not unfavourable. In this case, the treatment in question was the award of the pension. The reason for giving the relevant enhancement of the pension was because of his disabilities. If he had been able to work full-time, he would have had no right to the early and enhanced pension payment. Therefore, the award could not be said to be unfavourable.

Key points of analysis: The Supreme Court drew attention to passages in the Equality and Human Rights Commission’s Code of Practice which provides helpful guidance, and which confirms that there is a relatively low threshold before which disadvantage or

“unfavourable treatment” will trigger the requirement to justify the treatment as a proportionate means of achieving a legitimate aim under the Equality Act 2010. However, in this case, the only basis on which the claimant was entitled to pension at all at this age was by reason of his disabilities. Had he been able to work full-time (i.e. not been disabled) he would have had no right to a pension at this age. Therefore, it was not reasonable to hold that the treatment was unfavourable as a consequence of his disability.

Internet link source:

<https://www.bailii.org/uk/cases/UKSC/2018/65.html>, accessed 19 December 2018.