

Williams v Trustees of Swansea University Pension & Assurance Scheme: Supreme Court defines 'unfavourable' treatment for disability discrimination purposes

***Williams v The Trustees of Swansea University Pension & Assurance Scheme & Anor* [2018] UKSC 65**

The Supreme Court has ruled that a pension calculated by reference to a disabled employee's part time salary did not constitute "unfavourable" treatment for the purposes of s. 15(1) of the Equality Act 2010.

Mr Williams was employed by Swansea University for 13 years until he retired for ill-health reasons. He was disabled within the meaning of s. 6 of the Equality Act. For the last 3 years of his employment he worked reduced hours as a result of his disability. He successfully applied for ill-health early retirement under his pension scheme.

The pension scheme contained an enhanced element. This was payable immediately and without any actuarial reduction for early receipt. It was calculated on the basis of his actual salary at date of retirement. Mr Williams contended that as the calculation of the enhanced element was made by reference to his part-time salary, it constituted unfavourable treatment "because of something arising in consequence of his disabilities". It was therefore discrimination for the purposes of s. 15(1).

This contention was upheld by the Employment Tribunal but rejected by the EAT and the Court of Appeal. The Court of Appeal found that the treatment was far more favourable than it would have been if he had not become permanently incapacitated from his job.

Upholding the Court of Appeal's decision, the Supreme Court unanimously dismissed the appeal. Giving the only judgment Lord Carnwath found that it was necessary first to identify the relevant "treatment" to which s.15(1) applied, and then determine whether it was unfavourable. The treatment was the award of a pension, and there was nothing unfavourable or disadvantageous about it. The only basis on which Mr Williams was entitled to any award was by reason of his disabilities. The Appellant's case rested on an artificial separation between the method of calculation and the award to which it gave rise. Furthermore, in most cases there was little to be gained by seeking to draw distinctions between "unfavourable" treatment and analogous concepts such as "disadvantage" and "detriment", nor between an objective and a "subjective/objective" approach.

This is the first time the Supreme Court has considered what it means to be treated "unfavourably" for the purposes of s. 15 of the Equality Act 2010.