

***Williams v The Trustees of Swansea University Pension & Assurance Scheme
and Swansea University***

Comment: Keith Bryant QC, Saul Margo

In *Williams v The Trustees of Swansea University Pension & Assurance Scheme and Swansea University*, the Court of Appeal, in a unanimous judgment, has held that an employee was not unfavourably treated because of something arising in consequence of his disability.

This is a significant decision because it is the first time that the Court of Appeal has considered what it means to be treated “unfavourably” under s.15 of the Equality Act 2010.

Keith Bryant QC and Saul Margo of Outer Temple Chambers appeared on behalf of the Respondents to the appeal who were successful in resisting the appeal and in their cross-appeal.

The facts of the case, in brief, are that Mr Williams, the Appellant, suffers from a number of conditions including Tourette’s Syndrome, obsessive compulsive disorder and depression. After having worked full-time for many years he asked to work part-time hours because of his disability. His hours were reduced and at the point that he successfully applied for ill-health retirement in June 2013 (at the age of 38) he was working half of his original full-time hours.

Under the rules of the University’s pension scheme, Mr Williams was entitled to an enhanced pension based upon the salary he was receiving at the time he retired and a deemed period of pensionable service from his actual retirement date up until his normal retirement date, which in his case was a period of enhancement of over 28 years. He also received accrued pension without actuarial reduction for early receipt. Mr Williams claimed that by linking his enhanced pension to his final pensionable salary, he had been unfavourably treated contrary to s.15 of the Equality Act 2010 because of something arising in consequence of his disability and this treatment could not be justified. Mr Williams’ argument turned upon the fact that he had been working part-time hours because of his disability.

The Employment Tribunal upheld the claim but the Trustees and University successfully appealed to the EAT.

Giving the leading Judgment in the Court of Appeal, Lord Justice Bean made the following key findings:

- (a) Under the scheme rules the only employees entitled to retire early and to receive an enhanced pension were those who retired through ill-health and who were necessarily disabled within the meaning of the Equality Act 2010.
- (b) Mr Williams had been treated advantageously in comparison to non-disabled colleagues and there is no authority for the proposition that a claim under s.15 can succeed simply because an individual thinks he should have been treated better.
- (c) The simple fact that Mr Williams was working part-time hours because of his disability could not be enough to shift the burden onto the employer to justify the treatment. If it were, then it would be difficult to see why an employer would not also have to justify the pay it was giving to a disabled claimant who had never been able to work full-time and therefore had applied for and secured a part-time job. This cannot have been Parliament's intention.
- (d) There is no authority for the proposition that a disabled person who is treated advantageously because of their disability, but not as advantageously as a person with a different disability, has a valid claim under s.15 subject only to the justification defence. Were that so, it would call into question the terms of pension schemes or insurance contracts which confer increased benefits in respect of disabilities caused by injuries sustained at work, or which make special provision for disability caused by a particular disease, such as cancer.

Having dealt with the question of whether Mr Williams had been treated unfavourably, the Court of Appeal did not feel it necessary to consider the question of justification.

Critically, the Court of Appeal also allowed the Respondents' cross-appeal and found that the undisputed facts of the case were such that the treatment of Mr Williams could not amount to unfavourable treatment under s.15. As such, an order made by the EAT remitting the case to the ET for a full rehearing was set aside and an order was made dismissing Mr Williams' claims.