

**NORTHUMBERLAND COUNTY COUNCIL PENSION FUND
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Extract from Public Finance

Supreme Court gives woman right to late partner's LGPS pension

By:

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The Supreme Court has ruled in favour of a Northern Ireland woman who was denied Local Government Pension Scheme benefits after her long-term partner died suddenly.

Denise Brewster of Coleraine lost her partner Lenny McMullan in December 2009. They bought a house together in 2005 and became engaged just two days before his death. For 15 years, McMullan had been an employee of Translink, a public transport operator in Northern Ireland, and had paid into the LGPS.

Under the LGPS regulations that applied in Northern Ireland at the time of McMullan's death, co-habiting partners, unlike those who were married or in a civil partnership, did not have automatic entitlement to a survivor's pension if their partner died.

Instead, they were required to fill out a nomination form and also prove that they were co-habiting for two years before the form was sent and had been in that position for two years before the date of death.

Brewster claimed her partner submitted a nomination form before he died, but the Northern Ireland Local Government Officer's Superannuation Committee (NILGOSC), which administers the scheme, said it did not receive the form and refused to pay a survivor's pension.

She applied for a judicial review of the decision, and the High Court ruled that the nomination requirement was incompatible with human rights legislation. However, the Court of Appeal subsequently held that the nomination requirement was neither disproportionate nor unjustified.

Meanwhile, prompted by the High Court's judgement, LGPS schemes in England and Wales and in Scotland changed their regulations to remove the nomination requirement for co-habiting partners.

Following these changes, Brewster brought her case to the Supreme Court.

Five Supreme Court justices unanimously ruled in Brewster's favour. The judgement said the regulation that required McMullan to make a nomination should be disapplied and she should receive a survivor's pension.

In a summary of the statement, the court said that, as tests as to the nature of the relationship, already existed, the submission of a nomination form "adds nothing to this evidential hurdle".

Patricia Critchley, a senior associate at law firm Eversheds Sutherland, told *Public Finance* there should be no implications for the LGPS outside Northern Ireland as the nomination requirement was dropped when the new career average benefits scheme was introduced in 2014-15.

However, she added: "There could be significant implications for other major public sector schemes, such as teachers', NHS, police and civil service since they all contain the same nomination requirement. The only notable exception is the firefighters' scheme, which dropped the requirement when the new 2015 scheme was introduced.

"And all schemes may need to consider revisiting any past refusals to provide cohabitants' benefits where this was solely owing to the lack of a nomination form."

The Supreme Court's [full judgement can be read here](#).

- [Vivienne Russell](#)