

## **Sarah Margaret Richards v Secretary of State for Work and Pensions (Case C-423/04) ECJ 27-04-06<sup>1</sup>**

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On the 27<sup>th</sup> April 2006, European Court of Justice ruled that a British transsexual woman was discriminated against when she was treated as a man and refused a state pension.

When Sarah Richards reached the age of 60 in 2002 the Gender Recognition Act did not exist and so it had been impossible for her to obtain a GRC. She applied for a state pension but was told by the Pensions Agency that she would have to wait until she was 65 before receiving a pension - the standard pension qualification age for men.

The European Court of Justice found in favour of Ms Richards, who was born a boy in 1942. It ruled that the refusal to recognise a male-to-female transsexual as a woman and award a pension at 60 flouted several EU directives.

### **So What does this case REALLY MEAN in a European context.**

The case of Richards confirms the previous case of *K.B v NHS Pensions Agency*<sup>2</sup> (see) but with much more clarity and therefore certainty.

Both cases concerned pensions and they confirm that any national legislation, or workplace practice, which affords pay related benefits based upon sex or marital status, that results in a transsexual person who is permanently living in their new gender role being denied benefits is, in principle, incompatible with the requirements of Article 141 EC.

Article 141 states that "Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied." This is regardless of whether a person is employed in the public or private sector, and the word "pay" is broadly defined, to include any "consideration whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer".

As such a transsexual woman, who was living permanently in your new gender role, but was refused a state pension at the age of 60, can make a CLAIM to have it

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<sup>1</sup> The full decision can be found at <http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=C-423%2F04&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100>

<sup>2</sup> <http://www.pfc.org.uk/legal/kbecj.htm>

backdated. This will be of particular importance to those who continued to work after 60, as they can not only claim their pension up to the date of obtaining a GRC, but also they can claim back any National insurance contributions made whilst in work over the age of 60.

If a trans woman did not make a pension claim at 60, the case does not say they have an automatic right to the pension, but it is likely that a tribunal would be very considerate in these circumstances recognising that the failure to make a claim was due to qualified advice that such a claim would not be successful.

## **The Extension of the Richards Principle**

This case, however, goes far beyond the question of pensions.

According to the principle of the Richards case, any transsexual person who was living permanently in their new gender, regardless of surgery<sup>3</sup> can claim personal pay related benefits which were denied because their gender was still legally that of their natal sex. They can also claim marriage pay related benefits which were denied because they have been unable to marry their partner.

This not only includes benefits that come through national insurance schemes, such as pensions but also including working family tax credits based on married family status, and other benefits - such as employer's related gym membership, medical health insurance, travel credits etc.

**Claims must be made for back payments within a reasonable time of this decision**, i.e. a person has whatever is the national time limit to make a claim through an employment, or welfare benefits, tribunal **from the date they learnt about this decision AND realised that it is relevant to them and their your position.**

For an Employment Tribunal the time limit for submission of a completed IT1 form is 3 months.

For a Pensions appeal the period of time is generally 1 month.

## **Specific Advice for Trans Women to Claim Back-dated Pensions**

In all the following scenarios it does not matter whether you have a GRC, simply that you were living permanently as a woman when you reached 60 and still are doing so. The entitlement to your pension is not in regard to the ECHR decision in Goodwin and I v UK (2002) but relates to your rights under the Equal Treatment and Equal pay Directives of the European Union.

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<sup>3</sup> see K.B v NHS pensions Agency, where the benefits were awarded without any determination of surgical status

Those trans women, who were living permanently in their acquired gender, who reached the age of 60 **and applied but were consequently refused** their state pension, should now ask for their application to be reconsidered in light of the decision of the European Court of Justice in the case of [Sarah Margaret Richards v Secretary of State for Work and Pensions \(Case C-423/04\) ECJ 27-04-06.](#)

Those who had applied and, at some time in the past, have already made an appeal, you should ask for the appeal to be reconsidered in light of the decision of the European Court of Justice in the case of [Sarah Margaret Richards v Secretary of State for Work and Pensions \(Case C-423/04\) ECJ 27-04-06.](#)

If you **did not make a claim** and now wish to make a claim for back-dated state pension from the age of 60, then you should initially make a pension application enclosing a note such as the following:

I am a transsexual woman and have been living permanently as a woman since the (date). I reached the age of 60 on the (date) but at that time did not make a claim for a state pension because I was advised that as a transsexual women and, at that time, still legally regarded as a man my application for a pension would be unsuccessful.

I now wish to apply for my pension to be backdate to the (date) when I reached the age of 60, in light of the recent decision of the European Court of Justice in the case of [Sarah Margaret Richards v Secretary of State for Work and Pensions \(Case C-423/04\) ECJ 27-04-06.](#)

If a review is refused and all appeal opportunities have been used up, then you should make an application to an Employment Tribunal.

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