

CDC is key for nascent cultural revolution

The general election showed an increasing focus on collective over individual interests. CDC could fit right in, says Hilary Salt.

There's no shortage of analysis on the outcome of the general election. One I find particularly interesting is the interpretation as a cultural revolution - a vote against the identitarian, "woke" approach - against politics based on privileging individual rights over wider collective interests.

The jury may be out on this but if we are seeing a backlash, what does it mean for pensions policy?

A number of developments recently have started from the neoliberal focus on the individual. In the McCloud and Sargeant cases on public service schemes, courts decided that the approach taken to protection was directly age discriminatory and therefore not allowed.

In these schemes, protection meant leaving those within ten years of retirement in their existing schemes and introducing new schemes only for younger members. In many schemes, the overall settlement - including protection - was agreed collectively by unions representing their members in the public service.

And in some schemes, protection was recognised in advance as age discriminatory

with arguments advanced to meet the objective justification test as part of the equality assessment. An objective justification defence is possible if an action is designed to meet a wider social policy objective.

While these points could have formed a rationale for challenging any read-across of the original cases to other public service schemes, this was not done. Instead the principles of the cases were accepted across all the schemes - so promoting individual rights above wider issues - like the ability of unions to reach an agreement for all their members or of government to pursue wider social policy aims.



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For many in public service schemes, it isn't clear whether protection works in your favour until you leave and know the difference between your final and average salary and the effect of early or late retirement factors at your actual retirement. Therefore, the judgment means members may need a "better of" guarantee, meaning two benefit calculations.

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In the private sector, the Safeway decision has some similar issues. The scheme followed fairly standard procedure in the 1990s of changing its rules to equalise pension ages using an announcement to members (as its rules allowed) and following this up with a supplemental deed formally making the change. This widely used approach was seen as insufficient by the European Court of Justice, which ruled that the change was not validly made until the supplemental deed date. Interestingly the potential wider public interest test was not applied - despite the court having no idea of the effect this potential precedent has across the pensions industry. Again, individual rights are privileged above wider interests.

It's debateable whether this individual rights-based approach can work at all well with collective pension arrangements. Perhaps the nascent cultural revolution will see a return to an acceptance that often collective compromises can be better than individual negotiation and legal action.

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The Communication Workers Union (CWU) has worked extensively with Royal Mail to agree the details of what we expect will be the first scheme. The CWU recognised it needed to act collectively to find a solution to the problem of its members struggling to efficiently draw down an income from individual DC pots.

As a society, we need a similar solution for all those workers automatically enrolled in DC arrangements who will reach retirement needing a default approach to turning a pot of money into a wage in retirement. CDC could form a basis for doing that - viva la revolución cultural!



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