



Press Summary

20 November 2025

R (on the application of Jwanczuk) (Respondent) v Secretary of State for Work and Pensions (Appellant)

[2025] UKSC 42

On appeal from: [2023] EWCA Civ 1156

Justices: Lord Reed (President), Lord Lloyd-Jones, Lady Rose, Lord Richards and Lady Simler

Background to the Appeal

This appeal concerns a claim for bereavement support payment (“**BSP**”), a non-means-tested social security benefit which provides financial help to people whose spouse or partner has died. BSP will only be paid to the surviving spouse or partner if the conditions specified in the Pensions Act 2014 (“the **2014 Act**”) are met. These include the “**contribution condition**” described in sections 30 and 31, which requires that the deceased spouse or partner has paid relevant national insurance contributions for at least one tax year during their working life.

The respondent, Mr Jwanczuk, applied for BSP following the death of his wife, Suzanne Jwanczuk. Mrs Jwanczuk had a progressive degenerative condition that meant that she was severely disabled. During her working life, Mrs Jwanczuk was never in employment and never paid any relevant national insurance contributions. Mr Jwanczuk’s claim for BSP was therefore refused because the contribution condition was not met. The refusal was maintained in a reconsideration decision.

Mr Jwanczuk challenged this decision by judicial review. He claimed that his wife was unable to work due to her disability, and that applying the contribution condition in these circumstances constituted unlawful discrimination in breach of article 14 read with article 1 of the First Protocol (“**A1P1**”) to the European Convention on Human Rights (“the **Convention**”). Mr Jwanczuk relied on the decision in *O’Donnell v Department for Communities* [2020] NICA 36 (“**O’Donnell**”). In that case, the Northern Ireland Court of Appeal held that the contribution condition in the Northern Ireland pensions legislation unlawfully discriminated against the surviving spouse or partner of a deceased person who had been unable to work due to their disability. The relevant Northern Ireland legislative provisions were materially identical to those in sections 30 and 31 of the 2014 Act.

Mr Jwanczuk’s claim succeeded before the High Court and Court of Appeal of England and Wales. Both courts considered that they should follow *O’Donnell* unless it was clearly wrong

or there was a sufficiently compelling reason to depart from it. The Secretary of State's appeal to the Supreme Court therefore raises two main issues. First, how should the appellate courts in each of the UK jurisdictions treat one another's previous decisions on the effect of similar or materially identical legislation? Secondly, does the contribution condition unlawfully discriminate against Mr Jwanczuk?

Judgment

The Supreme Court unanimously allows the Secretary of State's appeal. Lord Reed and Lady Simler give a joint judgment, with which the other members of the Court agree.

Reasons for the Judgment

Issue 1: How should the appellate courts in each of the UK jurisdictions treat one another's previous decisions?

The Supreme Court holds that the answer to this question is governed by rules of practice based on comity and good sense, and not by the law of precedent [59]-[61], [92]. This means that decisions of any of the appellate courts of England and Wales, Scotland and Northern Ireland should be treated as persuasive authority when a similar legal point arises in one of the other UK jurisdictions [61], [71], [100]. However, the weight to be attached to them depends on a range of factors and involves the exercise of judgement [61], [93].

The courts have adopted a strict approach in relation to decisions concerning the interpretation of tax legislation. This reflects the particular characteristics of tax legislation, notably the constitutional and economic importance of uniformity across the UK as a whole [72]-[77], [96]. The approach to decisions concerning the interpretation of legislation on matters other than taxation is not so strict. The UK appellate courts should treat one another's decisions with great respect, since it is undesirable that there should be conflicting decisions on the construction of provisions which are intended to apply in the same way in more than one UK jurisdiction [100]. However, the appellate courts are not obliged to follow decisions they consider to be wrong [101]. While consistency across the UK jurisdictions is important, it is even more important that statutory provisions should be interpreted correctly [94]. Moreover, the practical importance of consistent interpretation depends to some extent on the nature of the provision in question [95]. The appellate courts are not required to identify a compelling reason or exceptional circumstances to justify a departure from the previous decision of another UK appellate court. Rather, they should explain clearly why they consider the previous decision to be incorrect, give what they consider to be the correct decision, and grant permission to appeal to the Supreme Court so that the difference of views can be resolved without undue delay [101].

In the present case, the Court of Appeal of England and Wales should have departed from the decision in *O'Donnell* if it considered it to be wrong. Indeed, there were good reasons for the Court of Appeal to do this. First, the Secretary of State chose not to amend the BSP policy for England and Wales in light of the decision in *O'Donnell*, indicating that consistency was not regarded as a matter of overriding practical importance. Secondly, the Supreme Court's decision in *R (on the application of SC) v Secretary of State for Work and Pensions* [2021] UKSC 26 was available to the Court of Appeal of England and Wales, whereas it had not yet been handed down at the time *O'Donnell* was decided. Thirdly, declining to follow *O'Donnell* would not have caused any serious difficulties; in fact, it would have maintained the status quo [102]-[105].

Issue 2: Does the contribution condition unlawfully discriminate against Mr Jwanczuk, contrary to article 14 read with A1P1 of the Convention?

Article 14 requires the Convention rights to be secured without unlawful discrimination on any ground "such as sex, race, colour, language, religion, political or other opinion, national or

social origin, association with a national minority, property, birth or other status” [25]. The Supreme Court concludes that Mr Jwanczuk has “other status” for the following reasons.

First, disability is recognised as a relevant “other status”. The European Court of Human Rights (“the **European court**”) has emphasised the need to prevent discrimination against people with disabilities and to foster their full participation in society. Indeed, disability has often been treated as a “suspect” ground for discrimination, requiring a particularly strict review of the reasons given to justify a difference in treatment [106]-[108]. Secondly, disability was a factor in the reason Mr Jwanczuk, who was associated with Mrs Jwanczuk through his marriage to her, was refused BSP. Associative discrimination has long been recognised in this context [111]-[112]. Thirdly, the Supreme Court rejects the Secretary of State’s argument that Mr Jwanczuk’s status is too susceptible to change to qualify under article 14 [113]-[117]. Finally, the Supreme Court is confident that the claimed status would be recognised by the European court and that there is no principled or constitutional objection to it [118].

The Secretary of State rightly accepts that, in principle, a decision to refuse BSP falls within the ambit of A1P1, which protects the right to peaceful enjoyment of property. Even non-contributory social security benefits can be possessions for this purpose [28], [119].

In being refused BSP, Mr Jwanczuk was treated in the same way as any other widower with a deceased spouse who made no national insurance contributions. He alleges discrimination because of the failure to treat his situation differently on account of his deceased wife’s disability. A breach of article 14 can arise where, without sufficient justification, there is a failure to treat differently those persons whose situations are materially different [119].

In this case, the Supreme Court concludes that the failure to make an exception to the contribution condition can be justified, applying the test set out in *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 39 [121]. The contribution condition has three aims, namely: (i) to encourage people to work to make the contributions needed to obtain contributory benefits such as BSP, reducing the stigma of claiming benefits; (ii) to simplify the benefit system to reduce administrative cost and complexity; and (iii) to ensure greater certainty so that individuals understand what they are entitled to and are able to plan for their financial future [128]-[134], [157]. All three of these aims are legitimate and rationally connected to the imposition of the contribution condition, which is justified and strikes a fair balance between the rights of individuals affected by the measure and the interests of the community as a whole [137]. Parliament should be given a wide margin of appreciation in cases, like this one, which concern policy choices about the allocation of scarce public resources. Parliament can be taken to have chosen not to enact an exception for those whose incapacity to work means that they will be unable to meet the contribution condition. This decision was an exercise of political judgement, and the courts should be very slow to substitute their own view for that of Parliament [138]-[153].

The Supreme Court’s finding that the contribution condition is justified renders the question of remedy academic. For completeness, the Court nevertheless holds that the interpretive obligation in section 3 of the Human Rights Act 1998 does not permit the courts to read an exception to the contribution condition into the 2014 Act [154]-[159].

Accordingly, the Supreme Court allows the Secretary of State’s appeal. Mr Jwanczuk is not entitled to BSP because the contribution condition is not met. This result may seem harsh, and the Supreme Court does not underestimate the vulnerability of people in Mrs Jwanczuk’s position or the difficulties faced by their families. However, the courts must respect the boundaries between legality and the political process [140], [160].

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)