

**LG/8/2009**

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To: Secretaries of Local Government Branches in England and Wales  
(Northern Ireland and Scotland – for information)  
Regional Heads of Local Government  
Registered Sectional/Professional Bodies - for information

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**UNISON wins ill-health transitional protection case which calls into question ill-health pension awards between 1 April 2008 and 30 September 2008 for LGPS England & Wales members**

**This circular updates branches in England and Wales on a successful case taken forward by UNISON where the employing authority awarded a Tier 3 ill-health pension, but failed to apply a transitional protection test to the detriment of the member. Branches are urged to contact UNISON's Pensions Unit with details of any members who received a Tier 3 or Tier 2 ill-health award between 1 April 2008 and 30 September 2008 (i.e. the transitional protection window) so that we can check whether this award is correct.**

The particulars of the case in question are as follows:

Ms X is a UNISON member whom received a letter from her employing authority on the 8 August 2008 stating that she qualified for a Tier 3 ill-health pension. This simply being payment of her accrued pension to date with no enhancement and the potential for it to cease after a maximum of 3 years.

No reference at all was made of her being covered by the transitional protection provisions that UNISON successfully lobbied for, covering ill-health decisions between the period 1 April 2008 and 30 September 2008.

In the transitional period, the employer first needs to consider whether the employee would be entitled to ill health benefits under Regulation 20 of the benefit regulations as amended by the LGPS (Amendment) Regulations 2008, and, if so, how much. The employer also needs to consider whether the

member would have been entitled to ill health benefits had the 1997 Regulations continued in force and, if so, how much. A comparison of the two amounts should then be made, having calculated any enhancement of prospective service at the rate of 1/60th accrual. For determinations made before 1 October 2008, the member is awarded the greater amount.

We wrote to Ms X's employing authority questioning her award making specific reference to the absence of transitional protection and received a completely inadequate response and therefore submitted a Stage 1 Internal Dispute Resolution Procedure (IDRP) complaint which was upheld on the 16 January 2009 (i.e. just over 5 months from the date of the original award).

It's a little bewildering to see why Ms X's employing authority did not originally grant her transitional protection, but the most apparent conclusion seems to be that they simply did not understand the regulations.

Our Stage 1 IDRP application referred to the fact that the law provides for this transitional protection, with the relevant provisions being Regulation 20(15) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 as amended by the LGPS (Amendment) Regulations 2008. We also pointed out that, to get a Tier 3 pension under the new ill-health Regs, a member must surely be deemed to satisfy the old ill-health regulation definition. This is essentially because the Tier 3 eligibility criteria is more onerous in that a gainful employment test is relevant whereas this is not so for ill-health eligibility prior to the 1 April 2008.

Although the old ill-health Regs require an available comparable job test with the same employer, it was difficult to see how this was relevant in Ms X's case given that there was no available comparable job!!

Hence, we argued that any outstanding issue in a transitional protection sense should simply relate to what basis of calculation would provide the greater award.

**Branches should note** that nearly every member who was awarded a Tier 3 ill-health pension during the transitional protection window should expect to have qualified for a greater entitlement under the old rules for the simple reason that the old regulations grant an enhancement, with the most common enhancement being 6 2/3rds years. Only the members who had less than 2 years service when they retired should be in Tier 3. It's also possible for a Tier 2 recipient to be potentially better off through receiving an enhancement based on the old ill-health regulations although this will depend on individual specifics.

The end result for Ms X is that she has now got a significantly greater pension and tax-free cash entitlement than she was originally quoted and furthermore, will now receive a pension for life instead of a temporary pension. **Very worrying she would not have received this if she had not contacted us.**

At the meeting of the Ill Health Monitoring Group on 19 February 2009 the CLG circulated the response to a survey that asked funds how many members had been retired into Tier 3. There was concern that of the 37 funds that replied,

over 60 members had been allocated to Tier 3 during the period of transitional protection.

**This case is clearly proof that members awarded Tier 3 and possibly Tier 2 ill-health pensions in England & Wales during the period 1 April 2008 and 30 September 2008 may have been incorrectly treated and may have valid claims for a greater entitlement based on the transitional protection provisions. Any such cases should therefore be forwarded to the Pensions Unit for greater investigation.**

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