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

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**A recent Employment Tribunal decision about age discrimination in
redundancy could potentially help many LGPS members who are to be
made redundant after 31 March 2010**

**This circular contains important information about a recent Employment
Tribunal decision which could be to the benefit of certain LGPS members
who might be made redundant after 31 March 2010.**

What is the issue?

If a LGPS member 50 years old or over is made redundant now, they have an unqualified right to access their LGPS benefits without reduction. In addition they could also qualify for a pension enhancement or a compensation payment, although this will very much depend on their employer's policy. See this link for more info http://www.unison.co.uk/pensions/pages_view.asp?did=7791.

With effect from the 1 April 2010, the Minimum Pension Age for everyone within the LGPS will increase to 55. (It's already 55 for new members with effect from the 1 April 2008.) Anyone made redundant on or after this date will need to be at least 55 years of age to attain the benefits described above. If they are less than 55, their benefits would become deferred, although they could potentially apply to draw them at 55 on an early retirement basis. The employer's consent would be necessary and the benefits would be reduced for early payment.

If made redundant after 31 March 2010 and any subsequent ? (previous ?) early retirement application post 55 is refused or not considered attractive by the member, then they would have to wait to at least 60 years of age to be eligible to access their pension benefits and 65 if they wanted to access them without any reduction being applied. They could always transfer to a personal or stakeholder

pension after 55 if they really needed their pension income, but this is very unlikely to be in their better interests.

It is unfair for an employer to potentially nominate a redundancy date which is likely to have a significant pension detriment on a member when it could be brought forward.

Can anything be done about employers who effectively declare an individual aged between 50 and 55 redundant now, but not implementing it until after 31 March 2010, in order to save money?

We believe that based on a recent Employment Tribunal ruling, such a practice might be viewed as unfair and discriminatory based on age, subject to the particular circumstances of the case. It should also be remembered that Employment Tribunal decisions do not set legal precedent.

The case in question is that of Mr X who was wrongly made redundant by Tower Hamlets at the age of 49 so the employer could escape the cost of bringing the unreduced pension into payment. This would have been the case if they had made the member redundant at 50. The same could apply to anyone who is now made redundant or dismissed on the grounds of efficiency just before the age of 50, if it could be established that there was a delay by the employer to circumvent the Regulations.

The same could be potentially argued if they are 50 prior to 1 April 2010 and their employer appears to be waiting for them to reach 50 prior to dismissing them on redundancy grounds. Branches should bring the specifics of the Mr X case to the attention of any employer who is threatening redundancies now for people aged 50 to 55 but not looking to implement them until on or after 1 April 2010.

What are the specifics of this Employment Tribunal Case?

Mr X was made redundant by Tower Hamlets seven months before his 50th birthday. This means that he had to wait to 65 in order to have an absolute right to draw unreduced pension benefits. If made redundant on or after 50, he could have accessed his LGPS benefits immediately, without any reduction being applied. In addition, he may also have benefited from additional pension/service being awarded or a compensation payment.

Tower Hamlets had hoped to have a 15 year period of grace before they had to pay Mr X's pension with one manager boasting "*If he goes now, we do save the pension*".

But an Employment Tribunal found the Council had acted unfairly in dismissing Mr X who had worked for Tower Hamlets for 33 years and had discriminated against him because of his age. He is subsequently in line to be awarded £1 million in compensation, which is understood to be the largest age discrimination payout ever in Britain.

Where can I view further details of this Employment Tribunal decision?

The Employment Tribunal decision can be viewed by going to <http://employment.practicallaw.com/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1247483922750&ssbinary=true>.

If branches believe this situation applies to any of their members please let the Pensions Unit know. Please remember though that success in such cases cannot be guaranteed and will depend on the specific tools of the case.

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Best wishes

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