



Department for Communities and Local Government

4 February 2016

Mr Terry Edwards
Senior Pensions Adviser, Workforce Team
Local Government Association
Local Government House
Smith Square
London
SW1P 3HZ

Dear Terry

LGPS part time buy back and past requirement to use an Employment Tribunal

You asked me to look at the process when a member seeks to buy Local Government Pension Scheme (“the Scheme”) service as a result of the reversal of the decision to exclude part time employees. You have pointed out to me that the requirement to make representation via an employment tribunal seems to unfairly penalise an employee as the recent introduction of costs, to apply through an employment tribunal, might have deterred a member who would otherwise have applied. You indicated that there are still a number of cases to be dealt with. I am sorry that I have not addressed this issue sooner.

Having consulted colleagues here, I am of the view that if there was an historic provision which purported to prevent part-time workers from joining the Scheme which has been held as a matter of European Union law to be unlawful, that provision ceases to bind the authorities who are responsible for administration of the Scheme. It seems to me that the legal position of a person who has applied to a tribunal and then upon reaching an agreement with the employer withdraws the claim, is identical to the legal position of a person who has just come to an agreement with the employer. The only case to be contrasted with this is the position of a person who applies to a court or tribunal and has a judgment to the effect that the discriminatory provision is disapplied and that is not the position here.

So I can see no legal necessity for anyone to have to go through the process of making an application to a tribunal and then withdrawing that application upon settling with the employer. It is open to local government workers, scheme employers and administering authorities to resolve any issues relating to the historic discrimination against part-time workers and “buy-back claims” administratively.

Conclusion

If an individual wishes to assert rights to membership and to pay contributions relating to an historic period when the Scheme regulations purported to restrict eligibility, and the employer is willing to entertain the claim and to make the appropriate arrangements,

these can be done without the need for any application to the courts or to a tribunal. I am of the view that any dispute about whether an individual is entitled to any sort of relief must, of course, be litigated through the courts or a tribunal and I am clear that I am not offering a view on the merits of any individual case or telling employers what they must do.

Yours sincerely,

A handwritten signature in black ink that reads "Lynda Jones". The signature is fluid and cursive, with "Lynda" on the first line and "Jones" on the second line.

Mrs Lynda Jones