

LGPC CIRCULAR NO. 94 - FEBRUARY 2001

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PART TIMERS' PENSION RIGHTS

DECISION OF THE HOUSE OF LORDS IN THE CASE OF

SHIRLEY PRESTON AND OTHERS v WOLVERHAMPTON

HEALTHCARE NHS TRUST AND OTHERS

AND DOROTHY FLETCHER AND OTHERS v MIDLAND BANK

PLC

Purpose of the Circular

1. Authorities will no doubt be aware that on 8 February 2001 the House of Lords reached its long awaited decision in respect of the above pensions for part-time workers case. A copy of the House of Lords judgement is available on the Employers' Organisation website at www.lg-employers.gov.uk

2. This Circular has been issued to inform authorities of the House of Lords judgement.

Background

3. The background to the 'Preston' and 'Fletcher' cases was covered in LGPC Circular 85 of May 2000. A copy of the Circular (and the ECJ judgement) is available on the Employers' Organisation website at www.lg-employers.gov.uk/pensions.html

House of Lords Judgement

4. The House of Lords determined in its judgement delivered on 8 February 2001 that:

- applicants who lodge a claim for retroactive membership of a pension scheme will be time barred if their claim was lodged more than 6 months after the cessation of the contract of employment
- where there has been a stable employment relationship resulting from a succession of short-term contracts concluded at regular intervals in respect of the same employment to which the same pension scheme applies, the 6 month time limit runs from the end of the last contract in that stable employment relationship period
- where a stable employment relationship does not exist, the 6 month time limit runs from the end of each separate contract of employment

Subject to the above (and to there having been discrimination),

- applicants may retroactively gain membership of the LGPS back to 8 April 1976 or the date of commencement of employment, whichever is the later, provided the "relevant pension contributions are paid" by the applicant, but any pension benefits payable in respect of that service will only be those that would be due to be paid in respect of the period after the date of the application to the Employment Tribunal.

5. The House of Lords hopes, and indeed expects, that agreement can be reached as to which of the applicants had a stable employment relationship, otherwise the question will have to be referred back to the Employment Tribunal.

What actions should be taken?

6. The implications of the judgement are currently being considered and any member who makes an enquiry should be informed that this is the case.
7. No immediate actions should be taken, except authorities may wish to consider undertaking some preliminary work to identify those claims which fail the 6 months time limit (see paragraph 4 above).

8. It is understood that the National Association of Pension Funds is working with the Inland Revenue and the DSS to identify and resolve some of the administrative complications arising out of the House of Lords decision, including ways of obtaining income records for past years (where relevant information within an authority no longer exists or is incomplete), clarifying the SERPS position and seeing if the 15% contribution limit can be lifted for members to whom the House of Lords decision applies.

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