

EQUAL PAY & THE LGPS

Treatment of Equal Pay Settlements for Pension Purposes

Equal pay compensation (back pay) should be treated as pensionable pay for the purposes of the Local Government Pension Scheme.

Doubt Caused by a Recent LGPS Amendment

A recent amendment to the Local Government Pension Scheme which is backdated to apply from 1st April 2008, appears to exclude equal pay settlements from pensionable pay. This only applies to England and Wales, the schemes in Northern Ireland and Scotland do not seem to have replicated this amendment. The revised LGPS (England & Wales) Benefit Regulations now include the following exclusion from pensionable pay:

(g) any payment by way of compensation for the purposes of achieving equal pay in relation to other employees.

This would mean that members who receive equal pay compensation are not able to count this towards their pension. GMB said this was wrong and raised it with CLG.

GMB Sought Clarity from CLG

Following GMB's correspondence with CLG, they have confirmed that their intention was only to exclude compensation for distress or inconvenience (the damages element that is rarely paid). The new regulation is not intended to stop members incorporating their equal pay compensation into their pensionable pay.

"The amendment is not intended to exclude from the definition of pensionable pay any increases in salary, even those which have been awarded to achieve equality. Rather, the amendment was intended to apply only to the damages element of payments made - for example, compensation awarded because the employer recognises that distress has been caused as a result of a particular example of unfairness."

CLG letter to GMB 5th March 2010

In fact this should happen automatically. The member's contributions on this amount should be deducted and their pension records adjusted to take into account the higher level of pensionable pay they should have had.

"It is not felt there is difficulty for all concerned to differentiate between such compensation and pay, since the latter should always be apportioned and attributed to the appropriate years and suitable deductions made for income tax, National Insurance and LGPS contributions."

CLG letter to GMB 5th March 2010

Despite this, we know that some authorities have had difficulty making this distinction. It is hoped that this clarity can be used to ensure employers apply the correct process.

As far as the LGPS is concerned, back pay should be spread over the years to which it relates, not counted as one payment in the year the settlement is reached (as reflected above).

Next Steps

GMB should ensure that members receiving settlements have them included in their pension to reflect the years covered by the settlement. Contrary to the views held by some employers, this is not discretionary or optional on the part of either the employee or the employer. Back pay is pensionable in the LGPS and must be treated as such, spread over the years to which it relates.

It is also necessary to ensure that settlements already in place included making the necessary adjustments to pensionable pay. Members may be required to pay pension contributions on this money. As pensionable pay both members and employers may be deemed liable for the contributions owed on the back pay. GMB lawyers have been notified.

Brian Strutton

Brian Strutton
National Secretary - Public Services Section

Join GMB at www.gmb.org.uk/join