

EMPLOYMENT TRIBUNALS

To all employing respondents in the public sector in England & Wales 8th August 2003

Dear Sir/Madam

Re: Part-time worker pension cases – the public sector

I am directed by Mr Macmillan, the Chairman with national responsibility for the management of these cases, to write to all employing respondents in the public sector as follows:

"At the case management conference on the 31st March 2003, I gave directions for the future management of public sector cases. These included a requirement for all employing respondents (that is all respondents other than the Secretary of State) to serve schedules on the tribunal before the 1st August, indicating in respect of each claim brought against it whether:

- i. the claim can now be settled
- ii. on the information currently available it is not known whether the claim can be settled, or
- iii. the claim is not yet ripe for settlement. In this case respondents were asked to identify the issues preventing settlement.

The third category was principally intended to give respondents the opportunity to identify cases affected by a test issue which had been appealed. However, following guidance given by the Local Government Pensions Committee (LGPC) a number of respondents have also used it to identify cases which they say should now be struck out. Whilst I have no objection to such cases being identified at this stage, the way in which it has been done is causing two problems which need to be rectified as a matter of urgency.

Because the cases to be struck out have been identified in sometimes very long schedules it is not practicable for them to be sent to individual applicants for comment. In addition the reason why the claim should be struck out is often given in only the most cryptic terms, often by reference LGPC Circular 140 which will of course be entirely meaningless to the applicant.

I therefore direct that by not later than the end of September 2003 in respect of every case in your schedule which you have asked to be struck out, you are to enter a formal notice of appearance (or where appropriate, an amended notice of appearance) at the office of the tribunal where the claim is lodged, explaining why the claim should be struck out. The reasons must be in plain English and should not refer to LGPC Circulars or any other document to which the applicant will not have access. A notice of appearance which simply attaches a copy of the circular and says "see para x" will not be accepted. The notice (or amended notice) of appearance will be considered by the nominated Chairman in the region who will either invite the applicant to show cause why the claim should not be struck out; require the respondent to show cause why the notice or amendment should not be struck out as misconceived; or list the case for a Case Management Discussion or a preliminary or full hearing as appropriate.

Please note that if your reason for applying for the claim to be struck out is that as a result of a statutory novation you are not the correct respondent, I have recently issued the following Direction with the agreement of the Association of Colleges, the LGPC and the Treasury Solicitor:

Where an applicant has named several respondents including the respondent to which liability has transferred as the result of a statutory novation, if the claim will be settled in full as a result of the recent agreement in the public sector, there is no requirement for a separate decision or other action dismissing the claim against respondents which have been incorrectly joined."

In consequence, there is no need for you to enter a notice (or amended notice) of appearance in such a case but you must notify the National Pensions Co-ordinator, Clayton Hayward, by e-mail to pensions@ets.gsi.gov.uk that that was the reason for indicating in your schedule that the claim should be struck out.

For the avoidance of doubt, claims cannot be considered for strike out at this stage if the point on which you intend to rely is the subject of an appeal in the test cases. Again, if that was the reason for applying for the claim to be struck out there is no need for you to enter or amend an appearance but you must notify Mr Hayward accordingly, to the e-mail address above.

If as a result of reconsidering your schedule in the light of this Direction, or for any other reason, you realise that you have made an error in your schedule and that the claim cannot be struck out at this stage you must

inform Mr Hayward by sending him an email at pensions@ets.gsi.gov.uk detailing the changes. These changes will then be forwarded to the trade unions for their information.

It has also been drawn to my attention that in some instances respondents have given unclear, confusing, even unintelligible reasons for explaining why a case is not yet ripe for settlement. Over the next few weeks I shall be reviewing all such cases and will give directions to respondents to provide such further information as seems appropriate.

I would remind you that in all cases in respect of which you have indicated that on the information currently available it is not known whether the claim can be settled, it is your responsibility to send a copy of the agreed questionnaire to the applicant to obtain the information which you require [see Information Bulletin No. 8 para. 6(d)]

If you have not yet sent in your schedule this should now be done as soon as possible. The Direction to enter (or amend) a notice of appearance in respect of any claim that you wish to have struck out applies equally to schedules yet to be delivered and should also be done no later than the end of September. In addition, there still appear to be some outstanding schedules of cases which must fail as a result of the August 2002 test case decision. These schedules were due by 31st January 2003 [see Information Bulletin No. 7 para 9] and should now be sent to Mr Hayward without further delay.

Finally, may I remind all respondents of the importance of this exercise in bringing these claims to an early conclusion, one way or another and to draw your attention to the opening words of para 6 of Information Bulletin No.8. A respondent which files a schedule which is so lacking in information as to be totally unhelpful or which appears to have merely paid lip service to the directions e.g. by answering "not known" in every case, may be deemed to be in material non-compliance with my Directions."

In addition to Mr Macmillan's directions above, and following some queries from employers, I can confirm that respondents should e-mail additional schedules to me every three months detailing any new cases they have received and indicating which category they fall into.

Yours faithfully

Clayton Hayward
National Coordinator
Part Time Worker Pension Cases

cc Test case trade unions