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Our Ref: KG/III Health
Your Ref:
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Please ask for: Kevin Greenough

Date: 7 August 2008

Dear Nicola,

**Local Government Pension Scheme
Draft Statutory III Health Guidance**

I refer to the Department's letter dated 1 July 2008 and the draft Statutory III Health Guidance that was attached and submit the following technical comments on behalf of the Merseyside Pension Fund which is administered by Wirral Council.

It is noted that you request that comments should be based on the contents of the guidance and whether it reflects the requirements of the regulations, referring any questions on the actual regulations for consideration by the ill health monitoring group. You will of course appreciate that it is extremely difficult to comment on statutory guidance on the application of regulations without raising questions about the correct interpretation of the regulations themselves. The fact that the first edition of Question and Answers on ill health benefits has only been circulated by the Department today has also delayed the response.

The Fund notes and is concerned by the Department's comment that "the guidance and Q&A's note does not replace the Regulations and practitioners will want to seek their own legal advice as necessary". The Fund believes that as a matter of principle that the Regulations should be clearly and correctly drafted and contain sufficient information to apply them without the need to seek legal advice on their meaning and application except in exceptional circumstances.

Please find attached comments for your consideration.

Should you wish to discuss any of the items raised in this response do not hesitate to contact me.

Yours sincerely

Director of Finance

**MPF - Comments on Statutory Ill Health Guidance
And Aide Memoire Edition 1**

- 1) Paragraph 35 details that a 3rd tier member is required to notify the previous employer when employment is found and the employer needs to consider whether what constitutes “gainful employment”. It is essential that in making this decision all employers act in a consistent and rational basis. The further guidance on this issued today **Q&A 32** is welcome, although the answer appears to confirm further complications for employers and gives employees opportunities to avoid being subject to the re-employment provisions. By ensuring either that they are under 30 hours per week or by having a break of a day or more between new short term employment contracts the employee will in many cases be able to avoid having the third tier pension suspended.
- 2) Paragraph 36 refers to a review being undertaken by the employer when 3rd tier payments have been made for 18 months.

Why is there no facility to allow the employer to carry out a medical review earlier than 18 months and potentially re-determine the case as tier 2 from that date if the conditions are satisfied then or to suspend the payment if the person is then found capable of gainful employment?

We believe that rather than relying on guidance or Q & A's (**Q&A 5**) there should be a regulatory requirement on employers to undertake a further medical review after 3 years before the 3rd tier payment ceases. This would be of great assistance in any subsequent appeals made by the individual.

- 3) Paragraph 43 - The Fund is concerned at the additional complication introduced into the Scheme for employers, that as well as having to carry out the normal tier 3 reviews and potentially greatly increased numbers of IDRPs ill health appeals, they will also be required to review a suspended tier 3 case on application by the former employee “**at any time**” up to NRD, with a view to re-determining the benefit payable as a tier 2 case with 25% enhancement up to NRD.
- 4) Paragraph 39 concerns protection for members who have had a reduction in hours due to the condition which has led to the ill health retirement. It would be helpful if the statutory guidance made it explicit that this protection applied to both the ill health enhancements and the actual service at reduced hours.

It would also be appreciated if the guidance could explain whether there is any implication on the final salary to be used if the membership is deemed to be whole time.

That is - should the individual be treated as a part-time employee and the final pay be pro-rated to the whole time equivalent, or are they to

be treated as whole time and their actual pay (at reduced hours apply)? For the majority of cases the protection on final pay given under Regulation 8 & 10 may suffice, however there may be cases where the reduced hours are in place for a period exceeding 10 years.

It would also be appreciated if the guidance could clarify whether this protection applies to any reduction in hours due to the medical condition or is restricted to only those reductions which take place after 1 April 2008 the date when these regulations come into effect.

- 5) Although not directly an ill health matter itself, it is also a consideration that the **benefits payable upon death in service** are based upon the entitlements available under Regulation 20. In such circumstances the provision of a certificate concerning the part-time protection signed by an approved medical officer as required by regulation 20(12) (b), may prove to be both problematic and distressful for the next of kin.

It would appear appropriate that for death in service cases that a decision by the employer based upon medical evidence available at the time the reduction in hours occurred may be sufficient. A comment on this within the statutory guidance would be welcome.

- 6) Paragraph 41 concerns the status of a member when the 3rd tier payment is discontinued. As a “pensioner with deferred benefits” it would be helpful if the guidance clarified when the benefit would again become payable either: -

- At age 60 with possible actuarial reduction (though new GAD factors may be required as the retirement grant element of pre April 2008 membership will have already been paid without reduction), or
- At age 65 without reduction, or
- Under the provisions of Regulation 31.
- Or if the person is subsequently determined to meet the criteria for payment of tier 2 benefits (Paragraph 43)

- 7) Paragraph 44 concerns transitional protections. As with the earlier comment regarding the application of regulation 20 in death cases, it would be most helpful if the guidance would confirm that any enhancements awarded under the provisions of regulation 20 (15) also applied to the **calculation of dependants pensions**.

Specifically would the pre April 2008 enhancements apply to a **nominated co-habiting partners benefits**? As nominated co-habiting partners are not recognised by the 1997 regulations under which the protected enhancements are awarded. It would be helpful if the guidance could also confirm whether protected benefits awarded under the 1997 regulations carry the 10 year death grant guarantee of the 2008 scheme, or the 5 year guarantee of the 1997 Regulations.