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UNDERSTANDING THE 85 YEAR-RULE

If you joined the Local Government Pension Scheme before 1st October 2006 and your age and length of service add up to 85 or more you qualify for some potential benefits under it's so called 85 Year Rule. However, the scope of the rule have changed over-time, becoming more open to interpretation and difficult to understand. Here, Napo's pensions lead, Dean Rogers, summarises how it used to work and how it works now.

The facts around the rule have not fundamentally changed since it was introduced in 2006. If you have been a member since then and your service and age added together come to 85 or more you qualify to use it. What has changed and what varies is what it gets you.

It was pretty normal, in the past for the pension you got to be enhanced. At the very least, it protected you from reductions to your pension for drawing it early and for longer. That was by design. The rule came in in a period when the public sector had been regularly re-organising and reducing staff. Anyone between 55 and 60 being made redundant qualified for immediate access to their pension, with protections against loss and a redundancy payment. Therefore, the 85 year-rule was cheaper way of encouraging someone who may have wanted to retire early to move on specifically before they were 60 and could usually choose to retire anyway.

Until 2014 your pension was capped at half your salary – with 1/40th for every year's service in the Classic 80th's scheme or 1/30th for each year from 2004. This meant that if you qualified under the 85 year-rule you were pretty close to having earned their full pension anyway and so the cost of meeting enhancements or the protections for the employer was limited.

However, when the CARE scheme came in the costs and context changed. Members get a much better return on their contributions under the CARE scheme – 1/49th of all earnings including overtime, non-consolidated pay awards and bonuses is a lot more than 1/60th of your guaranteed final salary. The cap is also removed so someone working for more than 30 years can potentially get more than half their final salary.

The retirement age was also extended - eventually to 67 for some members now approaching 55 who qualify under the rule. Enhancements were calculated up to someone reaching 60 not 67 so they're more expensive but more people also qualify for protections – the 85 year-rule wasn't relevant for many over 60 before but now the protections are afforded to people between 60 and 67 as well. More people could potentially qualify. Consequently, the cost for employers (and for the pension scheme) would massively increase unless the employer exercises greater discretion around enhancements.

The enhancements had always in fact been used at the employers' discretion. Now, where someone is under 60 the discretion is very rarely if ever being used. With more over 60's potentially qualifying the formula relating to the protections has been adjusted and is now so complicated that each case needs to be calculated independently…the old ready reckoners are obsolete.

Another CARE change was that anyone over 55 can now ask to retire. This in a way extends the 85 year rule to anyone over 55 almost regardless of how long they've been in the LGPS. However, someone under 60 who qualifies under the rule could seek to access the enhancements by asking their employer to "switch-on" the rule. This request prompts the employer to calculate the cost of protections and/or enhancements and then deciding if they'll agree – not to retirement (that's a right) but to paying enhancements / protections. Some HR advisors have been confused about this and have directed people to the 85 year rule instead of Ill-Health Early Retirement. This is wrong.

Any member who thinks they may "have" to retire due to ill-health should contact Napo for help, advice and support.

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25 January 2019