

Settlement of the Part time Pension Claims Guidance for the Further Education Sector

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Settlement of the Part time Pension Claims Guidance for the Further Education Sector

Introduction

This document is part of the agreement between the Employers Associations and the Trade Unions in the settlement of the Preston Part time Cases.

Important notes

1. Agreement has been reached between the *relevant trade* unions and the employers associations that the simplest and fairest method of constructing retrospective pension contributions and service credit is to use the notional salaries, together with the Settlement Model.
2. It is further agreed that Respondent Colleges (RC) will use the guidance agreed between the employer associations and the relevant trade unions to calculate retrospective service and TP pension contributions.
3. The agreed spreadsheet, to be used to calculate contributions is the Government Actuary Department (GAD) Settlement Model. Full explanation of this model and its use is discussed later in this guidance document.
4. The Notional Salaries must only be used to construct salary data for part time pensions cases and not for any other purpose.
5. RC are recommended to consider all the evidence provided by the Applicant together with all the information they may have and to use the information and advice in this guidance to reach a written agreement with the Applicant.
6. On the rare occasions where this is not possible by correspondence, the RC and the Applicant should meet to provide clarification and to seek to resolve any outstanding issues.
7. The Applicant should have the right to be accompanied by a trade union representative or work colleague.
8. The Department for Education and Skills has agreed that employer contributions for retrospective membership of the Teachers Pension Scheme shall be taken into account at the next scheme valuation and NOT through a direct charge on individual RC, Subject to Part 17, Para 7.
9. However, the Department will audit claims, verified by RC, to check that RC are carrying out their functions strictly in accordance with this guidance. If the Department is not satisfied that the process has been carried out in accordance with this guidance, the RC contributions will be met by direct contributions from individual RCs.

PART 1

Part time pension claims background

1. It has been directed by The European Court of Justice that part time pension claims can be retrospectively accessed back to 1976.
2. In the FE sector, this may include periods of employment before incorporation (April 1993) when the Applicant was employed by the local authority.
3. The Employment Tribunal (ET) decided that liability for periods of employment with Local Authorities will transfer to FE institutions, if the employment was transferred under the terms of the Education Reform Act 1988. This is described as Statutory Novation.
4. Institutions which have merged with other HE or FE institutions will be in a similar position – the liability for part time pensions claims will transfer from the transferee to the transferor.
5. The Employment Tribunal Information Bulletin Number 8, issued in April 2003, advised that “the government has agreed to settle the majority of the public sector claims”.

PART 2

Recent developments

1. Employment Tribunal Bulletin Number 8 requested employer respondents, in the education sector to:
 - a) e-mail to the ET, by 1 August, an Excel schedule of the part time pension claims known to them;
 - b) send a copy of a questionnaire (to be supplied by the pension administrators), by 1 October to all Applicants in the “can settle” and “not known” categories.
2. The purpose of the questionnaire in the “can settle” categories was to enable RC to collect the necessary salary and service information and evidence required to settle the claim.
3. The purpose of the questionnaire in the “not known” categories was to enable RC to gather further information, which will help identify to which category the claim should be allocated.
4. The timescale for return of the completed questionnaire to RC was 28 days.
5. If a part time election has not previously been completed by the Applicant and

accepted by Teachers Pensions, then any part time service after 1 May 1995 can be pensionable if the Applicant so wishes by ticking the box on Form 1. (This Form is discussed at Part 14). However any such service will be pensionable under the terms of the Teachers' Pensions Regulations 1997 and contributions will be collected by Teachers' Pensions accordingly. Please note: The information contained in this guidance document cannot be applied to an election for part time service after 1 May 1995.

PART 3

Next Steps – Actions in respect of questionnaire

1. Once the completed questionnaires have been returned, they should be categorised as follows:
 - those most likely to succeed in full;
 - those most likely to succeed in part;
 - stayed cases;
 - those who will be responding later than the 28 days. (RC may have been notified that there will be a delay in the return of the questionnaire);
 - cases that must be struck out;
 - those for which there has been no response;
 - still unknown.

Each category will require action as follows:

- a) “Those most likely to succeed in full” can now proceed to settlement. Agreement has been reached between the unions and the employers associations that the simplest and fairest method of constructing retrospective pension contributions and service credit is to use the notional salaries, together with the Settlement Model. Full details of the notional salaries and an explanation of their use is outlined in Part 5 of this document. Details of the Settlement Model is contained at Part 6.
- b) “Those most likely to succeed in part” can only proceed to settlement if agreement is reached between the RC and Applicant regarding the period to be purchased. Once agreement is reached calculation of retrospective contributions and service can be determined as described in a) above.
- c) Stayed cases will obviously remain stayed. If the completed questionnaire reveals that the claim should now fall in the “stayed”

category, the claim should be referred back to the ET, with the reasons for the decision.

- d) All that needs to be done for outstanding questionnaires which are awaited is to contact the applicant, asking if they are now in a position to complete the form. The delay may be due to the fact that they are collecting evidence.
- e) If the completed questionnaire reveals that the claim should now fall in the “must be struck out” category, the claim should be referred back to the ET, with the reasons for the decision.
- f) If the Applicant does not return a completed questionnaire, RC should satisfy themselves that every effort has been made to provide the Applicant with an opportunity to complete and return the form.
- g) It may be worthwhile checking that the Applicant has not moved address, been in hospital or on an extended absence from home. If the Applicant is a current employee, an internal communication may be more successful. If all efforts to contact the Applicant fail, the RC can request that the ET strike out the claim.
- h) RC are advised to retain evidence of any communication they have sent to non-respondents.
- i) Before a decision to strike out is made, the ET will send a notice to the applicant, inviting them to show cause why the claim should not be struck out.
- j) In very rare cases, some questionnaires will be returned, with insufficient evidence as to which category they belong. Refer to AoC Employment Briefing 9/03 that discussed categorisation (if it is impossible to determine the category, the claim should be referred back to the ET, with an explanation, for them to decide the progress of the claim).
- k) There may be occasions when the completed questionnaire contains information, supplied by the Applicant, which challenges the previous decision regarding the likelihood of success.
- l) On these occasions the ET and the Applicant should be notified and the claim will be listed for a hearing to resolve specific inconsistencies.
- m) Any ET sitting in the region in which the Applicant currently resides will hear these cases, unless application is made to the contrary.
- n) If there is no reliable evidence of earnings or working patterns, the Applicant should be advised to contact either:

- i. Inland Revenue. Data Protection Unit, Room BP4302, Benton Park View, Newcastle upon Tyne, NE98 1ZZ (quoting NI number) to formally request a copy of their employment record;
- ii. Inland Revenue, Class 1 caseworker, BP2202, Benton Park View, Newcastle upon Tyne, NE98 1ZZ (quoting NI number) to formally request a copy of their national insurance record.

PART 4

Next Steps – Analysis of the questionnaires

1. It is anticipated that the information contained in the questionnaires will cover a wide spectrum of both type and level of evidence.
2. Some Applicants will provide a complete documentary evidence of their work record, including contracts specifying grades of pay and hours of work, as well as pay slips and/or P60's.
3. Other Applicants will have some evidence of actual employment but little information on the range of contracts and hours of work.
4. For some Applicants contracts will be the main source of evidence, others will only have payslips (or similar evidence of earnings) and another possible group will have a mixture of the two.
5. P60 evidence is the most reliable form as it should be possible to identify the FTE salary and the percentage, using the tables on Pages 1 and 2 of Appendix 1.
6. The evidence supplied by the applicant should be cross-referenced with any information held by the RC.
7. The information held by the RC, together with the Applicant's evidence is likely to confirm service and fill any gaps, possibly resulting in a complete service record.
8. Any discrepancies in the evidence must be discussed with the Applicant, with a view to reaching and agreeing resolution.
9. It is the RC responsibility to work with the Applicant to reach agreement on how any gaps should be dealt with.
10. It is suggested that the RC and the Applicant, together with their representatives meet to reach resolution of outstanding issues.

11. Once a reasonable history of working pattern, earnings, together with supporting evidence has been established it should be possible to calculate the contributions and service history.
12. Suggested solutions for dealing with gaps in evidence are discussed in Part 11 of this document.

PART 5

Notional salaries

1. The DfES facilitated a working group consisting of representatives from employer associations and teacher unions to consider the practicalities relating to the settlement of the part time pension claims.
2. The working group agreed the following notional salary rates (Pages 1 and 2 of Appendix 1) which can be used to construct the retrospective pension contribution and relevant service credit.
3. Use of the notional salaries method is recommended as the easiest and fairest method of calculating the retrospective Applicant pension contribution and relevant service credit.
4. The tables provide the notional salaries for part time lecturers from 8 April 1976 through to 30 April 1995.
5. Table on Page 1 provides details of the FTE (full time equivalent) salary for each time period.
6. Table on Page 2 provides a breakdown of the salaries paid to lecturers according to the fraction/percentage worked.
7. The incremental point throughout is Point 14 for a Lecturer Grade I. The justification for this is:

If lecturers had been paid on an assessed rate of salary, most would have been at the maximum of Lecturer Grade I because of their qualifications and relevant experience; some would have progressed to Lecturer Grade II and some would also have been in receipt of the various London Allowances.

8. AoC advice is that all calculations are reached using the notional salaries, unless an Applicant specifically requests to have the calculation based on the actual evidence available and such evidence is complete. In which case the actual salary information can be entered into the Settlement Model (Part 7, Para 10).
9. When deciding which percentage column the applicant fits into, it has been agreed by the working group that the column selected should not contain a

figure lower for the year than the person actually earned in that year. For example, if the figure on the P60 falls between two columns the % column selected should be the higher value – but with consideration given to any pattern that evolves and a logical approach.

10. A worked example is at Part 8.
11. If it is necessary to calculate an average % because the hours were so varied, it will be possible to do this, using a P60 and plotting the relevant column for each year. See Page 11, worked example.
12. The Notional Salaries must only be used to construct salary data for part time pension's cases and not for any other purpose.

PART 6

The Settlement Model

1. The Employer Associations and the Public Service Unions have reached agreement that a model calculator be made available to RC in the part time pensions claims. This will enable a uniform calculation of retrospective pension contributions and service credit to be generated.
2. This is known as the Settlement Model. It is an on-line service and full details of how to gain access and its use are discussed in the "[GAD Spreadsheet Model to Assist in Calculating Repayment Amounts](#)" (Settlement Model), and [Appendix 2 - Guidance on the use of the GAD SPREADSHEET MODEL](#). Further reference to the Settlement Model is made in Part 8 of this document and Page 12 of Appendix 1.
3. In order to calculate the backdated Applicant contributions and service record, the following information will be required:
 - (Cell 24 of the Settlement Model) the full-time equivalent salary for each of those years (see Page 1 of Appendix 1);
 - (Cell 28 of the Settlement Model) the part time proportion (percentage), (see Page 2 of Appendix 1).

Once the evidence has been collected and processed it is the RC responsibility to calculate the contributions the Applicant is required to make and the service it will purchase in the scheme.

Full details of how to use the Settlement Model are explained at Part 8 and in Appendix 2.

A template of the Settlement Model is available on Page 12 of Appendix 1).

PART 7

Calculating retrospective contribution and service using the Notional Salaries and the Settlement Model

1. In the first instance it will be necessary to calculate the part time proportion of the FTE salary as a percentage using the following formula:

The FTE salaries can be found on Page 1 of Appendix 1.

$$\frac{\text{Actual earnings}}{\text{FTE Salary}} \times 100 = ?\%$$

2. This percentage figure is added to the Settlement Model (Cell 28) (see Part 8).
3. The percentage figure may have been consistent throughout the whole period of the claim, but if there are some variations, an average across the total period should be calculated, if possible.
4. The same percentage information can be used to calculate the years of pensionable service to be credited (see Part 12).
5. The applicants' contribution rate required by the Settlement Model (Cell 29) is 6% for all the years of the claim and the tax rate is 22%, unless the individual is liable for a higher tax rate (Cell 32).
6. If it is possible to establish the **actual** annual salary in the last tax year of the claim, this figure can be added to the Settlement Model, together with either the actual percentage figure or the average percentage figure and the relevant dates.
7. Once these details have been added to the Settlement Model, the total contribution figure for the whole period claimed will be calculated by the software.
8. It may be possible to create a block or blocks of employment for varied work patterns. Retrospective contributions can then be calculated for each block, entering the data for the final year of the block and adding together the calculation for each period (as described above).
9. We anticipate that this method to calculate contribution and service credit, will be the most frequently used.
10. Alternatively each year can be entered separately onto the Settlement Model and the individual figures added together to give a final contribution figure for the period of the claim.

11. Once Section 1 of the Settlement Model has been completed by the RC, the information generated by the software at Cells 39, 40, 42 and 43 can be integrated into the Offer Letter.
12. It is then possible to save this spreadsheet until a response has been received from the Applicant, indicating the options they wish to choose.
13. Once a response is received, the RC can return to the spreadsheet. It is important that for subsequent visits to a previously activated spreadsheet, that the drop down choice of "follow-up query" at Cell 12 is selected.
14. The "Settlement Model" is available at GAD SPREADSHEET MODEL TO ASSIST IN CALCULATING CONTRIBUTIONS REQUIRED TO REINSTATE SERVICE .

A worked example using the Settlement Model and the Notional Salaries is available at Part 8.

PART 8

Worked example using the Settlement Model

1. Several worked examples are available from Page 15 of Appendix 2 GAD spreadsheet model guidance.

PART 9

Tax relief

1. There are likely to be few applicants who fall into the “no tax relief” bracket, but RC are advised to obtain a list, from the payroll manager of the applicants who have additional deductions from salary for pension contribution purposes only (i.e. AVC's) and what % of tax relief is allocated to this contribution.
2. It should then be possible to identify whether the applicant is already receiving any tax relief for pension purposes and whether the applicant is entitled to tax relief for this contribution or not.
3. Tax relief totalling 15% of earnings is allowed for pension purposes.
4. Tax relief of 6% is allocated to individuals for contribution to the TPS.
5. If the only pension that the applicant contributes to is TP then the calculation that should be used is the one which shows the contribution, including tax relief.
6. If the applicant contributes to additional pensions schemes or is purchasing AVC's and the tax relief they receive is in excess of 9%, this, combined with 6% tax relief related to TP will take the applicant over the 15% limit and the contributions that are due will be calculated by the Settlement Model excluding tax relief.

PART 10

Calculating contributions

Contract based evidence

1. The Applicant is likely to provide the evidence in academic years as contracts were normally issued in this way.
2. During this period in FE and HE the pattern of work for hourly paid lecturers was 14 weeks in the Autumn term, 12 weeks in the Spring term and 10 weeks in the Summer term.
3. Because annual contracts run for academic years (September to August), this creates a situation where the first 26 weeks of the contract will be in one financial year and the remainder will be in the next financial year.
4. Hourly paid lecturers did not normally have contracts that covered enrolment and/or administration weeks.
5. In addition, contracts often ended one or two weeks before the end of term.

6. The table on Page 3 of Appendix 1 should be used to calculate the hourly rate, from 1976 to 1978. 1976, 1977 and 1978 hourly rates were the same. Therefore, the figures given for 1978 can be used for 1976 and 1977.
7. Hourly rates pre-1981 are available on Pages 4 and 5 of Appendix 1.
8. From 1978 to 1981 hourly rates were set regionally.
9. The hourly rates for each region for 1978 to 1981 are on Pages 3 and 4 of Appendix 1.
10. A list of the counties is on Page 6 of Appendix 1.
11. London allowances can be calculated in exactly the same way using the guidance on Page 8 and 9 of Appendix 1 for 1981 to 1995 and using county number one figures for 1976 to 1981.

Worked example

1. Using the table on Page 7 of Appendix 1 to calculate hourly rate.

September 1987 annual contract shows ten hours at grade IV for 32 weeks at an hourly rate of £13.60.

Using a copy of the table on Pages 10 and 11 of Appendix 1 plot the data before entering it into the Settlement Model.

Enter in the Autumn column 1987 the total of 14 weeks x 10 hours x £13.60 = £1,904.

In the Spring column 12 weeks x 10 hours x £13.60 = £1,632.

In the next financial year for Summer term enter eight weeks (annual contract 32 minus the Autumn and Spring term work 25, leaves six weeks for summer term work) x 10 hours x £13.60 = £1,088.

There was a pay rise on 1 July 1988 but the individual's contract did not extend to then.

If the next annual contract was from September 1988 15 hours at Grade IV for 34 weeks.

Enter in the Autumn column the total of 14 weeks x 15 hours x £14.43 = £3,030.30.

Enter in the Spring column the total of 12 weeks x 15 hours x £14.43 = £2,597.40.

In Summer term there was a salary rise 1 April 1989 so the calculation would be 6 weeks x 15 hours x £15.56 = £1,400.40.

Financial Year	Grade IV Summer	Autumn	Spring	Total	FTE
Apr 87 - Mar 88		1904.	1632.	3536. 20%	11158
Apr 88 - Mar 89	1088.	3030.30	2597.40	6715.70 60%	12540

If other contracts existed during this time at this grade of work these should be added to the table in the same way.

The individual may also have worked at different grades and these will need to be calculated separately.

Once the financial totals for each contract have been arrived at, they should be calculated to produce the percentage (Part 7, Para 1) and the FTE (Part 5, Para 5), which can then be entered into the Settlement Model.

Pay based evidence

1. In cases where the Applicant has P60's for some years and a bundle of pay slips for other years, tables on Pages 1 and 2 of Appendix 1 should be used.

Worked example

P60 evidence

March 1989	£7,534
March 1988	£6,850
March 1986	£5,907

This figures would determine that the applicant belongs in the 60% column on the table at Page 3.

The same Applicant also produces pay slips for the Autumn term of 1988 totalling £2,400 for 14 weeks.

Hourly paid employees during this period worked 36 weeks a year; 14 weeks in the Autumn term; 12 weeks in the Spring term and ten weeks in the Summer term.

Therefore, the annual salary for this employee will be:

$$2400 / 14 = £171.43 \text{ (1 week)} \times 36 \text{ weeks} = £6,171.$$

Referring to the table on Page 2 in Appendix 1, this indicates that the applicant belongs within the 60% column, as in the other years in this example.

If the evidence shows a variation or an exact calculation is required (Part 7, Para 10) between the columns then each variation should be plotted using the table and an average arrived at.

Finally a percentage and FTE salary can be calculated and entered onto the Settlement Model.

Mixture of contract and pay-based evidence

If the evidence available is a combination of contract and pay-based evidence then the calculation should be carried out in accordance with the examples above and then combined to arrive at a FTE salary and a % for each year and entered on to the Settlement Model.

PART 11

Incomplete history of employment

1. Once all the evidence has been collected and cross-referenced it is possible that there are still gaps in the employment history.
2. One solution of dealing with gaps is to identify the working pattern before and after the gap and if it is similar, it might be possible to agree with the Applicant to mirror the pattern across the gap.
3. If the work pattern is erratic then it may be possible to average the work for which evidence is available and extend the average across any gaps.
4. Using the tables on Pages 1 and 2 in Appendix 1, it should then be possible to calculate the percentage and FTE rate.
5. A worked example is shown at Part 10, Page 11.
6. Any discussions on how gaps in employment are incorporated should include the Applicant and their Representative.
7. The ET expect an RC to act reasonably and seek to reach an agreement.
8. Ultimately if it is not possible to reach an agreement with the individual, the matter will have to be referred back to the ET.
9. If there is no reliable evidence of earnings or working patterns, the Applicant should be advised to contact either:
 - a) Inland Revenue. Data Protection Unit, Room BP4302, Benton Park View, Newcastle upon Tyne, NE98 1ZZ (quoting NI number) to formally request a copy of their employment record;

- b) Inland Revenue, Class 1 caseworker, BP2202, Benton Park View, Newcastle upon Tyne, NE98 1ZZ (quoting NI number) to formally request a copy of their national insurance record.

PART 12

Calculating service credit using the Settlement Model

1. This will require the % figure and the number of years of the claim, as follows: The following example is for an Applicant who has worked for five years at 20%.

$$20\% \text{ for 5 years} = \frac{20}{100} \quad \times \quad 365 \quad \times \quad \frac{5}{365} = 1 \text{ year's service}$$

2. The number of years service can then be included in the offer letter to the Applicant and on the form to TP (see Part 13).

PART 13

Communications required following completion of the calculations

1. Once the calculations of retrospective contribution and service credit, have been completed and agreed, the RC will have to provide the Applicant with an Offer Letter. Offer Letters are discussed at Part 14.
2. RC will have to include the following details into the offer letter for each Applicant:
 - a) The dates of agreed service.
 - b) The cost of the retrospective contributions if the entire agreed period is purchased (see Part 7).
 - c) The average cost of the retrospective contributions if only part of the period is purchased (see Part 7).
 - d) The cost of the contributions, plus interest, if the Applicant decides to spread repayment over a time period (see Part 15, Para 12).
 - e) The pension benefits that would result from the purchase of the retrospective service in full or part.
 - f) The total pensionable service to be backdated (service credit). (See Part 15, Para 4 and 5).

3. In addition, once final agreement of service being purchased has been reached and confirmed by the Applicant (see Para 7 below); RC must inform TP of:
 - a) the retrospective pensionable service (service credit) (see Part 12 and Education Form 3 Appendix 3).
 - b) the cost of the retrospective employee's contributions (see Part 7 and Education Form 3 Appendix 3).
 - c) the cost of the retrospective employer's contributions.
 - d) a copy of the Completed Form 1 (see Part 14, Page 16).
 - e) when sending information to TP it is important to bear in mind that the information provided will be in financial not academic years and therefore summer terms should be included in the next financial year.
4. RC must also provide details to the ET of:
 - a) A copy of the Applicant's completed Form 2 "Withdrawal of Employment Tribunal Application"; (See Part 14, Page 16) or;
 - c) the need for the case to be decided by the ET, as outlined in Part 3 or;
 - d) the case should now be placed in the Stayed category and why, or;
 - e) the case should now be struck out and why, or;
 - f) that no response has been received from the Applicant;
5. If the Applicant agrees to accept the offer and make the required retrospective contributions, they will have to sign a form to withdraw their claim from the ET, because by accepting the offer their claim has been settled and can now be withdrawn. A withdrawal form is provided and discussed at Part 14.
6. Applicants will have six months from the date of the offer to inform RC whether or not they wish to accept the offer.
7. Once acceptance of the offer has been confirmed, RC must forward a copy of the completed Forms 1, 2 and 3 to TP, who will advise the Applicant and the RC of the amount to be collected. Deductions from payroll should commence from the first of the month following notification.
8. The additional contributions should be accounted for on the monthly contribution paying-in slip to TP in box F.

PART 14

Offer letters

1. There are three versions of the offer letter.
2. One for each type of Applicant. An active member of TPS, a deferred member and a pensioner member.
3. The offer letters are basically the same, but there are variations depending upon the current employment status of the Applicant.
4. RC will be required to add information to each of the offer letters, indicated by bold text within square brackets [].
5. Each offer letter must be accompanied by the following forms, for completion and return by the Applicant.
 - a) Form 1.

This is the election form on which the Applicant indicates whether or not they wish to accept the offer, made in the letter. The Applicant may also use the form to indicate their preferred option for payment and to provide details of any contribution they have made to a personal pension scheme. By signing the Form 1, the Applicant is entering into a legally binding agreement, from which they may not withdraw.

Form 1 must be completed and returned, to the RC, by the Applicant within six months from the date of the offer letter. The return date must be entered on the offer letter by the RC, in the "By when must I make a decision" paragraph. The RC name and address should be entered on the last page of Form 1 to indicate where the form should be returned.

Once it has been returned to the RC, a copy of Forms 1 and 2 must be forwarded to TP, together with Education Form 3. The service details must be provided in financial years (same format as the Annual Return). TP will then arrange for the necessary amendment to the service record and for retrospective reinstatement to the pension scheme.

A sample Form 1 follows each of the Offer Letters in the Appendices.

- b) Form 2. Withdrawal of Employment Tribunal Application.

This form must be completed and returned to RC, by all Applicants where agreement has been reached to settle their claim. When it has been received by RC it should be forwarded to the ET where it will signal to the ET that the claim has been settled and the case can be withdrawn/closed. If an Applicant decides to decline the offer of retrospective membership of TPS, they will still have to complete and return the Form 2 to one of the addresses enclosed with the form. Once the completed "Withdrawal of Employment Tribunal

Application” is received by the ET, the claim will be withdrawn and the case will be closed. There are guidance notes with the form which should accompany the form to the Applicant. A sample form is at Page 38 of the Appendices.

c) Form 64-8 Inland Revenue Authority Form

This form, once it has been completed by the Applicant, must be returned to the RC. It provides the Inland Revenue with the authority to send RC details of the Applicant’s National Insurance Contribution refund, to enable RC to calculate and pay the interest due to the Applicant on the overpayment of National Insurance Contributions.

Please note that for the purposes of Form 64-8 the RC is the “agent” dealing with the claim for retrospective membership of TPS.

Further copies of this document can be downloaded from www.inlandrevenue.gov.uk/pdfs/64-8.pdf

PART 15

Options for purchase of service and contributions

The following options for repayment have been agreed between Teachers Pension Scheme, the Employers Associations and the Trades Unions.

1. The Applicant will be able to purchase all or part of the agreed period of retrospective membership of TPS.
2. If all of the agreed retrospective membership is purchased, the full calendar length of the period will count towards qualification for benefits from TPS.
3. If all of the agreed retrospective membership is purchased, only the pro rata service for the period will count in the calculation of retirement benefits.
4. For example an Applicant who is entitled to retrospective membership for a period of 16 years, during which it has been agreed that the percentage working pattern was 50%, will be entitled to 16 years qualifying service for pension purposes, but only eight years will count in the calculation of retirement benefits.
5. Applicants only wishing to purchase part of the period of the agreed retrospective membership, must purchase either a complete calendar year or a multiple of complete calendar years.
6. Using the example above for an applicant who is entitled to retrospective membership for 16 years, but only wishes to claim for four years, the period purchased will be four years from the last day of the period claimed.

7. For example – the 16 year period covered 1976 to 1992. The four years that may be purchased will be 1989 to 1992.
8. This Applicant will be entitled to four years qualifying service for pension purposes and two years for service credit.
9. The Department for Education and Skills has agreed that retrospective pension contributions may be paid by instalment, over a period of more than six months.
10. Notwithstanding this, the Department considers that the responsibility for outstanding retrospective pension contributions an Applicant has committed to purchase, will remain with the RC.
11. Accordingly, in the event that the Applicant fails to make retrospective pensions contributions, in accordance with this document, the Department will recover any unpaid retrospective pension contributions (plus interest) from RC.
12. The interest payable for the instalment plan is calculated by the Settlement Model when the Form 1 is returned by the applicant and is included in the monthly repayments.
13. Should an Applicant decide not to purchase any membership, then none of the period will count for service credit or pensions purposes.
14. Once an Applicant has formally communicated their decision to RC, there will NOT be an option to alter this. This is an unambiguous condition of the terms of the agreement and relates to ANY requested changes.
15. It is important that the Applicant understands, before they accept or reject an offer, that they are entering into a contractual commitment, which cannot be altered once it has been entered into.

Payment options for active members

1. Active members of TPS can either:
 - a) pay off the sum within six months from the date they opt to purchase the service; or
 - d) spread the payments of the sum due (including interest) over a longer period of time with additional interest to take account of the extended repayment period.
2. The repayment period cannot extend beyond the period being purchased or, if earlier, the period up to the member's 60th birthday.
3. Any deduction from salary will not be expressed as a percentage of pay, but will be as a fixed monthly amount.

4. If the Applicant leaves the RC employment **with** immediate payment of retirement benefits, before completion of the payment of the retrospective pension contributions, the balance will be deducted from the retirement lump sum, or death grant and if necessary, by making a deduction from the monthly pension in payment.
5. In this case the deductions should not exceed the additional monthly pension payment, payable as a result of the retrospective purchase, (unless the person agrees to a higher deduction), until any outstanding sum has been collected and taking into account any required income tax adjustments. If the person leaves the RC employment **without** immediate payment of pension benefits before completion of the payment of the retrospective pension contributions they can either:
 - i) pay the balance of the outstanding retrospective pension contributions within six months of leaving the employment;
 - ii) have the balance of the outstanding retrospective pension contributions (plus interest) deducted from the deferred lump sum (or death grant) when it is paid and, if necessary, by making a deduction from the monthly pension when it is in payment, until any outstanding sum has been collected. The monthly deductions should not exceed the additional monthly pension payable as a result of the retrospective purchase, (unless the person agrees to a higher deduction).

If option ii) is chosen:

- a) the Applicant may, at any time before the deferred benefit (or death grant) becomes payable, pay off in a single payment, the outstanding balance of the retrospective pensions contributions plus interest; or
 - b) the Applicant may transfer the Cash Equivalent of the accrued pension rights to another pension scheme or arrangement, at any time before the deferred benefit (or death grant) becomes payable, provided that any outstanding retrospective contributions (plus interest calculated in accordance with the agreed GAD model spread sheet) are paid within three months of the date ("guarantee date") of the Cash Equivalent Transfer Value (CETV).
 - c) If the Applicant fails to make these payments, TPS will nonetheless have to pay the full CETV and recover the outstanding retrospective contributions from the RC.
 - d) There will then be a contractual debt between the Applicant and the RC and the responsibility for negotiating repayment of this debt will rest with the RC and the Applicant.
9. An Applicant paying the retrospective pensions contributions over a longer period who dies or who is retired on the grounds of permanent ill health will

not be considered as having completed payment of any outstanding retrospective contributions.

10. The outstanding retrospective contributions will, in the case of ill health retirement, be recovered by deduction from the lump sum and, if necessary by a deduction from the monthly pension payment until any outstanding sum has been collected. Such deduction from the monthly pension payment should not exceed the additional pension payable as a result of the buy back of part time service (unless the person agrees to a higher deduction).
11. In the case of death, the balance will be recovered from the lump sum death grant.

Deferred members

Deferred members can either:

1. Make a payment for the retrospective contributions in full within six months from the date they opt to purchase the service;
2. Pay as much of the retrospective contributions as they can afford and have the outstanding balance (plus interest) deducted from the retirement lump sum (or death grant) when it is paid, and, if necessary, by making a deduction from the monthly pension payment until any outstanding sum has been collected;
3. Have the cost of the retrospective contributions (plus interest) deducted from the retirement lump sum (or death grant) when it is paid and, if necessary, by making a deduction from the monthly pension payment until any outstanding sum has been collected.
4. If either option 2 or 3 are taken, the Applicant may:
 - a) at any time before the deferred benefit (or death grant) becomes payable, pay off, in a single payment, the outstanding balance of the retrospective pension contributions (plus interest); or
 - b) at any time before the deferred benefit (or death grant) becomes payable, transfer the Cash Equivalent of any accrued pension rights to another pension scheme or arrangement, provided that any outstanding retrospective contributions (plus interest) are settled, within three months of the date ("guarantee date") of the Cash Equivalent Transfer Value (CETV).
5. If the Applicant fails to make these payments, TPS will nonetheless have to pay the full CETV and recover the outstanding retrospective contributions from the RC.
6. There will then be a contractual debt between the Applicant and the RC.
7. The responsibility for negotiating repayment of this debt will rest with the RC and the Applicant.

Pensioner members

1. Applicants that have retired and are already accessing pension benefits, will have the cost of any retrospective contributions deducted from any additional retirement lump sum payable and, if necessary, by making a deduction from the monthly pension in payment until the outstanding sum is recovered.
2. The deductions should not exceed the additional pension payable as a result of the buy back unless the person agrees to a higher deduction.

PART 16

Estimate of retirement benefits

1. This is a facility available to members of TPS to obtain an approximate calculation of their retirement benefits.
2. This will enable an applicant to make an informed decision of whether or not to accept the offer or if it will be more beneficial for them to remain in SERPS or a private pension scheme, if they have one.
3. A document entitled Estimate of Retirement Benefits is available in Appendix 1 at Page 42 and a copy of this document should be included with Offer Letters to Active, Deferred and Pensioner Scheme Members.

PART 17

National Insurance Contributions (NIC)

1. When an individual joins an occupational or private pension scheme they usually “contract-out” of the State Earnings Related Pension Scheme (SERPS) and the NIC that would have been paid to SERPS are diverted to the occupational or private pension scheme.
2. Therefore individuals who were denied access to TPS and did not make contributions to a personal pension scheme would have been “contracted-into” SERPS.
3. Employers of individuals “contracted-into” will also have made a NIC payment into SERPS, in respect of the individual.

4. Therefore the NIC rate will have to be adjusted from contracted-in to contracted-out for any period of retrospective membership of the TPS that is purchased retrospectively.
5. Accordingly, any such adjustment will result in a refund of NIC to the employer and to the employee (assuming they earned enough, in the relevant period, to pay NIC and did not hold a married woman's/widow's election).
6. National Insurance legislation only provides for payment of interest on Employer refunds from 1993. Inland Revenue does not have the power to pay interest to employee refunds.
7. As Applicants need to be reinstated, as far as NIC are concerned, into the position they would have been had they not been excluded from TPS, it is the RC responsibility to compensate the Applicant for the interest on the employee NIC refund.
8. It has been agreed that this should be credited from the employer NIC refund, plus the interest payable on such refund.
9. It will therefore be the RC responsibility to calculate and pay the interest on any NI refund due to the employee.
10. The Inland Revenue will pay to the RC a refund of employer contributions (A) and interest on those employer contributions (B).
11. Inland Revenue will also pay a refund of employee contributions (C) to the employee.
12. Inland Revenue will normally pay any employee refund direct to the employee. If however the Applicant wishes the refund to be forwarded to the RC, then the Applicant will have to prepare a letter for Inland Revenue, requesting that their refund is paid directly to the RC.
13. In addition, Applicants must complete Inland Revenue Form 64-8, which authorises Inland Revenue to provide employee refund information direct to RC.
14. This will enable RC to calculate any interest due to the Applicant as described below.
15. Further copies of the Inland Revenue Form 64-8 are available from www.inlandrevenue.gov.uk/pdfs/64-8.pdf.
16. To compensate for lack of interest on the employee refund, an interest figure (D) must be calculated and paid to the Applicant by the RC (funded from (A + B) based on the refund (C)).
17. The Government Actuary's Department (GAD) has devised a spreadsheet for calculating Applicant interest (NIC Refund Calculator (NICRC)), based on the

annual employee refund and the month of calculation, both of which will be provided by NICO.

18. The NICRC spreadsheet will be updated monthly (by GAD) to take account any changes in the interest factors. RC will, therefore, need to ensure they use the most up-to-date version of the NICRC spreadsheet when calculating the interest due to the Applicant.
19. The NICRC spreadsheet for use in calculating the interest due on the employee's NIC refund is available at www.hm-treasury.gov.uk/documents/taxation_work_and_welfare/public_service_pensions/tax_pensions_preston.cfm
20. The figure (C) is inserted into the latest version of the NIVRC spreadsheet, together with the month of calculation, to produce a figure (D) which is due to the Applicant.
21. Once the RC has calculated and paid the interest (D) due to the employee from (A + B), the remainder (A + B - D) should be forward to TPS.
22. This sum will be used towards the employer pension contribution for the individual.
23. Applicants will need to obtain information in respect of the refund of NIC they may be entitled to from:

Inland Revenue,
National Insurance Contributions Office,
Benton Park View,
Newcastle upon Tyne, NE98 1ZZ

24. The request must be in writing and provide the following information:

Name and address,
NI Number,
Start and end date of the period of retrospective access,
Marked "PRESTON"
25. Applicants will also need to obtain information in respect of the effects any refund of NI contributions will have on SERPS, so they may compare this with the likely benefits from retrospective access to TPS.
26. This information is available from The Pensions Information Order line on 08457 313233 – leaflet BMO1, "*Backdating membership of an occupational pension scheme: what this might mean for you*".
27. If the Applicant contributed to either a personal pension or stakeholder arrangement during the period being claimed then RC may need to seek further information from TP before any agreement is reached.

PART 18

Applying for NIC refunds

1. RC will normally claim NIC refunds on behalf of the Applicant and themselves (see Part 17).
2. RC should complete a schedule of Applicants who are claiming NIC refund as part of the retrospective access to the Teachers Pension Scheme.
3. An excel template of the schedule is available at Page 44 of Appendix 1.
4. Once completed as fully as possible, the schedule should be sent, with a covering letter, from the RC, quoting the reference "PRESTON", to NICO, Benton Park View, Newcastle upon Tyne, NE98 1ZZ.
5. If the Applicant is claiming an NIC refund for a period of service with a previous employer, from whom the Applicant was statutorily transferred (a statutory novation), then the covering letter should provide details of the employer from whom the Applicant was statutorily transferred, together with relevant dates of service, for which retrospective membership of TPS has been agreed.
6. A completed Inland Revenue Form 64-8 for each Applicant (see Part 14, Para 5 c) must accompany the schedule.
7. NIC refunds can take some time to be processed, but once NICO have received the schedule, a form 64-8 for each Applicant, together with a letter requesting the Applicant's refund to be made directly to RC, if required and, where necessary a letter regarding statutory novation, it will be possible for them to calculate the refund due to the Applicant and RC, plus the interest due to the RC and arrange for payment to be made.
8. Once NICO has made employee refund (C), they will supply the employer with an annual breakdown in respect of those cases where a Form 64-8 has been returned with the schedule.
9. RC can then complete the NICRC spreadsheet (Part 17, Para 17) to calculate the interest due to Applicant and arrange for payment to be made to the Applicant, together with any NIC refund received in respect of the individual.
10. RC must then pass the residual sum (A+B-D) to TPS, to offset the employer pension contribution.
11. Employers should also refer to the guidance issued last August by DWP to Preston claimants - *"Backdating membership of an occupational pension scheme: What this might mean for you"*.

PART 19

Applicants who purchased personal pensions

1. As well as the basic state pension, employees can get an additional pension from the state, which is earnings-related.
2. This additional pension was commonly known as SERPS (State Earnings-Related Pension Scheme) before 6 April 2002, but was replaced from that date by the State Second Pension. An individual's right to SERPS or State Second Pension is not dependent on their right to a basic state pension.
3. The amount of additional pension an individual will be entitled to is based on the amount and type of earnings on which National Insurance contributions have been paid, since 6 April 1978, and, from 6 April 2002, on the lower earnings threshold.
4. Since April 1987, individuals have been able to use a personal pension scheme (or, from April 2001, a stakeholder pension scheme) to contract out of SERPS or the State Second Pension. This means that part of the National Insurance contributions is directed into the personal or stakeholder pension scheme, which will then provide a replacement for SERPS or the State Second Pension.
5. Most of the schemes which are authorised to do this are called Appropriate Personal Pension schemes (APP).
6. It is possible that some Applicants who fit into the "cases like to succeed" category will have paid into a personal pension scheme for part or all of the period that they are seeking retroactive membership of the TPS.
7. There are like to be three categories of Applicants who have purchases personal pensions.
 - a) Applicants who paid into a personal pension scheme, at a time when they were eligible for membership of the TPS and who have, as a result of the Securities and Investment Board review of mis-sold personal pensions, subsequently been reinstated in the TPS for part or all of the period of their claim;
 - b) Applicants who paid into a personal pension scheme and still hold the personal pension policy (i.e. the person has not transferred the value of the personal pension scheme into the TPS);
 - c) Applicants who paid into a personal pension and have transferred the value of that personal pension into the TPS as a normal transfer i.e. not as a mis-sold personal pension reinstatement.
8. Advice on each of these categories is given below.

Category (a)

An RC should not accept that part of a claim for retroactive membership of the TPS, which relates to a period that has already been reinstated within the TPS, following the Securities and Investment Board (SIB) review of mis-sold personal pensions.

This is because the effect of the reinstatement is to put the Applicant back in the position they would have been in, had they not been mis-sold the personal pension but had, instead, been in the TPS. RC should check with Teachers' Pensions whether any part of the period claimed by the applicant has already been reinstated in the TPS under the SIB review. If so, that part of the applicant's claim should not be accepted.

Category (b)

Where an Applicant contributed to a personal pension scheme during part or all of the period s/he is seeking retroactive membership of the TPS and still holds the personal pension policy (i.e. the person has not transferred the value of the personal pension scheme into the TPS), the RC can ignore the fact that the Applicant had contributed to the personal pension scheme when deciding what, if any, period of the part time claim to accept.

This is because the Inland Revenue has advised that there is no need to unscramble personal pensions as they will have been validly entered into at the time. The Inland Revenue will, nonetheless, seek to recover from a contracted-out personal pension any overpaid NI minimum contribution paid to the personal pension scheme in respect of any period for which the person also backdates membership of the TPS. Also, if a person is already in receipt of an annuity (a pension) from the proceeds of that contracted-out personal pension, the Inland Revenue may seek to recover the NI minimum contributions directly from the individual person in respect of any period for which the member backdates membership of the TPS.

Category (c)

Where an Applicant contributed to a personal pension scheme during part or all of the period s/he is seeking retroactive membership of the TPS and has transferred the value of that personal pension into the TPS as a normal transfer (i.e. not as a mis-sold personal pension reinstatement), the RC can (when deciding what, if any, period of the part time claim to accept) ignore the fact that the person had contributed to the personal pension scheme and that this has already purchased membership in the TPS.

This is because the Inland Revenue has advised that there is no need to unscramble personal pensions as they will have been validly entered into at the time. The Inland Revenue will, nonetheless, initially seek to recover from the TPS any overpaid NI minimum contribution included in the transfer value paid from the personal pension scheme to the TPS (i.e. in respect of any period for which the person also backdates membership of the TPS). Teachers' Pensions will already have notified the person of the period of membership the

transfer value has purchased in the TPS and has no power to repay the overpaid NI minimum contributions.

Upon failing to obtain a repayment from the TPS, it is understood the Inland Revenue will automatically debit the relevant sum from the total NI minimum contributions that they next pay over to that particular personal pension provider. The relevant personal pension provider will, undoubtedly, seek recompense from the TPS but will meet with the same response i.e. that Teachers' Pensions has no power to repay the amount requested by the personal pension provider.

9. Whether or not an Applicant who opts for reinstatement into TPS can continue paying into a personal pension will depend on whether:
 - a) they qualify under the concurrency criteria for the same employment (i.e. earn less than £30,000), or
 - b) they have another source of earnings in respect of which personal pension payments can be made.
10. Inland Revenue opinion is that it is unlikely that Applicants with personal pensions and retrospective membership of TPS would breach the maximum retained benefits limit.
11. However, the amount of additional pension an individual will be entitled to is based on the amount and type of earnings on which National Insurance contributions have been paid, since 6 April 1978, and, from 6 April 2002, on the lower earnings threshold.
12. Since April 1987, individuals have been able to use a personal pension scheme (or, from April 2001, a stakeholder pension scheme) to contract out of SERPS or the State Second Pension. This means that part of the National Insurance contributions is directed into the personal or stakeholder pension scheme, which will then provide a replacement for SERPS or the State Second Pension.
13. Most of the schemes which are authorised to do this are called Appropriate Personal Pension schemes (APP), or Appropriate Personal Pension Stakeholder Pension schemes (APPSHP).
14. In cases where payments can no longer be made, these personal pensions would be treated as paid up and frozen until the pension comes into payment under the normal rules for personal pensions.

PART 20

Guidance on the unravelling of SERPS

1. SERPS unravelling will commence once NICO receives the above documents from RC in respect of an Applicant who is being retrospectively admitted to the TPS and a NIC refund is required.
2. NICO will calculate the appropriate contracted-out deduction for the period of reinstatement, for Applicants who are still in employment
3. Applicants who have retired and are claiming the SERPS pension will have their NIC records adjusted.
4. This will enable a calculation to be carried out, by the Department of Work and Pensions, in respect of any overpayment of the SERPS pension to Applicants who are in receipt of the SERPS pension.
5. The SERPS pension will then be recalculated taking into account any refund of NIC.
6. Any overpayment of the SERPS pension to the Applicant will not be recoverable, although it will be off-set against any NIC refund that may be due.