

Teachers' Pension Scheme

Retrospective Access to Occupational Pension Schemes by Part-time Workers ('Preston'): Post-retirement employment

GUIDANCE FOR CLAIMANTS

Notes to accompany Questionnaire 'Education1 (post retirement)'

This note contains guidance to claimants who have lodged a claim with a Tribunal in relation to part-time employment undertaken as a pensioner.

It is for the respondent employer to consider your claim, but in summary, your claim will fall for consideration if:

- (a) you were aged over 60 when you retired (i.e. on "Age" retirement grounds); or,
 - (b) you were aged 50 or over and the employer awarded premature retirement benefits on grounds of redundancy or whilst acting in the efficient discharge of the employer's functions;
- and**
- (c) you retired before 1 April 1997 (in practice, on or before 29 March 1997);
 - (d) your re-employment commenced before 1 April 1997 and you were (or have been) in continuous employment; and
 - (e) you registered a claim with the Tribunal within 6 months of leaving that employment.

NB. Claims from people awarded benefits early on grounds of ill-health remain stayed.

1. This guidance is for claimants who have been sent a copy of Questionnaire 'Education1 (post retirement)'. This Questionnaire has been sent to you in response to the claim that you lodged with the Employment Tribunal (Form ET1) claiming unlawful exclusion from the Teachers' Pension Scheme (TPS) in relation to a period of post-retirement part-time employment which was excluded from the TPS part-time arrangements.

2. Your claim has been held in abeyance because it related to post-retirement employment and it has only been recently conceded that certain claims could succeed. However, if your pension was awarded on grounds of ill health, then your claim remains stayed.

3. In the course of dealing with the main backlog of Preston claims, a Working Group was set up to agree the 'Questionnaire Education1' and other administrative matters on which agreement is required. The teacher unions and the employer associations have reconvened the Working Group in order

to agree this guidance and to the format and procedure for completing the Questionnaire 'Education1 (post retirement)'.

4. Provided your pension was not an ill-health pension, the respondent employer will use the information provided in the Questionnaire to (a) consider whether your claim should succeed and (b) calculate the contributions you will need to pay for your backdated service. You are advised to keep a copy of the completed Questionnaire for your own records. Notes on completion of the Questionnaire are given at paragraph 13 onwards.

5. Please note that if you want your employer to give further consideration to your claim, you must complete Questionnaire 'Education1 (post retirement)' **and return it within 28 days of receipt**. If you fail to do this within the deadline without reasonable explanation, not only can your claim not be dealt with or settled, it may eventually lead to your claim being struck out.

6. Claims involving post-retirement employment can only be considered if the post-retirement employment commenced before 1 April 1997. And only employment up to 31 March 2000 can be claimed under 'Preston'. This is because:

(a) On 1 April 1997 the teachers' pensions regulations were amended to provide that no re-employment (full-time or part-time) could be pensionable. From that date, only full-time employment that had commenced before 1 April 1997 could be pensionable.

(b) On 1 April 2000, the teachers' pensions regulations were amended to allow (non ill-health) pensioners to elect for further employment to be pensionable. These were commonly known as the 'elected further employment' (EFE) arrangements.

7. In considering your claim, your employer will need to confirm whether the part-time employment that you are claiming meets the relevant criteria.

8. If you were in service on 1 April 2000 and did not take the opportunity to make an EFE election, then your employer will consider whether this is a reason for resisting the claim and may ask you to provide a reason for not joining as soon as the opportunity arose.

9. Retrospective access to the TPS for post-retirement employment from 1 April 2000 onwards is a separate matter between yourself and the employer in question. If your employer decides to make you an offer to settle your claim, your employer will use Form 1 to invite you to backdate your EFE election to 1 April 2000. This would be subject to payment of the necessary employee and employer contributions and statutory interest calculated in accordance with the teachers' pensions regulations.

10. A reference to your employer in this guidance is a reference to your employer against which you have made the claim for backdated membership and may not be your current employer.

11. If you now want your employer to give further consideration to your claim, **you must complete Questionnaire 'Education1 (post retirement)' and return it within 28 days** of receipt. If you fail to do this without reasonable explanation, not only can your claim not be settled, it may eventually lead to your claim being struck out.

12. Please note that if you were awarded Premature Retirement Compensation (PRC) with your premature retirement benefits and your claim succeeds, then the compensating authority will be obliged to assess whether the PRC should be clawed back. See paragraph 30 below.

Notes on Completion of Questionnaire 'Education1 (post retirement)'

13. The purpose of Questionnaire 'Education1 (post retirement)' is to enable the respondent employer to validate your claim for part-time employment that was excluded from the TPS part-time arrangements.

14. If you have already completed Questionnaire 'Education1' (because your employer had not realised that your claim related to post-retirement employment), then it would be best if you transferred the information on to Questionnaire 'Education1 (post-retirement)'. Alternatively, if you prefer, you could staple the completed Questionnaire 'Education1' to 'Questionnaire Education1 (post-retirement)'.

15. You must provide full details about the backdated service you wish to claim so that the respondent employer can consider your claim and agree the details claimed. It is important that the information you provide is as accurate and as detailed as possible. This is important because, in relation to "successful cases" if your employer agrees to the information you provide, he will use this information to calculate the amount of contributions you will be required to pay and the amount of pensionable service with which you will be credited.

16. It is possible that the respondent employer will not have a record of the employment that you are claiming. You should therefore provide supporting evidence such as payslips, contracts of employment, tax forms, National Insurance records or any other evidence which shows that you were in employment during the period you are claiming. If you cannot provide such evidence for any period or part of a period that you are claiming then you must provide a written statement to support your claim. **If you knowingly provide false information you may be prosecuted.** Teachers' Pensions might have a record of the service you have undertaken. In order to check this, you can request a "Member Print" by contacting TP via the Contact Centre on 0845 606 6166. Alternatively you can view your service details by logging into the secure area of the TP website in the "My Pension Online."

17. It is possible that your claim may have to be based on notional salary information. This would be the case if employment records are no longer available or, as is likely, you were paid on a flat-rate hourly basis where there was no full-time equivalent salary rate. In these circumstances your employer will use notional rates that have been jointly agreed by the teacher unions and

employer associations. Your employer will be provided with full guidance on this.

18. Information to be provided under Part 3: 'Details of the employment being claimed':

Column Headed

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|---|---|
| 1. Name of Employer | Enter the name of the employer against which you have made the claim for backdated membership. This may or may not be your current employer. |
| 2. Post Held | Enter the title of the post held (eg teacher, lecturer) or, if applicable, grade band, during the employment. |
| 3. Date Employment Started (see Note 1) | Enter the first date of the part-time employment claimed. |
| 4. Date Employment Ended (see Note 1) | Enter the last date of the employment claimed or, if hours worked fluctuated, the date the hours worked changed. |
| 5. Hours worked per week/rate or grade of pay (see Note 2) | If available, enter full information about the terms of the employment claimed.
If you do not hold information about the employment claimed or only limited information is available, you will need to reach agreement with the employer as to the use of notional salary/grade bands. |
| 6. Salary paid per week/month/year (see Note 2) | Enter all available information about your earnings during the employment claimed.
If you do not hold information about your earnings you will need to reach agreement with the employer as to the use of notional rates. |
| 7. Reason for leaving/reason for change | Give details of any breaks in service during the period being claimed. |

19. Please note that you cannot claim for periods prior to **8th April 1976** and for periods after **1st April 2000**. If you want to claim for any periods when you could have elected to join the Teachers' Pension Scheme but chose not to do so (i.e from 1 April 2000 onwards) then you would need to speak to your employer about agreeing a retrospective EFE election.

20. If your employer does not agree with the information you have provided

and/or you cannot agree on the construction of your employment record, your claim cannot be settled and may proceed to a hearing before the Employment Tribunal where the dispute can be settled. However, you and your employer are encouraged to resolve any disagreements about the information you have provided and avoid a further hearing.

21. Completion of Questionnaire 'Education1 (post retirement)' does not commit you in any way. As stated above, the purpose of Questionnaire is to enable the respondent employer to consider your claim. If the information you provide on the Questionnaire is sufficient for the respondent employer to decide that your claim must succeed (when tested against the Employment Tribunal Rulings), you will, in due course, be made a formal offer setting out settlement terms for you to consider. If your employer is satisfied that your claim should succeed and has verified the information you provide as accurate they will send you an **offer letter** containing the **settlement terms**. This will include the following information:

- a. the dates of the period being conceded;
- b. the amount of employee contributions to be paid to settle the claim;
- c. the full-time equivalent salary on which your contributions are calculated (this may be the notional salary agreed with the employer);
- d. the part-time proportion of the week you worked or the period claimed (this may be estimated if the service has had to be constructed) ;
- e. an estimate of pension and retirement lump sum the backdated service provide; and,
- f. depending on your circumstances, the payment options open to you.

22. **Please note** that if you are over 75 when the additional benefits are paid, it will not be possible for you to be paid a retirement lump sum without incurring penal tax charges. Therefore, the retirement lump sum will be converted into an amount of extra pension.

23. The contribution payable by you will be calculated according to a Model Settlement developed by the Government Actuary's Department and agreed by employer organisations and the teacher unions. The contribution will be calculated as though you had paid contributions to the TPS at the time of the employment being claimed. The Model Settlement caters for claims where full service and salary details are not available and claims where employment records have to be constructed using the joint agreement on notional salaries and grade bands.

24. When you receive the offer letter, you must then give careful

consideration about whether you want to continue with the claim. As the Teachers' Pension Scheme is contracted-out of the State Second Pension (which prior to 6 April 2002 was known as the State Earnings Related Pension Scheme, SERPS) if you choose to proceed with your claim for backdated service you must relinquish the benefits you have accrued in the State Second Pension in respect of that service. You will also receive a refund of part of the National Insurance Contributions you paid over that period. For further information, including about how to obtain a state pension forecast, you can contact The Pension Service on 0845 3000148 or alternatively you can request a pension forecast on-line on the "DirectGov" website as follows: www.direct.gov.uk/en/pensions.

25. Please note that settlement of your claim may have an impact on any Premature Retirement Compensation awarded to you by your employer when you retired (see paragraph 29 below).

26. If you decide **not** to proceed with your claim then you must notify your employer and complete and sign the **withdrawal form** that will be sent with the offer letter. This will formally end your claim to the Employment Tribunal.

27. If you agree the settlement terms and decide to proceed with your claim then you must complete and sign the **acceptance form** and the withdrawal form that will be sent with the offer letter. The acceptance form will confirm your agreement to settle on the terms set out in the estimate letter and indicate your choice of how you wish to pay your contributions for the backdated service. This must be returned to your employer who will forward it to Teachers' Pensions. The withdrawal form will indicate that you are willing to withdraw your application to the Employment Tribunal on the basis of the agreed settlement.

28. On receipt of the acceptance form, your employer will forward details to Teachers' Pensions who will arrange for the payment of your contributions and credit the backdated service to your pension record.

29. If you are no longer in re-employment, your pension will be increased according to the backdated service. You will also receive pension and lump sum arrears to reflect the increase from the date you retired.

IMPORTANT

If you want your employer to give further consideration to your claim, you must complete Questionnaire 'Education1 (post retirement)' **and return it within 28 days of receipt**. If you fail to do this within the deadline without reasonable explanation, not only can your claim not be dealt with or settled, it may eventually lead to your claim being struck out.

Abatement of TPS pension and Premature Retirement Compensation (PRC) pension

30. The teachers' pensions regulations provide for abatement of pension if the combined total of income during retirement is more than the index-linked salary at retirement (the 'salary of reference'). If you were awarded premature retirement benefits that were enhanced by additional years of discretionary compensation (PRC) then the PRC pension would also be subject to abatement.

31. If you had not previously informed Teachers' Pensions (TP) or the compensating authority about your re-employment then neither will have had the opportunity to assess whether abatement should have taken place. If this is the case, TP will now conduct an earnings assessment over the whole period of your re-employment and undertake recovery action if it is found that your pension has been overpaid (and liaise with the PRC compensating authority if appropriate).

32. **NB** Please note that TP will undertake recovery action in respect of any overpaid pension, irrespective of whether you decide to purchase your re-employment for pension purposes.

Clawback of Premature Retirement Compensation (PRC)

33. If you were awarded premature retirement benefits that were enhanced by additional years of discretionary compensation (PRC), then the compensating authority will be obliged to consider whether the PRC should be subject to claw back in respect of your 'Preston' service. Consideration will be on a case-by-case basis, but it **might** mean that you will not have the option to settle your claim 'in part'. Your employer may decide that you must choose between settling 'in full' or not at all. Ultimately, this is a financial consideration for the compensating authority - neither TP nor the Department would be involved in this matter.

<p>If you have any queries about these arrangements you should contact the respondent employer. There should be a contact on the covering letter that accompanied the Questionnaire. Do not contact the Department for Children Schools and Families or Capita Teachers' Pensions. Neither party is involved in handling individual claims and cannot comment on the merits of individual claims.</p>
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