

Retrospective Access to Occupational Pension Schemes by Part-time Workers ('Preston'): Post Retirement Employment Claims

GUIDANCE FOR EMPLOYERS

Summary

This guidance supplements the guidance previously provided in respect of "Preston" claims and relates specifically to claims lodged under 'Preston' for access to the Teachers' Pension Scheme in respect of post-retirement employment by people entitled to retirement benefits on grounds of:

- (a) age; or,
- (b) premature retirement benefits (i.e. where benefits were awarded where employment was terminated prematurely on grounds of redundancy or in the efficient discharge of the employer's functions).

Claims from such pensioners can now be dealt with and respondent employers should be aware that the Employment Tribunal has directed that **questionnaires must be issued to claimants by 26 February 2010.**

It is for the respondent employer to decide whether a claim should succeed or be resisted. **But** employers must be aware that the Treasury Model Settlement (which provides a mechanism for calculating the employee contribution and where the employer contribution does not have to be paid immediately) will only apply to employment before 1 April 2000, and then only in cases where:

- (i) The person retired before 1 April 1997 (in practice, on or before 29 March 1997);
- (ii) the period of post-retirement re-employment being claimed commenced before 1 April 1997 and has been continuous; and,
- (iii) if the person was still in employment on 1 April 2000, they elected to join the TPS (see paragraphs 5 to 9 below).

Notes

1 April 1997 is significant to these claims because the teachers' pensions regulations were amended on that date to provide that no re-employment (full-time or part-time) commencing on or after that date could be pensionable.

1 April 2000 is significant because the teachers' pensions regulations were amended on that date to permit age and premature retirement pensioners to elect for 'further employment' to be pensionable.

As with other 'Preston' claims, the Model Settlement only applies where the claim was lodged with the Tribunal within six months of the end of the employment in question. In this respect the point of reference for deciding whether a claim was 'in time' is Employment Tribunal Bulletin Number 9.

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

1. Employer respondents dealing with claims from pensioners who have lodged a claim with an Employment Tribunal (Form ET1) claiming unlawful exclusion from the Teachers' Pension Scheme (TPS) in respect of post-retirement part-time employment, can now deal with these claims. It is not known exactly how many such claims have been lodged and not every TPS employer will be holding such a claim. But every TPS employer needs to be aware of this guidance in case a new claim is lodged.

2. The Department has agreed that the Treasury Model Settlement (which provides a mechanism for calculating the employee contribution and where the employer contribution does not have to be paid immediately) should be used for successful claims - provided the claim is not settled inappropriately. The Department will audit claims verified by employers and reserves the right to require an employer to pay the full contribution if it is evident that the employer has not taken reasonable care to check the facts properly.

3. Determination of whether a claim was brought 'in time' should be considered in accordance with Employment Tribunal Bulletin number 9.
<http://www.employmenttribunals.gov.uk/PartTimeWorkers/informationBulletins.htm>

4. Employers must remember that the unlawful exclusion of post-retirement employment by age and premature retirement pensioners ceased on 1 April 1997 when the teachers' pensions regulations were amended to provide that employment commencing on or after that date (full-time or part-time) could not be pensionable. Therefore, these settlement arrangements only apply to part-time re-employment that commenced before 1 April 1997 (and where the claim was brought within six months of the end of the employment).

5. Employers must also remember that the teachers' pensions regulations were amended on 1 April 2000 to allow non ill-health pensioners to elect for further employment to be pensionable (commonly known as the 'elected further employment' (EFE) arrangements).

6. If a claimant was in service on 1 April 2000 and did not take the opportunity to make an EFE election on that date or shortly afterwards, then the employer should consider whether this might be a reason for resisting the claim. Employers should know from their records whether the pensioner was issued with an EFE election form in April 2000. It is for the employer to decide whether it is reasonable to concede a claim from a person who could have made an EFE election on 1 April 2000 but who did not. Just as with Preston claims generally, it would not be appropriate for Teachers' Pensions or the Department to be prescriptive about what is 'reasonable'. Preston claims have to be considered in relation to the employment-related facts.

7. Indeed, if a claimant did not make an EFE election despite the fact that the employer had made the person aware of the EFE arrangements, the employer would not be precluded from settling the claim. But if the Department becomes aware of this, then the Department would reserve the right to regard the claim as 'inappropriately settled'. In that event, the Department would most likely hold that it would not be right (or fair) for the contribution (for the pre-1 April 2000 employment)

to be dealt with under the Treasury Model Settlement.

8. However, it might be that the employer is satisfied that the claimant has a valid explanation. It might be that the claimant was aware of the EFE arrangements but did not elect to join because the planned post-1 April 2000 employment would be insufficient for the claimant to have met the one-year qualifying period for EFE benefits. It might be that the claimant can prove that he or she was not aware of the EFE arrangements because the employer failed to cascade information about the EFE arrangements.

9. If an employer decides that the lack of an EFE election on 1 April 2000 is not a ground for resisting the claim, then the question arises of whether the person should be invited to make a retrospective EFE election in respect of employment from 1 April 2000 onwards. This is a matter for the employer to consider and the employer's agreement to this would be subject to payment of the necessary employer and employee contributions plus statutory interest under the terms of the teachers' pensions regulations. If an employer does **not** wish to use this opportunity to offer a retrospective EFE election, then boxes (d) and (e) should be deleted from Form 1.

10. The Preston Working Group (set up to agree the handling of Preston claims) has agreed the content of a Questionnaire for use in the initial assessment stage. The teacher unions and the employer associations were represented on the Working Group and have agreed the format and procedure for completing the Questionnaire 'Education1 (post retirement)' to be used for these claims.

Action to be taken by the employer on receipt of the completed Questionnaire

11. Employers should ask the claimant to provide full details about the backdated service they wish to claim using the **Questionnaire Education1 (post retirement)**. This can then be used so that the employer can consider the request and agree the details submitted.

12. Claimants are required to provide supporting evidence such as payslips, contracts of employment, tax forms, national insurance records or any other evidence which shows that they were in employment during the period they are claiming. If they cannot provide such evidence for any period that they are claiming then they must provide a written statement to support their claim.

13. **IMPORTANT.** If an employer does not hold employment details (to validate the service claimed), it is worth checking whether Teachers' Pensions holds the service information (as non-pensionable "02"). This is more likely to be the case if the employment was in the schools sector and the service data was collected for statistical purposes. But Teachers' Pensions may also have collected the data for the assessment of abatement.

14. To investigate whether TP holds any service details, employers can obtain a Member Print showing details of any non pensionable "02" service via:

- TP online; or

- The TP Contact centre on 0845 606 6166.

Employers can request a "member print" via TP Online (TR2) and the details will be returned in 48 hours. The Member Print does not specify the type of retirement undertaken and in order to check that the retirement is "Age" or "Premature", the employer should telephone the Contact Centre.

15. It is possible that a service record may have to be constructed and based on notional salary information. This would be the case if employment records are no longer available or if the applicant was paid on a flat-rate hourly basis where there was no full-time equivalent rate. Note 2 on Part 3 of Questionnaire 'Education1 (post retirement)' instructs claimants to enter 'Not known' and in these circumstances it will be necessary for employers to agree with claimants to use notional rates that have been jointly agreed by the teacher unions and employer associations.

16. But even if the actual service and salary information is available, employers should use the TPS Preston GAD calculator (which is based on the Treasury Model Settlement) to calculate the employee contribution. The GAD calculator has had to be amended for these claims to recognise the later end date of 31 March 2000 (for other Preston claims the service claimed cannot go beyond 30 April 1995). The calculator can be accessed via TP's website [www.teacherspensions.co.uk/Announcements/Part-timeWorkers\('Preston'\)](http://www.teacherspensions.co.uk/Announcements/Part-timeWorkers('Preston')).

Verification (summary)

17. The claimants have been asked to provide detailed information about the amount of service they wish to claim, the number of hours worked per week and the hourly rate of pay with supporting evidence.

18. Employers must consider:

- (i) The service claimed and the supporting evidence provided.
- (ii) Whether the re-employment commenced before 1 April 1997.
- (iii) Whether the claim was lodged 'in time'.
- (iv) If the claimant was in employment on 1 April 2000 but did not make an EFE election, is this a reason to resist the claim.

19. If the employer is satisfied that the claim should succeed - and that it can properly be dealt with under the Treasury Model Settlement - the employer should proceed to the calculation stage.

Abatement of pension/Premature Retirement Compensation (PRC) and clawback of PRC

20. At calculation stage, employers should you will need to bear in mind:

- (i) That, having received details of the post-retirement employment, Teachers' Pensions will undertake an assessment of whether the TPS pension should have been abated.

- (ii) If the person was awarded additional years of service by way of PRC, the employer will have to assess (possibly with TP's help) whether the PRC should have been abated (regulation 20 of the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997 ("PRC97").
- (iii) The employer will also have to assess whether clawback of PRC should apply (regulation 21 of PRC97). Consideration will be on a case-by-case basis and this is not a matter on which TP or the Department can advise. This may require a discussion with the compensating authority (if different). The risk to a compensating authority is that a claimant is likely to seek to settle the claim 'in part' in order to avoid clawback. The employer will have to decide whether it would be reasonable to allow the claimant to settle in part (and continue to receive full PRC). The alternative would be for the claimant to only be given the option to settle the claim 'in full' (or withdraw the claim 'in full').

21. **NB.** Employers should warn the claimant about the potential impact of abatement and clawback of PRC. The claimant will need this information before deciding on whether to settle the 'Preston' claim.

22. TP will undertake the abatement assessment in the normal way via Certificates of Re-employment for each tax year. Once the assessment has been undertaken, TP will notify you of any impact on the pension and PRC in payment.

23. Employers should forward a copy of Education1 (Post retirement) to TP even if a claimant decides not to proceed with the Preston claim.

February 2010