

Teachers’ Pension Scheme

Provisions for Discretions

# Provisions for Discretion within the Teachers’ Pension Scheme

# Background

1. The Teachers’ Pension Scheme (TPS) provides a pension and other benefits to its members and the beneficiaries of those members. The conditions for membership in the scheme and for the payment of benefits are set out in legislation. On 1 April 2015 the TPS reforms came into force and as a result there are two sets of legislation. Both sets have been created to provide benefits for members of the TPS and their beneficiaries, although the method for calculating those benefits may differ.
2. The Department is responsible for developing scheme rules through legislation and policy. The scheme rules apply to all members equally and the scheme is administered through Capita Teachers’ Pensions (TP). TP has delegated authority to deliver the TPS in accordance with the scheme rules.

# Application of Scheme Rules

1. The vast majority of scheme correspondence is received by TP and relates to the operation of the scheme in general or in respect of individual members. Such communications usually require a factual response either stating the current service level credited to a member or a plain English explanation of the scheme rules.
2. Other forms of correspondence however, such as applications for benefits, require TP to gather evidence and determine whether the conditions set out in the scheme regulations have been met. In making these determinations TP follow an agreed process.
3. In the majority of cases, the application forms and guidance notes that are used are designed to capture exactly the evidence that will be required to demonstrate eligibility (or non-eligibility) for benefits. These forms are designed by TP’s Business Analysts, with input from a Subject Matter Expert (SME), and signed off by the Policy and Technical Team (PAT team). Where sufficient evidence is not provided, TP will write to the person concerned, using a standard template, requesting the necessary information.

1. Once all evidence is received, TP will consider the application against the conditions set out in the regulations. The case handler will initially consider the evidence and determine if the conditions have been met. For most cases this is a relatively straightforward process and the evidence is clear, for example death certificates or marriage certificates.

1. Where the evidence is not conclusive, or the case handler is unsure whether the conditions are met, the case is escalated to a SME. Details of the case are documented on a referral form which clearly sets out the reason for escalation. The correspondence manager will then consider all the information available and either provide the case handler with a solution, based on previous similar cases, request additional information, or escalate the case further.

1. Escalated cases are considered by the PAT team, who can advise SMEs on the most appropriate way to proceed. Where the PAT team are unable to provide such advice, they will request advice from the Department.

# Application of Discretion

1. There are occasions where strict application of the rules may unintentionally penalise a member for non-compliance which is out of the member’s control. The scheme rules therefore include a number of provisions that allow for discretion to apply so that unintentional consequences can be minimised.
2. TP are authorised to exercise discretion in respect of particular regulations. Authority is provided through a decision document which lists the statutory discretions and the conditions that must be satisfied before each discretion can be applied. The purpose of the discretion document is to assist TP in delivering the TPS in a consistent and effective way for all members.
3. TP may only consider discretion where there is evidence to demonstrate that strict application of a particular regulation would, or may, cause a person or group of people to be unduly disadvantaged.
4. On receipt of a query from a member, TP will document the reason for the query on a referral form. This form contains all relevant information relating to the query and provides a chronological history of the case. TP will record the date the enquiry is received, the nature of the enquiry and the relevant legislation and policy. Following consideration of the individual case, TP will document any options available in responding and the reason a particular response was chosen. This form is held on the member’s file for future reference.
5. In circumstances where TP believe the application of the regulations may unduly disadvantage a person, this is recorded on the referral form. TP will state the regulatory position and the specific circumstances of the case, explaining why strict application of the regulations should not apply. In some circumstances TP may be able to apply discretion. Discretion can only be considered by TP where there is a statutory provision allowing discretion and all the conditions for that discretion are met. The conditions to be met are set out in a decision document produced by TP, with agreement from the Department.
6. The referral form will be completed to include consideration of discretion and evidence that all the conditions are met. If the discretion conditions are met, TP may apply discretion to that member. This process must be followed for all enquiries, so discretion can only be applied on a case by case basis. Following a decision to apply discretion, the referral form is updated and held on the member’s file.
7. There may be occasions where some of the conditions are not met but TP recommend discretion is applied nevertheless. Where discretion is to be considered outside the conditions in the discretion document, the referral must be made to the Policy and Technical (PAT) Teamfor discussion with the Department. The referral form will clearly set out the background of the case, all considerations against the regulations, policy and previous practice and the reason why TP consider discretion should be applied.
8. The PAT Team will consider the referral in the first instance, update the referral form setting out their considerations and, where appropriate, provide the case handler with a response. Where the PAT team agree that discretion is appropriate, they update the referral form detailing which discretion they want to apply, the reason the discretion is appropriate and a recommendation on how to proceed. The updated referral form is then provided to the TPS policy team within the Department.

**Role of the Department**

1. The TPS Policy team are responsible for developing with TP, and managing, the decision document. In reviewing cases referred by TP, the policy team has regard to the application of discretion more generally and, if appropriate, will consider amendments to the document to ensure consistent application of discretion.
2. The policy team may also review cases that are not referred to the Department to ensure consistent delivery in decision making and quality of responses in individual cases. This quality assurance process ensures the Department is satisfied that discretion is being applied consistently and appropriately and any issues are identified and addressed quickly.