

**Settlement of the Part time Pension Claims
Guidance for the Higher Education Sector**

Index	Page
Introduction	2
Background, Settlement Procedure	3
History of the salary scales	5
Receipt of Questionnaire and non response	5
Step One - Checking Questionnaires	5
Step Two - Calculating the Backdated employees contribution	6
Using the Model Settlement	6
Step Three - Service Record	7
Resolving difficulties	7
Refer back to Tribunal	7
Step Four - Send out the offer letter and returns	8
Offer letter	8
Form 1	8
Form 2 Withdrawal form for the Employment Tribunal	8
Form 64-8 Inland Revenue Authority Form	9
Step Five - Processing the returned material	9
Active Members	9
Deferred Members	10
Pensioner Members	11
Problems	11
Applying for NIC Refunds	12
Individuals who purchased Personal Pensions	13
Guidance on the unravelling of SERPS	13

Guidance to Institutions Settling TPS Part-time Pension Claims

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 Educational Establishments with claims against them will use this 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 pension cases and not for any other purpose.*
5. *The Education Establishments are recommended to consider all the evidence provided by the individual together with all the information they may have and to use the information and advice in this guidance to reach a written agreement with that individual.*
6. *On the rare occasions where this is not possible by correspondence, the institution and the individual should meet to provide clarification and to seek to resolve any outstanding issues.*
7. *The Individual 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 employer.*

However, the Department will audit claims, verified by institution, to check that the institutions 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 employers contributions will then have to be met directly by that employer.

1. BACKGROUND

At the request of the Employment Tribunal (ET Information Bulletin no 8), HE institutions identified in August 2003 which of the outstanding TPS part-time pension claims were ready for settlement and which would remain 'stayed' pending the outcome of appeals or for other reasons. They were also asked to send a questionnaire by 1 October to the claimants in cases ready for settlement in order to collect the necessary details and evidence on which to settle the claim. These should now have been returned. In December, the trade union appeals were heard, so it is now clear that only hourly paid part-time teachers and lecturers who remained part-time up to lodging their claim or within six months of lodging have claims. It is generally accepted that comparators will not be needed for these claims. The remaining outstanding issue is on any claims affected by TUPE and these will remain stayed at this time.

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 appropriate box on Form 1. 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 (the information contained in this guidance document cannot be applied to an election for part-time service after 1 May 1995).

2. GUIDANCE TO HELP SETTLE CLAIMS

This guidance has been prepared by UCEA and the trade unions and is intended to help institutions settle claims where there has been a response to the questionnaire. Where there has been no response, institutions are recommended to check the address, particularly where it has been changed in the past, or use any other means of ensuring that the claimant has the opportunity to reply if they so wish,

As you are already aware, it has been decided that claims can go back to 1976. For HE institutions this could include periods of employment before incorporation (April 1989 in England and April 1993 in Wales) when the claimant was employed by the local authority. It has been decided that HE institutions are also liable for this part of a claim where there was continuous service and the claimant was therefore transferred to the institution under the terms of the legislation (Education Reform Act 1988). Institutions which have merged with FE colleges will be in a similar position.

3. THE SETTLEMENT PROCEDURE

- 3.1 It is readily accepted by all concerned that employment records will be sketchy and may, in some cases, no longer exist. Institutions are recommended to be reasonable and realistic in what evidence they require for all of the employment period claimed. Claimants will produce the evidence or information in their possession in response to the questionnaire. Institutions are expected to make available any records or information they may have.

In addition, to help institutions and claimants to resolve the outstanding claims, UCEA and NATFHE have drawn up details of salary scales and London allowances from 1976 to 1995, when hourly-paid part-timers were admitted to the TPS, and guidance on estimating approximate hours of work. For periods where there is no information, institutions need to identify patterns of employment from the details that are available and apply them to reach a reasonable informed estimate.

3.2 The purpose of this procedure is

- using the evidence available together with reasonable estimates, to calculate and inform the claimant (the offer letter) in writing of:
- the cost of the backdated employee contributions which they will be required to pay. A tool is provided for this purpose: the "Settlement model"
- the total pensionable service to be backdated (a formula is provided).
- as part of the agreement, the claimant is required to withdraw their claim with the Employment Tribunal
- to inform TPS of the backdated service payable and, unravel the national insurance contributions and SERPS
- to inform the tribunal of the agreed settlement and withdrawal of the claim or that the case will need to be decided by an employment tribunal.

3.2 To help this procedure succeed, institutions are recommended to consider all the evidence provided by the claimant 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 claimant. Where this is not possible by correspondence, the institution and the claimant should meet to provide clarification and to seek to resolve any outstanding issues. The claimant should have the right to be accompanied by a trade union representative or work colleague.

3.3 *If the individual has difficulty providing the evidence they should be informed to contact:*

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 and/or;

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.*

4. HISTORY OF THE SALARY SCALES

- 1976 - 1980 10 regional salary scales with hourly rates of pay. Salary details are provided in Appendix page 5-7. Institutions will be able to identify their appropriate group by reference to their local authority.
- 1981 – 1989 national local authority scales with hourly rates in Appendix page 8. Salary details are given in Appendix pages 10-.
- 1989 - 1995 HE institutions established their own national bargaining arrangements (PCEF). Salary details are given in Appendix pages 8-9.

London Allowances,

These were paid in addition to the hourly rate from 1976 to 1995. There were different allowances for each of the three zones: Inner Area, Outer Area and Fringe Area. Details are set out in Appendix pages 11-13.

5. Receipt of Questionnaires and non response

Once the questionnaires have been returned to you: check that all have been returned, if there are any not returned who have not contacted you to explain why, it is worth checking their address against your records in case they have moved and failed to have notified the tribunal of their new address. If the individual is still in your employment it would be worth considering internal mailing.

6. Step One - Checking Questionnaires

- 6.1 The questionnaire will need to be checked both for what is claimed and what evidence is offered. It would be wise at the same time to cross-reference this with any information that you hold on the individual. This is likely to confirm the evidence and claim and might also supplement the evidence if it has gaps in it and this might lead to a complete record. If there is any conflict you will have to discuss this with the individual and seek to resolve the matter.
- 6.2 It is recognised that the responses will cover a wide spectrum of both type and level of evidence returned to you. There will be some that have complete documentary evidence of their work record including contracts specifying grades of pay and work time as well as pay slips and P60's. There will also be some with evidence of the employment but scant information on the range of contracts and work time.
- 6.3 Once you have established a chronological diary of work, pattern, earning and evidence then you need to identify the method to be used to establish the data for putting in to the Settlement model for their contributions.

6.4 Your task is to establish a chronological pattern of the earnings over the time. You may need to use various tables to change the information you have been given into an earning pattern. Working examples of how to do this are in the appendix at pages 14-20.

6.5 The individual is likely to provide the evidence in academic years as contracts were normally issued in this way. **Remember you are reporting the information to Teachers Pension in financial years and need to separate out the summer term into the next academic year.**

6.6 Pattern of Work

During this period in FE and HE the pattern of working for hourly paid lecturers was 14 weeks in the Autumn Term, 12 weeks in the Spring Term and 10 weeks in the Summer Term. It is worth remembering this if you have annual contracts, it means that 26 weeks will be in one financial year and the remainder will be in the next financial year. During this time hourly paid lecturers did not always work the same as full-timers they did not have contracts normally for the enrolment or administration weeks, and sometimes their contracts stopped one or two weeks before the end of courses.

7. **Step Two – Calculating the Backdated Employee Contribution and Service.**

7.1 Once you have gathered the evidence and processed it you are ready to move to the calculation stage: this should enable you to work out the contributions the individual will have to make and the service it will purchase in the scheme. It will also enable you to complete the forms for Teachers Pension and provide the information necessary of the audit trail for the Department.

7.2 To calculate the backdated employee contributions, you need information on the earnings in each year claimed (use the evidence) and the full-time equivalent salary for each of those years (use the attachments). You can calculate the part time proportion (as a percentage) by dividing the earnings by the FTE to get a fraction and multiply by 100 to get a percentage. You then put this information in the "Settlement Model" and it will calculate the backdated employee contributions for you. With the same information use the formula to calculate the years of pensionable service to be credited.

7.3 Tracking an individual's pensionable earnings year by year is not likely to be practicable in the vast majority of cases because the records will not be available. **So the most frequently used method is likely to be based on one annual pensionable earnings figure at the end of the reinstatement period or current salary.** You will need the part-time proportion as described above. This may have been the same throughout the period or, where it varied, an average across the total period can be calculated or using the last year in the blocks for each variation and again totaling the contributions owed.

7.4 Some individuals will have provided all the evidence of their earnings and FTE for each year may be available and they have asked if you will work it out exactly. In these cases it is possible to use the Settlement model to do a calculation for each year. Then you will need to total the contributions.

7.5 The "Model Settlement" is available in the GAD SPREADSHEET MODEL TO ASSIST IN CALCULATING CONTRIBUTIONS REQUIRED TO REINSTATE SERVICE. The website also provides information on how to use the model - guidance on the use of the GAD SPREADSHEET MODEL. The TPS contribution (employee) rate required by the model settlement is 6% for all years and the tax rate is 22%. A copy of the model page and the guidance is in the appendix page 24 onwards.

8. Step 3 -Service Record

The following formula has been agreed as the means of calculating the service record from the model settlement. Using the % of individual earnings against the FTE salary you multiply it by the years that has been accepted and this provides you with the service to be credited.

$$40\% \text{ for } 10 \text{ years} = \frac{40}{100} \quad \times \quad 365 \quad \times \quad \frac{10}{365} = 4 \text{ years}$$

If the individual earnings have been entered into the model settlement in blocks or individual years then you will have to replicate this and add the individual results together to provide the total service to be credited.

Remember to place a copy of this calculation into the individual's file for reference purposes.

The number of years service can then be included in the offer letter to the individual and on the form to Teachers Pensions.

9. Difficulties

It is likely that you may have some difficulty with some of the evidence or lack of evidence for periods of time the individual is claiming. Then it would be useful if you invite the individual and their representative to attend a meeting with you to see if the issue can be resolved. Any tribunal would expect an employer to act reasonably and seek to reach an agreement. It may be that the agreement if there is a gap can be reached using what happened before and/or after that particular period.

10. Refer back to Tribunal

Ultimately if it is not possible to reach an agreement with the individual, then the matter will have to be referred back to the courts.

If you receive no response to your questionnaire and have sought other ways of reaching them and not been successful, again you will have to refer the matter back to the tribunal. It is wise to have retained the evidence of your efforts, as tribunals are likely to be unhappy if they believed that it could have been resolved without their intervention.

11. Step 4 - Offer Acceptance Forms

Once the calculations of the retrospective contribution and service credit have been completed and agreed, the institution will provide the individual with an Offer Letter and other relevant information.

11.1 Offer Letters

1. There are three versions of the offer letter.
2. One for each type of individual. An active member of TPS page 43 in the appendix, a deferred member page 52 in the appendix and a pensioner member page 60 in the appendix.
3. The offer letters are basically the same, but there are variations depending upon the current employment status of the individual
4. The institution 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 individual

11.2 A) Form 1.

This is the election form on which the individual indicates whether or not they wish to accept the offer, made in the letter. The individual 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 individual (who legally is known as the applicant) is entering into a legally binding agreement, from which they may not withdraw.

Form 1 must be completed and returned, to the institution, by the individual within six months from the date of the offer letter. The return date must be entered on the offer letter by the institution, in the "By when must I make a decision" paragraph. The institution's 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 institution, a copy must be forwarded to TP, who will make the necessary arrangements for retrospective reinstatement to the pension scheme.

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

11.3 b. Form 2. Withdrawal of Employment Tribunal Application.

This form must be completed and returned to one of the addresses on the back of the form, by all individuals where agreement has been

reached to settle their claim. When it has been received by the ET it will signal to the ET that the claim has been settled and the case can be withdrawn/closed. If an individual/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 on the back of 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 68 of the Appendices.

11.4 c. Form 64-8 Inland Revenue Authority Form

This form, once it has been completed by the individual, must be returned to the institution. It provides the Inland Revenue with the authority to send the institution details of the individual’s National Insurance Contribution refund, to enable the institution 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 institution 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

- 11.4.1 D. Estimate of Retirement Benefits sheet will be included with the information sent to enable the individual to obtain an approximate calculation of the increased benefits they are able to purchase. Page 74 in the appendix.

12. Step Five– Processing the returned offer and forms

When the forms are returned within the six-month deadline, then the institution needs to process them. Sort them out into the types of membership of Teachers Pension and process. Completed forms 1 (the questionnaire), Form 1 and Education Form 3 must be sent to Capita Teachers’ Pensions, Mowden Hall, Darlington, DL3 9EE

12.1.1 Active member

Lump sum payment

If the individual is not purchasing the whole amount but part of their service, go back to the Model Settlement and if you have saved an individual copy for each member then open it. Remember to change from the ‘initial quotation’ to ‘follow-up query’, to enable you to input the new data. Input the part purchase option and print off a copy of this form and add this to their file.

If the individual is purchasing the full period or part of the period by lump sum payment, then you need to complete the receipt for the cheque and send it to the individual for their claim for tax relief. Page 74 in the appendix. Send all information to Teachers Pension with copies of their file. At the same time confirm this with the individual.

Move to sorting out their National Insurance Contributions.

12.1.2 Deduction by monthly debit.

If the individual is not purchasing the whole amount but part of their service, go back to the Model Settlement and if you have saved an individual copy for each member then open it. Remember to change from the 'initial quotation' to 'follow-up query', to enable you to input the new data. Input the part purchase option and print off a copy of this form and add this to their file.

If the individual is purchasing the full period or part of the period by deduction from their salary and they will have indicated either that they wish to pay this off over the period equal to the number of years being purchased or the period to their 60th birthday (whichever is the earlier), then, establish the payroll deductions. Check that the period is not more than the period of years that they are purchasing. Check that the repayments do not extend beyond the individual's 60th birthday. Remember that the deductions are a fixed payment not a percentage of salary and send all information to Teachers Pension with copies of their file. At the same time confirm this with the individual.

Move to sorting out their National Insurance Contributions.

12.2 Deferred Members

If the individual is not purchasing the whole amount but part of their service, go back to the Model Settlement and if you have saved an individual copy for each member then open it. Remember to change from the 'initial quotation' to 'follow-up query', to enable you to input the new data. Input the part purchase option and print off a copy of this form and add this to their file. At the same time confirm this with the individual.

Use of retirement grant to complete repayments.

If the individual has indicated no payment back or a limited payment back and has opted to have the payment deducted from the lump sum retirement grant (or death Grant) and if necessary, by making deduction from the monthly pension when it is in payment, these arrangements are made directly with Teachers Pension. Therefore the institute needs to send all information to Teachers Pension with copies of their files. . At the same time confirm this with the individual.

Once Teachers Pensions have been notified move to sorting out the national insurance contributions.

12.3 Pensioner Members

If the individual is not purchasing the whole amount but part of their service, go back to the Model Settlement and if you have saved an individual copy for each member then open it. Remember to change from the 'initial quotation' to 'follow-up query', to enable you to input the new data. Input the part purchase option and print off a copy of this form and add this to their file.

Teachers Pension will recalculate the benefits and offset the cost of the period being bought against the additional benefits due.

Move to sorting out the national insurance contributions.

13. **Problems**

The institute needs to remember that if the individual defaults on any arrangements, then Teachers Pension will recover any unpaid amount (with interest) from the institute. It will be for the institute to recoup the money direct from the individual.

13.1 Active Members

If the individual is an active member and chooses to leave your institution before payment is completed, and is not claiming the pension, then when you receive their notice you need to talk to them over their intentions.

They could repay the money over a shorter period if they could afford to.

They could move to the payment being collected out of the retirement pension when they claim it.

Or select the payment in a one of sum in the future before retirement.

If the individual is claiming pension before they have completed the repayments, the institute should notify Teachers Pension who will recover the outstanding contributions via the retirement lump sum and monthly pension payments if necessary.

13.2 Deferred Members

If the deferred member has not paid off their outstanding contributions and wishes to transfer their pension, then the individual must pay off any balance of the outstanding contributions within six months of the 'guaranteed date' of the Cash Equivalent Transfer Value (CETV).

14. Applying For NIC REFUNDS

- 14.1 Institutions will normally claim NIC refunds on behalf of the individual and themselves. Institution should complete a schedule of Applicants who are claiming NIC refund as part of the retrospective access to the Teachers Pension Scheme. An excel template of the schedule is available at Page 82 of the Appendices.
- 14.2 Once completed as fully as possible, the schedule should be sent, with a covering letter, from the educational institute, quoting the reference “PRESTON”, to NICO, Benton Park View, Newcastle upon Tyne, NE98 1ZZ.
- 14.3 The institution should include the following details if any of them apply
- a) If the individual is claiming an NIC refund for a period of service with a previous employer, from whom the individual 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.
 - b) A completed Inland Revenue Form 64-8 for each Applicant
- 14.4 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 individual’s refund to be made directly to the institution, if required and, where necessary a letter regarding statutory novation, it will be possible for them to calculate the refund due to the individual and institution, plus the interest due to the institution and arrange for payment to be made.
- 14.5 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.
- 14.6 The institution can then complete the NICRC spreadsheet to calculate the interest due to the individual and arrange for payment to be made, together with any NIC refund received in respect of the individual. The NICRC model is available on the Treasury website http://www.hm-treasury.gov.uk/documents/taxation_work_and_welfare/public_service_pensions/tax_pensions_preston.cfm. An example of what it looks like is on page 81 of the appendix.
- 14.7 The institution must then pass the residual sum (A+B-D) to TPS, to offset the employer pension contribution. You can remit this amount to TP in the usual way. Explanations of unraveling the National Insurance Contributions are on page 76 in the appendix.

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’.

15. Individuals who Purchased Personal Pensions

- 15.1 It is possible that some individuals who fit into the ‘cases most likely to succeed’ category will have paid into a personal pension scheme for part or all of the period that they are seeking retrospective membership of the TPS. There is an explanation of Personal Pension and Retrospective access to Teachers Pension Scheme on page 78 of the appendix.
- 15.2 There is only one situation that you have to watch out for and that is the individual 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 (SIB) review of mis-sold personal pensions, subsequently been reinstated in to Teachers Pension for part or all of the period of their claim. You will be alerted to this possibility by Teachers Pension, following submission of the agreed dates for retrospection, they hold this information on their files.
- 15.3 If Teachers Pension contact you on this matter it will be to inform you and provide you with the relevant dates and depending on this information the claim will either not be able to continue or you will have to recalculate the information removing that period of time.

16. Guidance on the unravelling of SERPS

1. SERPS unravelling will commence once NICO receives the above documents from the institution in respect of an individual 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 individuals who are still in employment
3. **The SERPS pension will then be recalculated taking into account any refund of NIC.**
4. Individuals who have retired and are claiming the SERPS pension will have their NIC records adjusted.
5. 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.
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.