

## Teachers' Pension Scheme

### Retrospective Access to Occupational Pension Schemes by Part-time Workers ('Preston')

#### GUIDANCE FOR APPLICANTS

##### Notes to accompany Questionnaire 'Education1'

#### Introduction

- This guidance is for applicants who have been sent a copy of Questionnaire 'Education1'.
- 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 because a period of part-time employment undertaken between 1976 and 1995 was excluded from the Scheme's part-time arrangements. The respondent employer has decided that your claim falls into one of the following categories:
  - (a) "**successful claims**" - *the claim can now proceed to be settled.*
  - (b) "**not known claims**" - *the information provided on Form ET1 is not sufficiently detailed to allow the respondent employer, to agree whether the claim is successful or not.*
- Questionnaire 'Education1' has been sent to you so that you can provide the respondent employer with further information so that in relation to (a) they can calculate the contributions you will need to pay for your backdated service and in relation to (b) a decision can be made on whether your claim should succeed. The employer will have indicated in the covering letter accompanying the Questionnaire into which of the two categories your claim falls.
- References 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.
- Notes on completion of the Questionnaire are given at paragraphs 9 to 16.

#### **IMPORTANT**

If you want your employer to give further consideration to your claim, you must complete Questionnaire 'Education1' 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.

## Background

1. Since the House of Lords Ruling in February 2001 that applicants must lodge their claim with the Employment Tribunal within six months of the end of the employment in question, the Employment Tribunal (with Mr John Macmillan presiding) has considered various legal issues, including what constitutes a stable employment relationship in relation to various employment patterns. In August 2002, the Employment Tribunal issued its decision on these issues. Some aspects of the decision are the subject of appeal and claims affected by these issues are stayed pending their resolution.

2. As regards other claims, on 3 April 2003, Mr Macmillan issued Directions to respondent employers and applicants with a view to parties reaching agreement on the administrative arrangements for settling successful claims. Representatives of the applicants and respondents were directed to agree a standard form of Questionnaire for the purpose of ensuring that all relevant information is available to enable successful claims to be confirmed and proceed to be settled (Information Bulletin No 8 fully explains all of the Directions. A copy of the Bulletin is available from [www.employmenttribunals.gov.uk](http://www.employmenttribunals.gov.uk) or by telephoning 0115 947 5701.)

3. The Teachers' Pension Scheme is a group scheme administered centrally. A Working Group was set up earlier this year to agree the Questionnaire and other administrative matters on which agreement is required. The teacher unions and the employer associations are represented on the Working Group and have agreed the format and procedure for completing the Questionnaire 'Education1' to be used for all claims involving the Teachers' Pension Scheme and this guidance. (See annex A for a full list of representative organisations and unions.)

*Have I been sent the Questionnaire because my claim has succeeded?*

4. Not necessarily. You have been sent Questionnaire 'Education1' to complete because:

- a. the respondent employer has decided that your claim can now proceed to be settled; or
- b. the information provided by you on Form ET1 is not sufficiently detailed to allow the employer to agree whether your claim is successful or not.

5. The employer will have indicated in the covering letter accompanying the Questionnaire into which of the two categories your claim falls.

6. If you want your employer to give further consideration to your claim, **you must complete Questionnaire 'Education1' 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.

7. In relation to the “not known cases” if, in the light of the details you provide on the Questionnaire, your employer considers that your claim is **not** successful then it will inform the Employment Tribunal and your claim may be listed for hearing before the Tribunal. However, your employer may not be able to consider whether your claim is successful as the information you provide may raise issues which are subject to the Employment Appeals Tribunal. These cases are stayed until the Tribunal has made a decision.

8. The Teachers' Pension Scheme has contained arrangements for part-time employment in the schools sector to be pensionable (on election) since 1967. Over time the arrangements have been extended to include additional employer categories (eg the FE sector was included with effect from 1<sup>st</sup> January 1977). However, until 1<sup>st</sup> May 1995, the arrangements excluded non-fractional hourly paid employment and not all employer categories. In considering your claim, your employer will need to confirm whether the part-time employment that you are claiming was *excluded* from the part-time arrangements that were in place at the time the employment took place.

#### **Notes on Completion of Questionnaire ‘Education1’**

9. The purpose of Questionnaire ‘Education1’ is to enable the respondent employer to validate your claim for part-time employment that was excluded from the Teachers' Pension Scheme's part-time arrangements.

10. Importantly, 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.

11. It is more than likely 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.**

12. It is also 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.

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

**Column Headed**

<b>1. Name of Employer</b>	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.
<b>2. Post Held</b>	Enter the title of the post held (eg teacher, lecturer) or, if applicable, grade band, during the employment.
<b>3. Date Employment Started (<u>see Note 1</u>)</b>	Enter the first date of the part-time employment claimed.
<b>4. Date Employment Ended (<u>see Note 1</u>)</b>	Enter the last date of the employment claimed or, if hours worked fluctuated, the date the hours worked changed.
<b>5. Hours worked per week/rate or grade of pay (<u>see Note 2</u>)</b>	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.
<b>6. Salary paid per week/month/year (<u>see Note 2</u>)</b>	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.
<b>7. Reason for leaving/reason for change</b>	Give details of any breaks in service during the period being claimed.

14. Please note that you cannot claim for periods prior to 8<sup>th</sup> April 1976 and for periods after 1<sup>st</sup> May 1995. 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 (e.g. any period after 30th April 1995) then your case is still subject to issues to be considered by the Employment Appeals Tribunal and is a stayed case.

15. 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.

16. Completion of Questionnaire 'Education1' 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.

*What will happen once I have submitted my completed Questionnaire to the employer?*

17. 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 total amount of backdated service agreed;
- b. the amount of employee contributions to be paid;
- 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;
- e. an estimate of the value in pension terms the backdated service will have on your pension benefits; and
- f. details of the options available to you for payment of the contribution that you will need to pay

18. 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 scheme at the time of the employment being claimed. The Model Settlement caters for claims where full service and salary details are available and claims where employment records have to be constructed using the joint agreement on notional salaries and grade bands.

19. 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 (previously 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 see the Pension Service's leaflet "Backdating membership of an occupational pension scheme" (available from [www.thepensionsservice.gov.uk](http://www.thepensionsservice.gov.uk) or telephone 08457 31 32 33).

20. 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.

21. 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.

22. 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.

23. If you are already in receipt of pension benefits 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.

**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 Education and Skills or Capita Teachers' Pensions. Neither party is involved in handling individual claims and cannot comment on the merits of individual claims.**