
CIRCULAR

Please pass on sufficient copies of this Circular to your Treasurer/Director of Finance and to your Personnel and Pensions Officer(s) as quickly as possible

No. 138 – APRIL 2003

PART-TIMER PENSION CLAIMS

Purpose of this Circular

1. The purpose of this Circular is to notify authorities of the Directions issued by the Employment Tribunals on 3 April 2003 and to set out the process that will ensue in relation to the Local Government Pension Scheme. A copy of the Directions letter is attached (Appendix 1). The letter, and further information about the part-timer test cases, is also available on the Employment Tribunals' website at www.employmenttribunals.gov.uk
2. It is **VITALLY IMPORTANT** that a copy of this Circular is passed to the person or persons within your authority who is dealing with the part-time Employment Tribunal claims, if any, lodged against your authority.

Summary of the process

3. The Employment Tribunal was informed on 31 March 2003 that:
 - a) the Public Sector employers and unions have agreed in principle the method of calculating the arrears of contributions (the "Settlement Formula") for those employees who have submitted a valid claim to the Employment Tribunal, and
 - b) joint agreement on the detail will be reached by **1 June 2003**.

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Executive Director: Charles Nolda
Registered in England No 2676611 Registered office: Local Government House, Smith Square, London SW1P 3HZ



INVESTOR IN PEOPLE

4. The text of the "Settlement Formula" is still being worked on in minor respects and there is scope for flexibility and tailoring of the formula to meet the needs of the LGPS. The LGPC is seeking to agree with the unions as simple a process as possible. An Excel spreadsheet has been developed to calculate the arrears due and will be made available to authorities in due course. The final version of the Settlement Formula may not be available until early June 2003.
5. The LGPC will issue guidance **early in June 2003** which will enable authorities to determine which cases fall into categories 6(a), (b) or (c) below. Authorities are advised to await the detailed guidance before finalising the categorisation of their cases.
6. By not later than **1 August 2003** all employers will be required to serve by e-mail on the tribunal at pensions@ets.gsi.gov.uk a schedule in Excel format of all part-time worker pension ET claims against them, in alphabetical order, indicating whether:
 - a) the claim can now be settled;
 - b) on the information currently available it is not known whether the claim can be settled; or
 - c) the claim is not yet ripe for settlement.
7. In the last case any outstanding issues preventing settlement of an ET claim are to be identified. The schedules will then be forwarded to the unions representing the test cases. It should be noted that authorities should already have notified the Employment Tribunal of certain cases that can be struck out – see LGPC Circular 128 which is available on the LGPC website at www.lg-employers.gov.uk/pensions/circulars.html
8. Employers will be required, by **1 October 2003**, to issue a questionnaire to each ET applicant under categories 6(a) and (b) above. The form of the questionnaire is to be agreed between the LGPC and the unions and will be circulated to authorities in due course.
9. The applicant will be required to return the completed questionnaire to the address shown on the questionnaire within 28 days of receiving it from the employer. Any applicant who does not return the completed questionnaire cannot have their claim settled and employers may eventually apply to have such claims struck out.
10. The employer will, upon receipt of the completed questionnaire, need to verify the information provided. If the information supplied by an applicant on a questionnaire is not accepted by the employer as accurate it will be worth trying to resolve this with the applicant. However, if this cannot be achieved, or if the information provided on the questionnaire suggests that the previous belief that the claim must succeed or may succeed was wrong

then, on the application of either party, the claim will be listed for an immediate hearing by the tribunal to resolve the issues.

11. If the information supplied by the applicant is accepted by the employer as accurate, the employer will need to calculate the amount of employee contributions due together with the pension and lump sum that would derive from the payment of those contributions and notify these to the applicant. Further information on this matter will be included in the guidance to be issued by the LGPC in early June 2003. The applicant can then either:
- a) decide not to backdate, or
 - b) pay the arrears of contributions, or
 - c) agree to pay the arrears of contributions

In each of these cases, the claim can be settled and the following procedure to withdraw the claim will apply:

- a copy of the form (at Annex A) is to be sent to applicants by the employer¹ together with the applicant's individualised calculations.
- the form is to be completed by the applicant stating that they wish to withdraw their case. The case number, full name and signature are essential. The applicant's date of birth would also be useful.
- where an applicant is unrepresented, they should send the completed withdrawal form to the National Co-ordinator, Employment Tribunal Service (currently Clayton Hayward) who will forward it to the local ET office for a withdrawal letter to be issued and the file closed. (Where an applicant is represented, withdrawals will be actioned by the National Co-ordinator personally).
- applicants represented by a union are to return the signed form to their union.
- unions will collate their members' withdrawal forms and send monthly schedules to the National Coordinator instructing him to withdraw all cases listed in the schedule.
- cases will be disposed of by the tribunal issuing a letter confirming that the cases have been withdrawn and the files closed. "Dismissed on Withdrawal" decisions will not be issued.

¹ Although the Bulletin from the Employment Tribunal states that the form is to be issued by the "pension scheme administrators" the LGPC has agreed with the Employment Tribunal that the employer should issue the form (on the basis that it is the employer and not the "pension scheme administrator" that will have the relevant details).

- the named respondent on the withdrawal letter will be The Secretary of State for..... & Others to avoid the complication of adding all named respondents (many ET records show a respondent that no longer exists due to local government reorganisations)
- unions will inform their members that their ET case has been withdrawn upon receipt of the withdrawal letter from the tribunal
- the tribunal will copy withdrawal letters to Treasury Solicitor/Office of the Solicitor who will notify the employing respondents of the withdrawal
- copy of withdrawal letters issued by the National Co-ordinator will be sent to each tribunal office to enable them to close local records

12. It should be noted that amending regulations are not necessary in order to grant retrospective access to those who have submitted a valid claim to the Employment Tribunal (ET) but will be necessary in other (valid) cases to enable retrospective access to be granted without the need to submit a claim to an ET. It is important that authorities recognise that at this stage only those cases where an ET claim has been lodged are to be dealt with. Those cases where no ET claim has been submitted must await relevant amendments to the LGPS Regulations. Any employee who has not submitted an ET claim and who leaves prior to the introduction of any relevant amending regulations will need to submit a claim to the ET within 6 months of leaving in order to protect their position.

Actions for administering authorities

13. Administering authorities should copy this Circular to employers in their Fund (other than to Local Authorities in England and Wales to whom this Circular has been sent direct) or bring the Circular to the attention of employers by directing them to the Circular on the LGPC website at www.lg-employers.gov.uk/pensions/circulars.html

Terry Edwards
Assistant Director (Pensions)
April 2003



EMPLOYMENT TRIBUNALS

**TO: REPRESENTATIVES IN TEST CASES
PART-TIME WORKER PENSION CASES**

Case Number:

Your Ref:

Date: 3rd April 2003

Dear Sir/Madam

At a directions hearing held at London Central on Monday 31 March, Counsel for the public sector unions and the Secretary of State and representatives of the NHS Pensions Agency, certain health sector employers and Nottinghamshire County Council agreed the directions set out below and the mechanism detailed in Annex A attached to this letter for the handling of cases which will now settle in the public sector as a result of terms of settlement agreed in principle between the Secretary of State and the public sector unions. The Treasury Solicitor kindly undertook to send to Mr Hayward, the National Pensions Co-ordinator, a copy of the settlement agreement as soon as the few remaining outstanding issues of detail have been resolved. Neither party anticipated any difficulty in reaching final agreement. All parties consented to the publication of the terms of settlement on the tribunal's website and elsewhere. The computer software necessary to generate offers of settlement in individual cases would not be ready for use before early June and all sides agreed that further information would be required from many applicants before offers of settlement could be made. The timetable incorporated within the directions recognises all of those difficulties. The NHS Pensions Agency has kindly agreed to act as the co-ordinating body on behalf of all health sector employers for this purpose.

1. DIRECTIONS

(a) By not later than 1 August 2003, all employing respondents in the education and local government sectors are to serve by email on the tribunal at **pensions@ets.gsi.gov.uk** a schedule in Excel format of all part-time worker pension claims against them, in alphabetical order, indicating whether:

- (i) the claim can now be settled;
- (ii) on the information currently available it is not known whether the claim can be settled; or
- (iii) the claim is not yet ripe for settlement.

Regional Office, 3rd Floor, Byron House, 2a Maid Marian Way, Nottingham, NG1 6HS
Tel: 0115 947 5701 **Fax:** 0115 950 7612 **Website:** www.employmenttribunals.gov.uk
email: Nottinghammet@ets.gsi.gov.uk

In the last case any outstanding issues preventing settlement are to be identified. The schedules will then be forwarded to the unions representing in the test cases.

(b) By not later than 1 October 2003, the NHS Pensions Agency is to serve a similar schedule.

(c) A standard form of questionnaire for the purpose of ensuring that all relevant information is available to enable a settlement figure to be produced is to be agreed between the applicants and respondents' representatives.

(d) By not later than 1 October 2003 in the case of education and local government and by not later than 1 November in the case of health, a copy of the questionnaire is to be sent by the employing respondents or the NHS Pension Agency as appropriate to all applicants in the "can settle" and "not known" categories in direction (a).

(e) Applicants are to return their completed questionnaires within 28 days of receiving them to the address shown on the form. Any applicant who does not return the completed questionnaire cannot have their claim settled and respondents may eventually apply to have the claims of any such applicants struck out.

(f) If the information supplied by an applicant on a questionnaire is not accepted as accurate by the employer or NHS Pensions Agency or suggests that the previous belief that the claim must succeed or may succeed was wrong, on the application of either party the claim will be listed for an immediate hearing to resolve those issues. Unless application is made to the contrary, such cases will be heard by any tribunal sitting in the region in which the applicant currently resides.

The following points were also dealt with at the hearing:

2. COMPARATORS

It was agreed that there needed to be a further test case to determine whether an applicant could rely on a comparator employed in the same sector as her but not by her own employer. This test case will be heard by Mr Macmillan sitting alone at London Central on Monday 20 and Tuesday 21 October 2003. A new test case will have to be identified in which the employing respondent has not previously conceded and does not now concede that a comparator exists. Mr Scott acting for NATFHE has agreed to identify such a case. If the employing respondent has not so far entered an appearance, they must now do so. The parties are to formulate the precise question or questions which Mr Macmillan is to be asked to decide. In the event of the parties experiencing difficulty in bringing this new test issue on for hearing, Mr Macmillan will hold a directions hearing by telephone conference call on the application of any party.

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email: Nottingham@ets.gsi.gov.uk

3. MISSING APPLICANTS

It was agreed that where it appears that an applicant has left the address which the tribunal has on record, they are to be treated as having lost interest in the proceedings and their claims may be struck out for want of prosecution provided that a notice inviting them to show cause why that should not be done is first sent to their last known address.

4. NEW POINTS OF LAW

It was agreed that if the questionnaire process mentioned in the directions produced a new question of law not previously dealt with in the test cases which required judicial determination before settlement could be reached, that question would be listed for hearing before Mr Macmillan sitting alone. It would be necessary for the parties to apply to Mr Macmillan for directions for such a hearing.

Yours faithfully

CLAYTON HAYWARD
National Pensions Co-ordinator

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ANNEX A



- When a claim is settled, a copy of the form attached is to be completed by the applicant stating that they wish to withdraw their case. The **case number, full name** and **signature** are essential. The applicant's date of birth would also be useful.
- A copy of the form is to be sent to applicants by the pension scheme administrators² together with the applicant's individualised calculations
- Where an applicant is unrepresented, they should send the completed withdrawal form to the National Co-ordinator, ETS (currently Clayton Hayward) who will forward it to the local ET office for a withdrawal letter to be issued and the file closed. (Where an applicant is represented, withdrawals will be actioned by the National Co-ordinator personally)
- Applicants represented by a union are to return the signed form to their union
- Unions will collate their members' withdrawal forms and send monthly schedules to the National Coordinator instructing him to withdraw all cases listed in the schedule (N.B. applicants individual withdrawal forms should NOT be sent). If a union represents applicants in more than one public sector, they must send a separate schedule each month for each public sector scheme i.e. health; education; local government
- Cases will be disposed of by the tribunal issuing a letter confirming that the cases in the schedule attached to the letter have been withdrawn and the files closed. "Dismissed on Withdrawal" decisions will not be issued.
- The named respondent on the withdrawal letter will be **The Secretary of State for..... & Others** to avoid the complication of adding all named respondents (many ET records show a respondent that no longer exists due to local government/health service reorganisations)
- Unions will inform their members that their ET case has been withdrawn upon receipt of the withdrawal letter from the tribunal
- The tribunal will copy withdrawal letters to Treasury Solicitor/Office of the Solicitor who will notify the employing respondents of the withdrawal
- Copy of withdrawal letters issued by the National Co-ordinator will be sent to each tribunal office to enable them to close local records

² Although the Bulletin from the Employment Tribunal states that the form is to be issued by the "pension scheme administrators" the LGPC has agreed with the Employment Tribunal that the employer should issue the form (on the basis that it is the employer and not the "pension scheme administrator" that will have the relevant details).

**PART TIME WORKER PENSION CASES :
WITHDRAWAL OF EMPLOYMENT TRIBUNAL
APPLICATION**

To be completed by the employer

APPLICANT'S FULL NAME

APPLICANT'S EMPLOYMENT TRIBUNAL CASE NUMBER

APPLICANT'S DATE OF BIRTH

I wish to withdraw my application to the Employment Tribunal.

APPLICANT'S
SIGNATURE_____ **DATE**_____

The applicant should sign the form above and return it to one of the addresses shown overleaf.

ADDRESSES TO RETURN THIS FORM TO

If you are represented by one of the following unions, please sign and return this form to the address shown, marking your envelope “Part Time Pension : Tribunal Case Withdrawal”

ATL 7 Northumberland Street, London, WC2N 5RD

NASUWT c/o Reynolds Porter Chamberlain, 278-282 High Holborn,
London WC1V 7HA

NUT Hamilton House, Mabledon Place, London, WC1H 9BD

RCN 67-69 Harborne Court, Harborne Road, Edgbaston,
Birmingham, B16 8PE

UNISON 1 Mabledon Place, London, WC14 9AJ

If you are not represented by one of the unions named above please sign and return this form to the address below, marking your envelope “Part Time Pension : Tribunal Case Withdrawal”

Clayton Hayward, National Pensions Coordinator, ETS, 3rd Floor,
Byron House, 2a Maid Marian Way, Nottingham, NG1 6HS

Distribution

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Pension Managers (outsourced) and Administering Authority Client Managers
Officer Advisory Group
Local Government Pensions Committee
Trade Unions
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Private Clients

Website

Visit the LGPC website at:
<http://www.lg-employers.gov.uk/pensions/index.html>

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