

No. 143 - SEPTEMBER 2003

PART TIMER PENSION CLAIMS

Purpose of this Circular

1. This Circular follows on from Circulars 138, 140, 140A and 140B¹ and the e-mail issued to all local authority Chief Executives on 8 August 2003 which included:
 - a) a letter from the Employment Tribunals dated 8 August 2003, and
 - b) a note from the LGPC explaining the reasoning behind Circulars 140, 140A and 140B.

2. This Circular (143)
 - a) encloses the questionnaire and covering notes that employers in England and Wales must send, by 1 October 2003, to certain Employment Tribunal claimants, and
 - b) sets out the procedure to follow in cases where an employer in England or Wales marked cases on the Excel spreadsheet previously sent to the Tribunal as “not yet ripe for settlement” quoting the reason as “wrongly named respondent in a statutory novation” – see paragraph 9 of Circular 140A.

¹ Available at www.lg-employers.gov.uk/pensions/circulars.html

The Questionnaire

3. The questionnaire and covering notes at Annex 1 must be sent, by 1 October 2003, to those claimants where an employer in England or Wales has already notified the Employment Tribunal that
 - a) it accepts the claim can be settled, or
 - b) based on the information then available, the employer could not ascertain whether the claim could be settled.
4. The questionnaire and the covering notes have, as required by the Employment Tribunal, been agreed jointly between the Employers' Organisation for local government and the national union representatives.
5. The questionnaire and notes are self-explanatory. It will be noted, however, that there is no column on the questionnaire for employees to indicate the number of contractual weeks per year for which they were employed (e.g. a term-timer employed for, say, 44 / 52). It was felt that the inclusion of such a column may have been confusing for claimants and that it should be left to employers, when verifying the returned questionnaire, to determine the number of contractual weeks that were applicable by reference to their records and any information submitted with the questionnaire by the claimant. Clearly, the columns headed "Job Title" and "Place Employed" will provide an indication to employers of whether or not the claimant is likely to have been employed on, for example, a term time basis.

The Next Steps

6. Once the questionnaire has been completed and returned by the claimant, the employer will need to verify the information provided on the form, either from their own payroll or personnel records, or from any backup papers submitted by the applicant, or both. The employer may need to obtain further evidence before being in a position to make a decision. The employer will then need to inform the claimant whether the claim is
 - accepted in full, or
 - accepted in part, or

- not accepted, or
- put in the “stayed” category

7. If, based on the available evidence, the employer accepts the claim in full the employer will have to issue the claimant with a letter which will:

- confirm the period of service for which the claimant may backdate membership of the LGPS,
- set out the amount of contributions the claimant will have to pay in order to count that period of service for pension purposes,
- set out the amount of pension benefits that would result from the payment of the contributions,
- detail the options for paying the contributions if the claimant decides to purchase some or all of the period of service, and
- include an election form and an Employment Tribunal withdrawal form.

Within 6 months of the date of the letter the claimant will have to decide whether or not to purchase all, part or none of the period of service and

- confirm her / his decision on the election form mentioned above and return it to the address shown on the form, and
- complete the Employment Tribunal withdrawal form mentioned above, so that the Employment Tribunal can be informed that an agreement has been reached in her / his case.

Failure to respond within the 6 months timescale will mean that the employer will be able to ask the Employment Tribunal to “strike out” the claim.

8. If, based on the available evidence, the employer believes that only a part of the claim can succeed, the employer should seek to agree with the claimant the period of service for which the claim can succeed. If agreement can be reached, the employer will have to issue the claimant with a letter which will:

- confirm the period of service for which the claimant may backdate membership of the LGPS,
- set out the amount of contributions the claimant will have to pay in order to count that period of service for pension purposes,
- set out the amount of pension benefits that would result from the payment of the contributions,
- detail the options for paying the contributions if the claimant decides to purchase some or all of the period of service, and
- include an election form and an Employment Tribunal withdrawal form.

Within 6 months of the date of the letter the claimant will have to decide whether or not to purchase all, part or none of the period of service and

- confirm her / his decision on the election form mentioned above and return it to the address shown on the form, and

- complete the Employment Tribunal withdrawal form mentioned above, so that the Employment Tribunal can be informed that an agreement has been reached in her / his case.

Failure to respond within the 6 months timescale will mean that the employer will be able to ask the Employment Tribunal to “strike out” the claim.

If the employer and the claimant cannot reach agreement on the period of service for which the claimant may backdate membership of the LGPS, then either party may apply to the Employment Tribunal to have the matter resolved.

9. If, based on the Employment Tribunal decisions in the public sector test cases and the evidence available, the employer believes none of the claim can succeed or, having initially held the view that the claim could succeed, now believes – following receipt of the completed questionnaire – that none of the claim can succeed, the employer must notify the claimant and the Employment Tribunal of this.

The Employment Tribunal will then convene a hearing to determine what happens next.

10. If, based on the available evidence, the employer believes that the claim must be put on hold (“stayed”) because the case involves one of the matters covered by paragraph 10 of Circular 140, the employer should notify the claimant and the Tribunal of this.

11. Full guidance will be issued in due course to employers in England and Wales to enable them to comply with paragraphs 7 and 8 above. The guidance will be issued under cover of a further Circular. It will include the details of an agreement between the Employers’ Organisation and the national union representatives on the amount of contributions successful claimants will have to pay in respect of any period they elect to buy-back and the terms and conditions that will be applicable. The terms of the national agreement are currently being finalised. An Excel spreadsheet to calculate the relevant amount of employee contributions due will also be made available to employers. Whilst employers must now start the process of issuing questionnaires in accordance with the timescale set out in paragraph 3 above, they must await notification of the details of the national agreement before, following receipt of completed questionnaires, they issue any letters in accordance with paragraphs 7 and 8 above. It should be noted that the intention is that any **employer** contributions due in respect of a successful claim will be dealt with through the triennial valuation of the Pension Funds (i.e. employer contributions will not be required up front ²).

² Although part of any NI rebate paid to employers in respect of a claimant who backdates membership of the LGPS will be payable to the Pension Fund. Full details of this will be provided when the terms of the national agreement are notified to employers.

Wrongly named respondents in England and Wales

12. Paragraph 9 of Circular 140A provided advice in relation to cases where an employer has been named as the respondent whereas the liability for excluding an employee from the LGPS passed to the claimant's new employer following a **statutory transfer of employment** e.g. from an LEA to a further education college or from one local authority to another following local government reorganisation. Circular 140A advised that such cases should be marked on the Excel spreadsheet which was to be sent to the Tribunal by 1 August 2003 as cases that were "not yet ripe for settlement" quoting the reason as "wrongly named respondent in a statutory novation".
13. The LGPC has been asked by the Tribunal to request that those employers who annotated the spreadsheet accordingly should send relevant paperwork / details of the claim to the "correct" respondent i.e. the employer to whom the employee was statutorily transferred. It will be for that (new) employer to act as the Respondent in the case.

Actions for administering authorities

14. Administering authorities should take **URGENT** action to copy this Circular to employers in their Fund (other than to Local Authorities 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)
10 September 2003

This form was issued on Please return it within 1 calendar month of this date.

Annex 1

Application for Backdated Membership of the Local Government Pension Scheme (LGPS) in cases where a claim has been lodged with an Employment Tribunal

To enable us to consider your application for backdated membership of the LGPS please complete and return this form giving as much detail as possible. Upon receipt of your completed form we will seek to verify the information you have supplied. The completion and submission of this form is to help us decide whether or not we accept you have a valid claim (where this is not yet clear) and we will let you know our decision. If you have a valid claim the information you provide could help us in determining the amount of pension contributions you and we, as your employer (or ex-employer), would have to pay to count eligible service for pension purposes.

Forenames Surname Title: Mr/Mrs/Miss/Ms/Other

Maiden name / former surname (if appropriate)

Date of marriage / date name changed (if appropriate)

Date of Birth NI Number

Home address

Payroll reference number (current if you are still employed by us OR last if you no longer work for us)
.....

Employment Tribunal case number (if known):

Date joined the LGPS (if applicable) Date left the LGPS (if applicable)
.....

If you have left the LGPS, are your LGPS benefits:

- a) deferred
- b) in payment as a pension
- c) transferred out to another scheme / arrangement

Period of retrospective membership of the LGPS you are claiming: From to (note that you cannot claim for periods prior to 8 April 1976)

Details relating to the period being claimed:

Job title	Contractual hours per week; or if you worked say a three week rota, show the rota hours e.g. 20 / 25 / 22; or show the average hours	Place employed e.g. name of school, etc.	Name of employer e.g. XXX Council	Date from	Date to	Reason for leaving / reason for change

	worked if you had no contractual hours					
1.						
2.						
3.						
4.						
5.						

Please give us as much information as you can and complete a new line in the table above each time there was a change in your job title, contractual hours, place of employment or employer. Continue on a separate sheet if necessary. If you are making a claim in respect of more than one job that you held at the same time (i.e. you concurrently held more than one job) you should submit a separate form in respect of each job. If appropriate, you can, if you wish, obtain additional copies of this form from us. If you are unable to provide exact dates you must at least specify the month and year. Please attach to this form a copy of any contracts of employment you possess in relation to the period(s) being claimed or, in the absence of copy contracts, any other documentary evidence you may hold – such as a letter of appointment, copy payslips, end of year form P60, bank statements showing a bank credit transfer into your account from the employer, etc. Also, please attach, if you still retain them, a copy of any pay slips you may possess that relate to the period of time leading up to the last date to which you wish to claim backdated membership of the LGPS. For example, if you are claiming backdated

membership for a period from, say, 1 July 1989 to 31 December 1992 it would be helpful if you could attach a copy of any payslips you still have that relate to November and December 1992.

You should not include in the table:

- any periods during which you were offered membership of the LGPS but did not opt to join the Scheme, or
- any periods in relation to which you had completed a form opting out of membership of the LGPS, or
- any periods in respect of which you have received a refund of LGPS pension contributions

This form must be completed and returned to:

.....
within 1 calendar month of the date this form was issued to you (see the date at the top of the form). If you do not complete and return this form you cannot have your claim considered / settled and the Employment Tribunal has ruled that those applicants who do not return a completed form within 28 days of receiving the form may have their claims “struck out”.

If you have any queries over the completion of this form (or require additional copies of the form), please contact:

.....

Declaration

Please read the following statements carefully and then sign and date this claim form.

- I declare that the information I have given is true and complete to the best of my knowledge

- I will keep you informed of any change to the details I have provided on this claim form including any change of address if I move before my claim has been finalised
- I agree that the employer who is the respondent in this case may make any enquiries it considers necessary to verify the information I have given
- I agree that the employer who is the respondent in this case and the Pension Fund administering authority may hold and process this information for the purpose of determining my claim and determining my pension entitlements (if any). I understand that this may include the passing of information to third party pension administrators contracted to administer the LGPS on behalf of the Pension Fund administering authority and the sharing of information with other Government bodies in assessing the proper management of, and accounting for, public monies.

Signed

Date

What happens next?

Upon receipt of your completed form we will consider your claim. In some cases we may need to contact you further before making a decision. Once we have made a decision we will either accept your claim in full, in part or not at all or ask that your claim be temporarily put on hold. Whatever our decision, we will confirm this in writing to you and set out what options you then have. Please see the attached notes of guidance for further details.

Notes of Guidance

Please read these notes of guidance which we hope will be of help to you in completing the form relating to your claim for backdated membership of the Local Government Pension Scheme (LGPS) and help you understand what will happen once we have received your completed form. Throughout these notes of guidance the employer (or ex-employer) who you have identified in your claim to the Employment Tribunal as being responsible for, in your view, unfairly denying you access to the LGPS is called the “Respondent”.

1. Why have I been sent a form?

You have lodged an application with the Employment Tribunal claiming that you were unfairly denied access to membership of the LGPS. The Employment Tribunal has directed that the Respondent must issue you with a questionnaire on which you are able to provide relevant information in support of your claim.

Where the Respondent has not yet formally accepted your claim the completion and return of the form will enable the Respondent to decide whether or not to accept the claim in whole or in part. This decision will be based on the House of Lords decision in *Preston & Others v Wolverhampton Healthcare N.H.S. Trust & Others* and *Fletcher & Others v Midland Bank Plc* and the subsequent Employment Tribunal determinations in the public sector test cases.

Where the Respondent has already decided to accept your claim or, as a result of the information you provide on the form, decides to accept your claim in whole or in part, the information you provide on the questionnaire may also be used to assist the Respondent in determining the amount of pension contributions that you and the Respondent would have to pay in order for eligible service to count for pension purposes.

It is important, therefore, that the information you provide on the form is as accurate and detailed as possible.

The form has been agreed at national level between the Employers’ Organisation for local government and national union representatives, in accordance with directions issued by the Employment Tribunal.

2. When must I return the completed form by?

You should return a completed form to the address shown on the form within 1 month of the date the form was issued to you. If you do not complete and return the form you cannot have your claim considered / settled and the Employment Tribunal has ruled that those applicants who do not return a completed form within 28 days of receiving the form may have their claims “struck out”. The period of one month referred to above allows for a bit of time when the form is in the postal system.

3. What happens once I have sent back my completed claim form?

Clearly, the submission of a claim form does not mean that the Respondent has accepted or will automatically accept your claim. So, when your completed form is received, the Respondent will seek to verify the information you have provided. Any supporting documentation you are able to provide (see the form for details) will be of invaluable assistance to the Respondent in considering your claim, particularly if the Respondent no longer holds personnel or payroll records relating to the period you are claiming. Once the Respondent has considered your claim, the Respondent will either

- accept your claim in full, or
- accept your claim in part, or
- not accept your claim, or
- ask that your claim be temporarily put on hold pending clarification of certain legal issues.

4. What happens if my claim is accepted in full by the Respondent?

If, based on the available evidence, the Respondent accepts your claim in full the Respondent will gather the data necessary to work out how much you and the Respondent will have to pay in pension contributions to purchase the service. The Respondent may ask you for certain pay details in order to assist in this process. The Respondent will then issue you with a letter which will:

- confirm the period of service for which you may backdate membership of the LGPS,
- set out the amount of contributions you will have to pay in order to count that period of service for pension purposes,
- set out the amount of pension benefits that would result from the payment of the contributions,
- detail your options for paying the contributions if you decide to purchase some or all of the period of service, and
- include an election form and an Employment Tribunal withdrawal form.

Within 6 months of the date of the letter you will have to decide whether or not you wish to purchase all, part or none of the period of service and

- confirm your decision on the election form mentioned above and return it to the address shown on the form, and
- complete the Employment Tribunal withdrawal form mentioned above, so that the Employment Tribunal can be informed that an agreement

has been reached in your case. You will be provided with details of where to send the completed withdrawal form.

Failure to respond within the 6 months timescale will mean that the Respondent will be able to ask the Employment Tribunal to “strike out” your claim.

5. What happens if my claim is accepted in part by the Respondent?

If, based on the available evidence, the Respondent believes that only a part of your claim can succeed, the Respondent will seek to agree this with you.

If you and the Respondent reach agreement on the period of service for which you may backdate membership of the LGPS, the Respondent will gather the data necessary to work out how much you and the Respondent will have to pay in pension contributions to purchase that service. The Respondent may ask you for certain pay details in order to assist in this process. The Respondent will then issue you with a letter which will:

- confirm the period of service for which you may backdate membership of the LGPS,
- set out the amount of contributions you will have to pay in order to count that period of service for pension purposes,
- set out the amount of pension benefits that would result from the payment of the contributions,
- detail your options for paying the contributions if you decide to purchase some or all of the period of service, and
- include an election form and an Employment Tribunal withdrawal form.

Within 6 months of the date of the letter you will have to decide whether or not you wish to purchase all, part or none of the period of service and

- confirm your decision on the election form mentioned above and return it to the address shown on the form, and
- complete the Employment Tribunal withdrawal form mentioned above, so that the Employment Tribunal can be informed that an agreement has been reached in your case. You will be provided with details of where to send the completed withdrawal form.

Failure to respond within the 6 months timescale will mean that the Respondent will be able to ask the Employment Tribunal to “strike out” your claim.

If you and the Respondent cannot reach agreement on the period of service for which you may backdate membership of the LGPS, then either of you may apply to the Employment Tribunal to have the matter resolved.

6. What happens if my claim is not accepted by the Respondent?

If, based on the Employment Tribunal decisions in the public sector test cases and the evidence available, the Respondent believes none of your claim can succeed or, having initially held the view that your claim could succeed, now believes – following receipt of your completed form – that none of your claim can succeed, the Respondent will notify you and the Employment Tribunal of this.

The Employment Tribunal will then convene a hearing to determine what happens next.

7. What happens if the Respondent wishes to put my claim on hold?

If, based on the available evidence, the Respondent believes that your claim falls into one of the categories that is to be put on hold (“stayed”) because there is an outstanding legal issue, or an existing decision of the Tribunal is being appealed, or a new point of law has arisen, the Respondent will inform both you and the Tribunal of this.

8. What do I do now?

Once you have completed and returned the form all you need to do is await a letter from the Respondent setting out the Respondent’s decision or, in some cases, asking for some more information before a decision can be made. The letter from the Respondent will clearly set out the options that you will then have.