

EMPLOYMENT TRIBUNALS



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Case Number:
Your Ref:
Date: 3rd April 2003

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

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 \(PDF version\)](#) 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.qsi.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.

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.

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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