

The Chief Executive of:
Each Health and Social Services Board
Each HSS Trust
Central Services Agency
Northern Ireland Practice and Education Council
Northern Ireland Guardian Ad litem Agency
Northern Ireland Blood Transfusion Agency
Northern Ireland Health Promotion Agency
Northern Ireland Regional Medical Physics Agency
Northern Ireland Medical and Dental Training Agency

Circular HSS(S) 06/05

GP Practices
Directional Bodies

05 August 2005

Staff Representative Bodies

Dear Colleague

HPSS SUPERANNUATION SCHEME - PART-TIME EMPLOYEES PENSION CASES (The “Preston” Case)

This circular updates employers and employees on the litigation and settlement process for those who have submitted claims to the Office of the Industrial Tribunals and the Fair Employment Tribunal (This is the equivalent of the Employment Tribunal in England) for retrospective access to the HPSS Superannuation Scheme in respect of periods of part-time employment between 8 April 1976 and 31 March 1991.

The Office of the Industrial Tribunals and the Fair Employment Tribunal expects the Department to adopt the decisions reached by the Employment Tribunal in England.

Recipients may wish to make copies of this Circular available to any department or staff responsible for dealing with part-time pension/Employment Tribunal claims and to any legal representative.

Decisions reached by the Employment Tribunal

The decisions reached so far are summarised in Employment Tribunal Information Bulletins, which can be viewed at –
http://www.employmenttribunals.gov.uk/part_time_workers_pensions.asp.

In summary, as far as is relevant to health service sector cases, the following principles have been established.

- Claims made by GP Practice staff in relation to period prior to the Scheme being made available to GP staff on 1 September 1997 have been dismissed. These claims will be struck out by the Tribunal.
- For other types of claim to succeed, it must have been received by the Tribunal whilst the Claimant is still employed by the relevant employer or within 6 months of the end of that employment relationship; **AND**
- The Claimant must have worked less than half the equivalent full-time hours for their post; or
- Where the Claimant worked at least half the standard hours or more for the grade, the Claimant must satisfy the Tribunal that she was either denied the right to join the Scheme or discouraged or dissuaded from joining as the result of a policy of her employer aimed at part-timers and involving the imposition of conditions not imposed on full-time employees, or a campaign of deliberate misinformation, or which otherwise amounted in practice to a denial of her right to membership of the Scheme;
- A claim for any part of the period 6.4.1988 to 31.3.1991 can only succeed if the Claimant joined the Scheme either on 1.04.1991, or without significant delay thereafter (this has been interpreted by the Department as 'before 1.4.1992'), **UNLESS** the Claimant can satisfy the Tribunal that she would have joined during the earlier period had she been eligible (e.g. because by the time the Rules of the Scheme were changed, the Claimant was so near to retirement that joining was pointless or she had already taken out a personal pension plan);
- Settlement is limited to crediting successful Claimants with the Scheme membership they would have received during the relevant period **providing** that the Claimant pays the appropriate contributions including an amount of interest to reflect the decline in the value of the money during the intervening period (see paragraph 'Employer Contributions' for more details about Scheme contributions.)

Appeal Issues

A petition to the House of Lords for leave to appeal to the Court of Appeal decision on the "TUPE" point (Transfer of Undertaking Protection of Employment) has been received by Treasury Solicitors. This is a point predominantly affecting the electricity sector and although this issue has arisen in a handful of cases in the health sector in the UK as a whole there is no indication as yet that it affects any cases in relation to the HPSS Superannuation Scheme.

Succeed in Full Cases

These are cases where the Claimant worked less than half the full-time equivalent hours for their post throughout the period of claim **and** joined the Scheme on becoming eligible to do so, without significant delay thereafter, (i.e. before 1.4.92). Calculations of the contributions due, together with an estimate of the additional benefits that would arise, will be sent to Claimants in these cases.

Fail in Full Cases

Where the Claimant was always eligible for Scheme membership because she worked at least half the full-time equivalent hours for her post, the claim will be listed in this category. Details of these cases have been and will be submitted to the Tribunal by Schedule to determine whether the case should be struck out. Claimants and First Respondents will have the opportunity to make any representations that they think appropriate before strike out.

NOTES:

- a) Where the Claimant alleges that the employer denied, discouraged or otherwise dissuaded her from joining the Scheme as a result of a policy aimed at part-timers, or a campaign of deliberate misinformation, the Tribunal Chairman will consider the case. If the Chairman considers that there is an arguable case the application will be listed for a full hearing. The Department and HPSS Superannuation Branch **will not** be defending this type of claim on the employer's behalf. This will solely be a matter for the responsible employer to resist. If the relevant employer does not resist or make any written representations on its behalf. Judgement may be entered in default against that employer. It is important therefore that employers or their legal representatives make representations on their behalf as appropriate in these cases.
- b) In the event that the Tribunal finds in the Claimant's favour and issues a determination instructing the Department to admit the claim, the case will then be dealt with as described in paragraph 'Succeed in full Cases'. However see paragraph 'Employer Contributions'.

Succeed in Part Cases

The Tribunal has been provided with details of cases where the claim can only be accepted in part because, for example, the number of contracted hours worked fluctuated and for some periods the hours worked were less than half the standard hours, and for other periods were at least half the standard hours. The Tribunal will contact the Claimants or their representatives for a decision as to whether the partial claim is to continue or be withdrawn. In the event that the Claimant decides to proceed with a partial claim, the case will be dealt with as in 'Succeed in Full' cases.

Issue of Settlement Offers

The Department will prepare Formal Settlement Offers to be issued to those Claimants who have been successful.

Calculation of Contributions

A special calculation method devised by the Government Actuary's Department and agreed between HM Treasury, Public Sector Pension Schemes and Staff Representative Organisations is being used in all cases. This method avoids the need for Claimants and employers to research precise details for the claim period. Safeguard arrangements are in place for any Claimant who had an unusual pay lift immediately prior to the period of claim. Further details of the calculation model and methodology can be viewed at the following address: <http://www.hm-treasury.gov.uk/media/26E/54/prestonsettlementmodel.doc>.

Collection of Contribution Arrears

Where the successful Claimant is still in HPSS employment, employers will be required to collect the contributions (as advised by HPSS Superannuation Branch) through the Payroll system. Instructions will be issued on each appropriate case. Where the claimant is already retired, or no longer employed in the Health Service, HPSS Superannuation Branch will be responsible for collecting the sum due.

Employer contributions

The Department has made a submission to the Department of Finance and Personnel that financial responsibility for the employer contributions for successful Claimants who were debarred from membership by virtue of the Scheme Rules, i.e. those who worked less than half the full-time equivalent hours for their post, will be met centrally by the Scheme. It is proposed that this additional liability will however be taken into account in the next Scheme valuation undertaken by Government Actuary's Department and may result in a future increase in the level of employer contributions.

Employers however should be aware that they will be directly responsible for paying employer contributions in any cases where the Tribunal determines that the Claimant was eligible to join the Scheme (because they worked at least half the standard hours for the post), but the employer operated a policy that denied, discouraged or otherwise dissuaded part-timers, or operated a policy aimed at part-timers, or a campaign of deliberate misinformation against part-time workers in respect of admission to the Scheme.

Adjustments to National Insurance Contributions

In cases where retrospective Scheme membership is bought, most Claimants will be entitled to claim a refund of the difference between the contracted out (D rate) contributions that should have been deducted and the non-contracted out (A rate) contributions that were actually deducted at the time. Where the Claimant held an appropriate personal pension the contribution difference will have been paid as a "rebate" into the personal pension plan and no adjustment will therefore be due.

The NHS Pensions Agency is considering the proposal that where the Claimant claims such a refund, the current 'relevant employer' will be asked to sign a form giving the Agency the right to claim the refund of the employer proportion of overpaid NI contributions. Sums received in this way will be used to make 'good will' interest payment to the Claimant on the overpaid NI contributions because Inland Revenue rules do not provide for interest to be paid. Any sum left over will remain in the NHS Scheme fund and be offset against the additional employer contributions that should have been collected. The Department intends to follow the NHS Pensions Agency lead on this issue. Offsetting refunds of employer NI contributions in this way was fundamental to securing HM Treasury and Department of Finance and Personnel agreement in England & Wales and Northern Ireland respectively to individual employers not being directly charged the appropriate additional Scheme contributions.

Any employer who declines to cooperate with this arrangement will be directly charged the full amount of additional Scheme contributions for all their successful cases.

Any queries on the content of this Circular should be made in writing to David Quinn, HPSS Superannuation, Waterside House, 75 Duke Street, Londonderry BT47 6FP.

Yours sincerely

Phil McCusker
HPSS Superannuation Scheme Manager