

To: Chief Education Officers in Local Education
Authorities (England & Wales) and Teachers'
Pension Scheme Function Providers

Direct line: 01325 391003

10 December 2003

Dear Colleague

**AMENDMENTS TO THE TEACHERS' PENSIONS REGULATIONS 1997:
TEACHERS' PENSION SCHEME (TPS) MEMBERSHIP AND CERTAIN
CATEGORIES OF NON-TEACHING STAFF**

1. There has been a legal challenge to the pension arrangements made by some LEAs in respect of certain non-teaching staff who have been contributing to the TPS without any statutory basis for their membership of that scheme. While this challenge has been made in the context of one particular LEA, we understand that this practice is fairly widespread among most, if not all, LEAs. The posts involved appear to be mainly, but not exclusively, in the LEAs' inspection and advisory services. Such "organiser" posts are covered by the Local Government Pension Scheme (LGPS) and not by the TPS. The background to the pension arrangements for such staff is summarised in the attached annex.

2. This position needs to be regularised as quickly as possible. As matters currently stand, there is no basis for the TPS to receive pension contributions in respect of these individuals; and, consequently, there is no statutory basis to support the payment of pension benefits in respect of periods covered by those contributions. The Department has, therefore, been in discussions with LEA employer representatives, the unions representing the individuals concerned and the ODPM, who have overall responsibility for the LGPS, with a view to finding a satisfactory solution to this problem.

3. As matters currently stand, individuals who have been wrongly contributing to the TPS should retrospectively be admitted (to the beginning of the employment) to LGPS. There would then be an 'interfund adjustment' of the employer and employee contributions between the TPS to LGPS. But we recognise that rewriting history in

this way could bring with it a number of complications for individuals; and it would not do anything to regularise the position of those individuals who are already in receipt of retirement benefits from the TPS in respect of periods during which there was no statutory basis for their membership of that scheme.

4. We propose, therefore, to bring in amending regulations that would give those individuals who are currently contributing to the TPS the opportunity to elect that they should be able to remain in the TPS for the duration of their current employment. This election would have retrospective effect to the start of their employment in an "organiser" post. Those individuals who do not want their post covered by the TPS would be retrospectively admitted to the LGPS and an interfund adjustment made to the LGPS to cover the contributions that had been wrongly paid to the TPS

5. It is proposed that the amendments will come into force at the earliest opportunity and no later than 31 March 2004.

6. The nature of the amendments will be to require that TPS membership must cease on cessation of the current employment unless the subsequent employment is a teaching post that properly falls within the TPS. There is no need to make any specific amendment to the TPS regulations to make clear that anyone who is appointed to an "organiser" post should **not** be admitted to the TPS but should be a member of the LGPS. The existing provisions of both schemes are already explicit on this point. LEAs must ensure that, on appointment, individuals are placed into the correct scheme.

7. Where the change of employment is as a consequence of a TUPE transfer to a function provider who has been accepted as an employer for the purposes of the TPS, individuals who are members of the TPS at the date of transfer will be entitled to continued membership of the TPS for as long as they remain in the post held at the time of the TUPE transfer.

8. It is proposed that the amendment to the teachers' pensions regulations will allow individuals who elect to remain in the TPS to be deemed as being in teaching employment to create a link with the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997. This will give a statutory basis for an LEA or function provider who may wish to grant premature retirement benefits or award discretionary added years to a person who is being awarded premature retirement. Provision will also be made to give a statutory basis to pensions in payment that included service wrongly treated as pensionable in the TPS.

9. Following the completion of this consultation process, further information will be issued to LEAs setting out the administrative arrangements for dealing with the election forms and handling the 'interfund adjustments' for those who choose to be admitted retrospectively to LGPS. LEAs should, however, begin now to consider how they will identify the individuals who have wrongly been contributing to the TPS and who will, therefore, be required to complete the election form to either regularise their membership of the scheme or to seek retrospective admission to the LGPS. Neither this Department nor our scheme administrators (Capita Teachers' Pensions) will be able to offer any advice to individuals on which option they should choose. LEAs may, therefore, wish to consider whether they should make arrangements for individuals who have to make this decision to have access to independent financial advice.

10. Finally, I must stress that the arrangements described above will only apply to those who are currently in posts where they have wrongly been contributing to the TPS. LEAs and function providers must ensure that all future appointees to “organiser” posts are admitted to the LGPS and not the TPS.

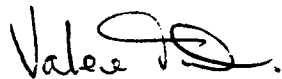
11. Any comments on the proposal to amend the teachers' pensions regulations in the way described, or on the remainder of this letter, should be made **in writing** to:

Shirley Richardson
Pensions and Medical Fitness
School Workforce Unit
Department for Education and Skills
Mowden Hall
DARLINGTON DL3 9BG

Email: shirley.richardson@dfes.gsi.gov.uk

The deadline for comments is 6 February 2004.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Valerie Tooth'.

VALERIE TOOTH
Pensions and Medical Fitness Project
School Workforce Unit

Background to existing pension arrangements for “organisers”

1. Until 31 December 1976, the teachers' pensions regulations made provision for teachers to elect to remain in the TPS when they progressed to LEA educational organiser posts (ie where posts involve duties ancillary to education eg advisors). In the absence of a subsequent election by an person to leave the TPS (which should have been offered on any change of employment), organisers who have been employed continuously in the same or similar posts have automatically remained in the TPS. The teachers' pensions regulations contain a 'continuation' provision for this.
2. Since 1 January 1977, there has been no statutory basis for staff newly appointed to non-teaching posts (including 'organiser' posts) to contribute to the TPS.

Posts that combine teaching and non-teaching duties

3. The Department recognises that the position is less clear when the duties of the post comprise a combination of teaching and non-teaching duties. The distinction must be whether:
 - the principal duties of the post involve 'classroom' teaching - in which case the post is **teaching** and within the scope of the TPS (headteacher and deputy headteacher posts are deemed to be teaching posts even if there is no teaching commitment); or
 - the principal duties of the post involve responsibilities that are ancillary to education - in which case the post is **non-teaching** and outside of the scope of the TPS.
4. Designating posts into teaching or non-teaching is a matter for the LEA. In the past, employers have submitted Job Descriptions to Capita Teachers' Pensions but there are no sensible grounds for such practice. Employers are best placed to make the distinction and should not contact Capita Teachers' Pensions or the Department for advice on this.

Short-term and fixed-term contracts

5. Some LEAs are under the mistaken impression that former teachers recruited to short-term or fixed-term employment as an organiser should be given the option of remaining in the TPS. This is not the case. The only circumstances when a person would validly remain in the TPS would be when they were on secondment, and then only for so long as their teaching post was being held open for them (ie a temporary move). In all other circumstances, such posts are covered by the LGPS and TPS membership is not an option.

Copies to:

Association of Teachers and Lecturers
Association of University Teachers
National Association of Educational Advisers,
Inspectors and Consultants
National Association of Head Teachers
National Association of Schoolmasters/Union of
Women Teachers
National Association of Teachers in Further and
Higher Education
UCAC
National Union of Teachers
Professional Association of Teachers
Secondary Heads' Association

Association of Chief Education Officers
Association of London Government
Confederation of Education Service Managers
Local Government Association

Chief Education Officers in England and Wales
TPS Function Providers

Association of Foundation and Aided Schools
Association of Heads of Foundation and Aided
Schools
City Technology Colleges Chairmen's Forum
City Technology Colleges Principals' Forum
Foundation and Voluntary Aided Schools'
Association
Girls' Schools Association
Girls' Day School Trust
Headmasters' and Headmistress' Conference
Independent Association of Preparatory Schools
Independent Schools Association
Independent Schools Bursars' Association
Independent Schools Council
National Association for Education in Art and
Design
National Association of Foundation and Aided
Primary Schools
National Bursars' Association
Society of Headmasters and Headmistresses of
Independent Schools
National Association of Independent Schools and
Non-maintained Special Schools
Specialist Schools Trust

Association of Governing Bodies of Independent
Schools
Association for College Management
Governors of Wales
Independent Institution for School and College
Governors
National Association of Governors and Managers
National Employers' Organisation for School
Teachers
National Governors' Council

Amicus
Association of Colleges
Committee of University Chairs
Confederation of Education Service Managers
Education and Learning Wales
FFORWM
Principals' Professional Council
Sixth Form Colleges Employers' Forum Ltd
Standing Conference of Principals
University and Colleges Employers' Association

Agency for Jewish Education
Catholic Education Service
Church of England Board of Education
Free Church Federal Council Education
Committee
Methodist Church Division of Education

Cabinet Office
Department for Constitutional Affairs
Department for Work and Pensions
Department of Health
Government Actuary's Department
Higher Education Funding Council for England
HM Treasury
Home Office
Learning and Skills Council
Learning Delivery and Standards Group, DfES
Ministry of Defence
National Assembly for Wales
NHS Pensions Agency
Occupational Pensions Regulatory Authority
Office of the Deputy Prime Minister
IR Savings, Pensions, Share Schemes
School Teachers' Review Body
Scottish Public Pensions Agency
Teacher Training Agency
Teachers' Superannuation Working Party
Northern Ireland Department of Education
Welsh Joint Education Committee