



Date: 30th November 2020
Ref: L09-TTO3-20
To: All members at Lambeth schools covered by TTO

Dear Colleague

Re: Important information for all members on Lambeth term time only contracts

Further to recent communication, we met with the Council last Tuesday to discuss the term time only payments, which we negotiated some time ago. As you may be aware, there have been a series of delays with this. These delays have been caused by a number of problems with ACAS and their ability to process the payments, coupled with the other unions failing to sign off the agreement until now. Having agreed to the formula for compensation in August, we are extremely unhappy that the other unions have stalled on this as this means that the payments will not be made in time for Christmas, as we had long hoped.

Despite this, it appears that these issues are now close to being resolved and, as long as the other unions sign off the agreement, the Council will shortly begin sending out the agreements for you to sign. These agreements are called COT3s and are legally binding. The wording was agreed by our lawyers some time ago. By signing this agreement, you effectively waive your right to pursue your term time only case legally in return for an agreed payment, which is the standard process for what is, essentially, an out of court settlement. No other rights are affected. Once signed and returned, you will receive your payment in the following month's pay (subject to the usual cut-off dates beyond which payments cannot be processed).

What happens next?

As soon as we have received confirmation that the other unions have agreed the settlement, we will let you know. Once this happens, the agreements will be sent out. Where we have an email address for you, this has been shared with the Council and ACAS with a view to them emailing you the agreement. If we do not have an email address for you or if you have opted out of email communication, then this will be sent to you by post. Once you have received this and checked the amount, on the assumption that it is correct and you are happy to sign, then this should be returned to trigger the payment.

How much can you expect to receive?

The deal agreed with Lambeth means that you will receive a payment of up to five years three months back pay, covering the period between 01/01/2015 and 31/03/2020. If you only worked for some of that time, you will only receive a payment commensurate with the period for which you were employed. These payments will be based on your actual

salary within that period, meaning that the days for which you will be paid will be worked out based on actual pay over that period.

In terms of the number of days pay you can expect to receive, this varies depending on your service and the number of weeks you work per year. For those in classroom-based roles, you tend to work either 38 weeks per year or 39 if you work on inset days. If you fall into this category, your payment will be based on a shortfall of around 3.7 to 3.8 days per year (if you have less than five years' service), 5.0 to 5.1 (if you have between five and nine years' service) up to 5.9 to 6.0 days per year (if you have ten or more years' service). If you worked for more than 39 weeks, then you can expect a higher amount as the shortfall will be slightly higher. The number of days per year will depend on your service within the year itself, so people who moved into a higher bracket during the period will get different numbers of days according to their service in each year. We have included a matrix and some examples at the end of this letter to give you an idea as to how many days you can expect per year, depending on your service and the number of weeks worked.

If you were in the pension scheme between 2000 and 2014, you will receive an additional payment of £50 per year for each year in the scheme (subject to a maximum of £700). The reason for this additional payment relates to the fact that the pension changed in 2014 from a final salary scheme to a career average scheme. As a result of this, because your pension will be fractionally lower than if the payments had been correct, this additional payment has been agreed in order to compensate you for this loss.

What to do if you think your payment is incorrect?

Because the Council is basing the payments on their system which calculates the money based on actual salary over the period, we expect most of these to be correct. However, there is always a possibility that there has been a mistake. When we have dealt with these issues previously with other councils, we have found that the majority of mistakes tend to occur when one of the following happens:

- Someone moves school or workplace
- Someone comes in or out of the pension scheme.
- Someone changes their name

If you are in one of these categories, it is especially important to check the offer to ensure that both your full period of employment and your full period in the pension scheme is included. If you feel the offer is under what you believe you should have, based on the information above, you should first raise this with HR, whose details will be on your offer letter. If that does not resolve the issue, please come back to us and we will assist you.

What happens if I do not receive a letter?

We have submitted claims on behalf of close to 2,000 members within the Borough. Once the deal has finally been agreed by the other unions, the offers will be sent out either by post or by email. As stated before, we will let you know the moment we receive confirmation that this has happened and will then be able to provide a timescale as to when you can expect to be contacted.

What happens if I am on Universal Credit?

Unfortunately, there is a possibility that these payments will affect those of you in receipt of Universal Credit. However, from our calculations, we have worked out that, although this may impact on your benefits, in every case you will still be better off as a result of having it. In order to assist you with this, we have written a standard letter which we will supply you with, which can be given to the Department of Work and Pensions, to explain the basis of the payment.

Are the payments subject to tax and National Insurance?

Unfortunately, the answer to this is yes. Because this is a compensation payment for money that should have been received, the rationale of the Inland Revenue is that if it had been paid as usual, tax and National Insurance would have been applicable and, therefore, it will be applied to the payment.

What do I do if I do not want to accept the payment?

As stated in previous letters, we have taken legal advice on this and it is the view of our lawyers that this is a very good offer. The five years three months backpay represents almost 90% of the best-case scenario of six years and there is no guarantee that members would receive pension compensation, should they win at Tribunal. It should be pointed out that Tribunal wins are never guaranteed and that the situation is further complicated by the fact that all term time only claims in the system have been stayed until November 2021, when another case on the issue is heard. As a result, if you were to progress the matter to Tribunal, it is highly unlikely that your case would be heard before 2022, at the very earliest. That said, all members retain the right to reject and escalate the matter via the Employment Tribunal service. Should you wish to do this, then you will need to either pursue it on your own, as the Union will not provide legal support or, if you wish to reject the offer and progress the issue yourself, please contact us so that we can pass on the relevant ACAS certificate, which will be necessary for you to have.

If you have any queries about this or any other matter, please contact your local Lambeth Branch on 020 7926 6993.

Yours sincerely

Andy Prendergast

Senior Organiser
GMB Southern Region

Information regarding the likely amounts of the settlements:

Days owed per year

Weeks worked	For years when you had less than five years' service	For years when you had between five and nine years' service	For years where you had ten or more years' service
38	3.7 days	5.0 days	5.9 days
39	3.8 days	5.1 days	6.0 days
40	3.9 days	5.3 days	6.2 days
41	4.0 days	5.4 days	6.3 days
42	4.1 days	5.5 days	6.5 days

Examples

Example A

Sheila has worked on a 38 week contract since 2000 and has always been in the pension scheme. As a result, she should expect 5.25 years' pay for her period with more than ten years' service.

01/01/2015 to 31/03/2020 (5.25 years) x 5.9 days = 30.975 days' pay

Total 30.975 days' pay + £700 pension compensation

Example B

Miriam started on 1st January 2012 on a 40 week contract and has always been in the pension scheme. As a result, she is owed two years' pay for her calculated at the rate for those with less than five years' service and 3.25 years' pay for the period with five to nine years' service.

01/01/2015 to 31/12/2016 (2 years) x 3.9 days = 7.8 days' pay

01/01/2017 to 31/03/2020 (3.25 years) x 5.3 days = 17.225 days' pay

Total 25.025 days' pay + £150 pension compensation

Example C

Shanice started on 1st September 2016 on a 39 week contract. As a result, she should get 3.58 years' pay calculated at the rate for those with less than five years' service

01/09/2016 to 31/03/2020 (3.58 years) x 3.8 days = 13.6 days' pay

Total 13.6 days' pay

Example D

Bruno started on 1st January 2007 on a 38 week contract and has always been in the pension scheme. As a result, he will get two years' pay calculated at the rate for those with between five and nine years' service and 3.25 years' pay calculated at the rate for those with more than ten years' service.

01/01/2015 to 31/12/16 (2 years) x 5.0 days = 10 days' pay

01/01/2017 to 31/03/2020 (3.25 years) x 5.9 days = 19.2 days' pay

Total 29.2 days' pay + £350 pension compensation