



# **Pensions** equality issues

The Teachers' Pension Scheme (TPS) includes discriminatory provisions, which the NASUWT is campaigning to remove.

The reformed TPS, introduced on 1 April 2015, is highly discriminatory and the NASUWT has consistently opposed it for this reason.

During negotiations on TPS reform, the NASUWT repeatedly pressed the Government to carry out a fit-for-purpose equality impact assessment (EIA) into its planned TPS reforms before implementing them. The Department for Education (DfE) failed to do so. It had not previously collected the necessary equalities data and has failed to do so since.

The NASUWT continues to press for this data to be collected so that the full equalities impact of TPS reform can be assessed.

The NASUWT believes that the reformed TPS design is discriminatory in several key aspects.

### **Adult survivor benefits for widowers, civil partners and same-sex married couples**

The NASUWT opposes and continues to campaign against the continuing discrimination against women, civil partners and same-sex married couples in the provision of TPS survivor benefits (sometimes known as family benefits).

In the TPS, a Scheme member's pensionable service determines their benefits and those of a surviving partner. However, for adult survivor benefits, not all pensionable service counts.

### **Discrimination against women in the TPS**

The following pension survivor benefits are paid to survivors of men and women members of the TPS who are opposite-sex spouses:

- benefits for widows – backdated to 1 April 1972;
- benefits for widowers – backdated to 6 April 1988.

## **Discrimination against civil partners and same-sex married couples in the TPS**

The following pension survivor benefits are paid to survivors of men and women members of the TPS who are same-sex spouses or civil partners:

- benefits for civil partners – backdated to 6 April 1988;
- benefits for same-sex married couples – backdated to 6 April 1988.

The current situation is that same-sex married couples and civil partners are treated less favourably than some opposite-sex married couples in respect of survivor benefits.

The benefits for same-sex married couples and civil partners are equal with those of opposite-sex married partners but only in respect of those for widowers, which include any service since 6 April 1988, rather than for widows, which include service from 1 April 1972.

The NASUWT is continuing to campaign for widows, widowers, civil partners and same-sex married couples to all have equal pension rights, including survivor benefit rights, and that the equalisation of survivor benefit rights must include service which is backdated to 1 April 1972 in the calculation of those rights. To do otherwise would mean the TPS perpetuating an unacceptable form of discrimination against women and Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) teachers.

The NASUWT led the campaigning and lobbying against this discrimination:

- In 2009, the NASUWT opposed the pensions exemption in the 2010 Equality Act, which permitted continuing discrimination against women and civil partners. The NASUWT lobbied Ministers on this issue.
- The NASUWT highlighted that the DfE has taken an unacceptable, discriminatory approach towards survivor benefits in the TPS. The DfE buried, in a consultation on employee pension contribution increases, an announcement that it intended to continue to discriminate against women and civil partners and that it intended to extend this discrimination to same-sex married couples.

The NASUWT opposed the DfE's announcement, calling for a full consultation on this issue. The Union also encouraged members to write to

the DfE about this, placing template letters and relevant briefing materials on the NASUWT website. In its response to the consultation, the DfE acknowledged that over half of the responses made use of NASUWT materials to argue against the continuation of discrimination against women, civil partners and same-sex married couples in the provision of pension benefits. The NASUWT appreciates members' engagement on this issue.

### **Government Review of Pension Survivor Benefits under the Marriage (Same Sex Couples) Act 2013**

The 2010-15 Government undertook a review of survivor benefits for same sex partners, widows and widowers under Section 16 of the Marriage (Same Sex) Couples Act 2013.

A Report of the review was published on 26 June 2014. There is an order in s.16(6) of the Act that enables the Secretary of State to introduce legislation to equalise or reduce differences in survivor benefits. The NASUWT took full opportunity of the 2010-15 Government Review to advance members' interests and responded in detail to the consultation.

The terms of reference of the 2010-15 Government Review were as follows:

*The review will investigate differences in occupational pension schemes between: same sex survivor benefits and opposite sex survivor benefits provided to widows; same sex survivor benefits and opposite sex survivor benefits provided to widowers; and opposite sex survivor benefits provided to widows; and opposite sex survivor benefits provided to widowers. The review will include separate consideration of survivor benefits provided to both surviving same sex married couples and to surviving civil partners.*

*The review will investigate what the costs and other effects would be of the elimination of these differences by the equalisation of survivor benefits. The review will consider the extent to which same sex survivor benefits are provided in reliance on paragraph 18 of Schedule 9 to the Equality Act 2010, and the extent to which same sex and opposite sex survivor benefits are calculated by reference to different periods of pensionable service.*

*The review will inform the Secretary of State's decision as to whether he should exercise his powers to change the law to eliminate or reduce differences in survivor benefits in occupational schemes.'*

## **The costs of ending discrimination in the TPS**

The assumptions provided by the Treasury to the NASUWT indicated that the capitalised cost to the TPS of backdating all survivor benefits to 1972 would be in the region of £600 million with between one third and a half of this being in respect of backdated payments.

The Treasury also estimated that the whole of the capitalised cost across all public sector schemes would add around 0.2% of pensionable pay to employer contribution rates over a 15-year term. This is a relatively small figure and the NASUWT has argued that discrimination in the TPS should now end and that the ending of that discrimination is not only just, but is clearly affordable.

## **The outcome of the Government Review**

When the Government Review reported in June 2013, it failed to make any recommendations to end discrimination in occupational pension schemes, including the TPS. The Treasury simply reported the costs involved, which the NASUWT has already demonstrated are affordable and which many private sector pension schemes have already met.

The NASUWT believes that the Government has failed to discharge a basic equality duty and has allowed discrimination to continue.

The NASUWT has stepped up its campaign for full pensions equality in response and supports the TUC petition calling for the equalisation of survivor benefits: [www.tuc.org.uk/survivorpensions](http://www.tuc.org.uk/survivorpensions).

The NASUWT leads the campaign for an end to adult pension survivor benefit discrimination. The Union seconded a motion at TUC Congress 2015, which was passed unanimously, and committed the TUC to campaigning for an end to discrimination. NASUWT members are urged to lobby MPs, also using the materials on the 'campaigns' section of the NASUWT website.

The NASUWT has produced a campaigning presentation for Local Associations and school groups, which can be found at the following link: [www.nasuwt.org.uk/SurvivorBenefits](http://www.nasuwt.org.uk/SurvivorBenefits).

The NASUWT has further argued for the ending of the provision whereby

adult survivor pensioners, who received their pension before 1 January 2007, surrender their pension if they remarry, enter into a civil partnership or cohabit.

The NASUWT considers that full equality involves meeting the cost of retrospective claims where survivors have surrendered their pension.

### **Indexation of pension benefits**

The reformed TPS is a career average revaluation of earnings (CARE) scheme and annual pension earnings are revalued in accordance with an indexation formula. This is the Consumer Prices Index (CPI) + 1.6% for TPS members, providing that they do not leave pensionable service for more than five years. If a TPS member leaves pensionable service for more than five years, indexation is CPI only, which reduces the pension pot which that teacher eventually receives. The NASUWT opposes this provision which discriminates against teachers who take career breaks. The most significant group of such TPS members are teachers who take career breaks to raise families, the majority of whom tend to be women.

For these same reasons, the NASUWT opposes the TPS provision which removes full and tapering protection from TPS reforms from teachers who are out of pensionable service for five years or longer.

In February 2016, the Chief Secretary to the Treasury announced that the 2016 revaluation index for TPS members who are out of service would be CPI minus 0.1%. This was because of a negative 0.1% figure for one month in 2015. This would revalue the pension pot of teachers who are out of service downwards and the NASUWT wrote to the Chief Secretary to the Treasury to protest at this unacceptable, and potentially discriminatory, decision.

### **TPS flexibilities**

The reformed TPS includes new 'pensions flexibilities' which are available, at a cost, to teachers.

These are buying out the actuarial adjustment and buying faster accrual.

It is also possible to buy additional pension in largely the same way as it was before 1 April 2015 and purchase teachers' additional voluntary contributions (TAVCs) from Prudential.

The NASUWT is campaigning and taking industrial action to achieve a decent teachers' pension at a reasonable pension age and believes that teachers should not have to purchase additional pension to give them such provision.

Many teachers with protected characteristics, as well as part-time teachers and teachers on temporary contracts, already suffer from low pay and intermittent work and will not be able to afford to purchase additional pension.

### **Access to the TPS – supply teachers**

Many supply teachers suffer from high levels of exploitation, including those who are victims of employment agencies which undercut national pay and conditions and whose teachers are in the TPS.

The NASUWT has long campaigned for all teachers to be members of the TPS, including employment agency teachers.

Employment agencies should not be able to offer a cheap auto-enrolment pension, such as a National Employment Savings Trust (NEST), as an alternative to the TPS.

### **Employee contribution structure**

The NASUWT rejected the TPS Proposed Final Agreement (PFA) in March 2012. Some other unions, however, agreed to an average employee pension contribution of 9.6%, which the NASUWT demonstrated was unjustifiable and has consistently opposed. The agreement of these unions, representing less than 10% of the teaching profession, gave the Government the opportunity it needed to continue to attack teachers' pensions and to worsen the provisions.

Once the unacceptable figure of an average 9.6% employee pension contribution was set by the TPS PFA, the NASUWT argued vigorously for tiering of contributions, with the most progressive structure possible, in order to give some protection to the lowest-paid teachers.

The NASUWT also argued that pension contributions should be paid on the basis of actual, rather than full-time equivalent (FTE) salaries, for the same reason.

The NASUWT has achieved these objectives in the TPS employee contribution structure from 2015-2019:

<b>Annual salary for the financial year 2015-16 rate</b>	<b>Employee's contribution</b>
£0 - £25,999	7.4%
£26,000 - £34,999	8.6%
£35,000 - £41,499	9.6%
£41,500 - £54,999	10.2%
£55,000 - £74,999	11.3%
greater than £75,000	11.7%

From 1 April 2015, teachers have paid an average pension contribution of 9.6%, but the contribution structure has been tiered, with those who earn the least paying the least.

In addition, part-time teachers have paid a contribution based on their actual salary, rather than their FTE salary, which was the case before 1 April 2015.



**For further information on:**

- How the CARE scheme works;
- How to access information about pension provision;
  - Buying additional pension.

Go to: [www.nasuwt.org.uk/PensionsMaterials](http://www.nasuwt.org.uk/PensionsMaterials)

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