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‘Quirk’ in Teachers’ Pension impacted by 2021/22 pay freeze

What does this mean for education employers? We explain some of the options available and potential risks.

25 February 2022

This article was updated on 15 March 2022.

The education unions have alerted the Department for Education (DfE) to the potential impact the pay freeze could have on how some final salary pensions are calculated, due to a 'quirk' in the regulations.

This 'quirk' means that certain calculations need to be triggered by a change in the rate of pay, which wouldn't occur for some members affected by the pay freeze in 2021/22.

This issue generally does not apply in the career average scheme, nor to colleagues in Wales who were not subject to the pay freeze in 2021/22. Where this could impact members in the career average scheme is where those members have ‘transitional protection’ as a result of the McCloud judgement.

The DfE is now considering amending the regulations to stop this issue occurring in the future. However, this will not resolve the problems that will be experienced this year. As such NAHT, NASUWT, NEU, ASCL and Voice have written to all employers in England to highlight the problem and the action needed.

The trade union joint correspondence sets out a practical way of ensuring the regulations work as intended by asking employers to create a change in the pay rate (suggested as small a change as £1 increase per annum to full-time equivalent salary) to engage regulation 37 (9) and (10), which will in turn trigger the revaluation of method B. The unions reference paragraph 27.1 about the relevant body being able to make retention payments. It should be noted that such payments cannot, under STPCD, be made to headteachers, deputy headteachers and assistant headteachers where the pay range needs to take this into account.

According to the Teachers’ Pensions the change in the pay rate doesn’t have to include an increase of £1, it could also include a decrease of £1 but that would clearly be more problematic to implement.

The trade unions are also encouraging members to discuss this with their governing bodies, to consider the implications for their schools.

The activity around this has resulted in several clients getting in touch to find out how best to navigate this. To be clear this specifically relates to those teachers who have not had any pay increase (cost of living or incremental) and who are within 10 years of retirement. It also applies to teachers with ‘transitional protection’. This is therefore a smaller proportion of the workforce as most should have transferred or be in the career average scheme without ‘transitional protection’.

We understand from a circular shared by the Local Government Association that the DfE's position for both the pension and pay issues is as follows:

- There will be an update at the February Teachers’ Pension Scheme Advisory Board
- That the DfE do not believe a universal approach is “necessary or justified”, but is for individual employers to determine their approach based on the specific circumstances – it supports a case by case assessment, whilst ensuring it aligns with requirements set out in the Implementing Your Approach to Pay guidance

- Reminds us that this STCPD is only statutory for maintained schools (although, decisions should clearly still be fair and transparent in line with the governance arrangements of the employer)

Teachers' pensions has confirmed the position in some new guidance and have also provided additional clarity to the LGA that where a teacher has been subject to a pay freeze, any change in salary must occur during that period for indexation to be applied i.e. by 31 March 2022.

They say that it is possible to report a change of salary retrospectively to trigger the indexation for 2021/22, as long as the teacher has not applied for their retirement benefits before the change is made, and is consistent with the teacher's contract of employment and the employer's pay policy.

What does this mean for you?

There are a number of options available to you as employers and after speaking with teachers' pensions directly about this, the teachers' pensions is very clear that it is the employer's decision as to how they choose to deal with this. We will now set out some of the options that we believe are available to you and what the risks could be so that you can make an informed decision.

Option 1 – Do nothing

You could choose to do nothing about this. teachers' pensions has said by doing nothing there is a chance that those teachers that are caught by this issue will have a smaller pension calculation. Further any teacher than plans to move out of teaching or choose to retire in the 10 years could also be caught out by this. Teachers' pensions advised that it is really hard to pin down the scale of the consequences of doing nothing, but they can't say that there would be no consequence at all. Therefore, it is more probable than not there is likely to be a consequence for teachers who are caught by this issue. By doing nothing the employer needs to accept the unknown risks that are attached with this option which could be future challenges.

Option 2 – Increase the annual full-time equivalent (FTE) salary by £1 to eligible teachers only

If you choose to increase the annual FTE salary for eligible teachers only, you will need to spend time identifying who those teachers are. In order to find out who these individuals are, you may wish to approach your payroll/pension administrator or use your own information to find data on employed teachers who are in the final salary pension scheme who have not received a pay increase (both cost of living and incremental – so those at the top of the scale or those who have had progression withheld). You also need to consider teachers who have 'transitional protection' which is far trickier to identify.

This approach is in line with the advice from the DfE. The DfE's view is that you shouldn't be paying the increase to those teachers not affected.

Care should be taken in whether by paying this additional £1 it actually results in the teacher moving to the next pension contribution band. It would also result in you operating different pay ranges and ones that were not in line with STPCD. Alternatively, you may wish to pay this as a one off (retention) bonus rather than by increasing the pay range (noting of course you are not, under STPCD, able to pay bonuses to senior leaders).

In following this option, you need to have good pension records for all of your teaching staff so that you can identify those who are affected. Teachers' pensions has said that identifying those who have 'transitional protection' will be very tricky and this may prevent the employer from realistically pursuing this option and if this is the case for you, Option 3 should be considered.

Option 3 – Increase the annual FTE salary by £1 to all teachers that you employ

If you decide to pay a £1 increase to all teachers regardless of whether they are affected by this issue or not will need to be justified public expenditure and so you will need to have a rationale in place.

If you are unable to identify all of the teachers who are affected (see note on Option 2 about those teachers affected by 'transitional protection') or the cost of identifying those teachers will out way the outlay of the £1 applied to annual FTE salary for all teachers, then that may be sufficient justification.

After speaking with teachers' pensions, it seems likely that most employers will find identifying affected teachers problematic and costly in time spent gathering and investigating data.

Option 4 – Decrease the annual FTE salary by £1 for all or affected teachers only

This is a very problematic approach for employers that will likely result in trade union challenge. Reducing pay for any employee will require consultation as the change causes an impact that is less favourable to pay, even if it is only by £1. After a pay freeze, this is an option that would likely result in protracted challenges, including legal ones.

Based on the options above if you decide you do want to pay it, our advice is that you assess your ability to follow Option 2 as a first course of action. If you have the data available to spot those teachers who are affected by this (including those who have 'transitional protection') then you should strongly consider following that route. If, however, you do not think that you have this data or that it will be too time consuming and costly to gather it together accurately then you may have to consider following Option 3.

Having spoken with the Teachers' pensions, their advice is that you will need to submit updated annual FTE salary data for the teachers that you wish to add the £1 to their salary.

To be clear, this is £1 to the full-time equivalent salary (part time staff will receive a proportion of this £1 as appropriate).

We understand from clients that there are differing views on how best to communicate changes to TP. Our advice is to call the TP employers helpline to find out how you can best do it.

This has been incredibly problematic for schools and the Teachers' pensions confirmed that they have received a lot of queries. We understand from the Teachers' pensions that further detailed guidance is expected soon, before the end of March. If you remain unsure on which option to follow or how to submit the updated Monthly Contribution Reconciliation then you can contact Teachers' pensions directly for advice or go to the Teachers' Pensions employer hub.

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