



Department
for Education

The Teachers' Pension Scheme (remediable service) regulations 2023

Equality impact assessment

March 2023

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Introduction

1. This Equality Impact Assessment (EIA) is being undertaken to inform the amendment of the Teachers' Pension Scheme (TPS) rules following the age discrimination that was identified in the McCloud case¹. This document should be read in conjunction with the Teachers' Pension Scheme Transitional Protection Remedy consultation document.

2. In 2015, the Government implemented amendments to the public service pension schemes by introducing the reformed Career Average Revalued Earnings scheme to sit alongside the legacy Final Salary schemes. Therefore, from that date the TPS consisted of two schemes - a legacy scheme and a reformed scheme. As part of those reforms, the Government agreed that those closest to their scheme retirement age would be granted transitional protection and allowed to remain in their legacy scheme beyond, whilst all other existing members would be moved to the reformed scheme from that date. All new members joining the scheme from 1 April 2015 enter the reformed scheme. As a result of transitional protection, the following member types were created:

- **Full Protection:** Members 10 years or less from the Normal Pension Age (NPA) of their existing scheme on 31 March 2012 received full protection. This meant they continued to accrue benefits in the legacy scheme.
- **Tapered Protection:** Members more than 10 years but less than 13½ years from the NPA of their existing scheme received tapered protection. This meant that their transition date was later than 1 April 2015 but before 1 February 2022. Tapered Protection members will² have accrued benefits in both the legacy and reformed schemes during the remedy period of 1 April 2015 to 31 March 2022.
- **Unprotected:** Members more than 13 ½ years from the NPA of their existing scheme did not receive protection. The legacy scheme closed to them on 31 March 2015, and they transitioned to the reformed scheme from 1 April 2015. Therefore they accrued reformed scheme benefits throughout the remedy period.

3. This differential treatment gave rise to the McCloud case where, in 2018, the Court of Appeal ruled that the transitional protection that was awarded purely on a member's proximity to normal pension age was discriminatory on the grounds of age. The

¹ The McCloud (Sargeant) case judgement can be seen [here](#) and is hereafter referred to as the McCloud case

² Only if they remained in the TPS beyond their transition date i.e., if a member retired or left the scheme before they were due to move to the career average scheme, they will not hold mixed benefits for the remedy period.

Department for Education (the Department) is now working to implement the Government's policy to remedy the discrimination identified in the McCloud case.

4. The transitional protection remedy has been split into prospective and retrospective stages:

- **The prospective stage**

5. This has already been completed and saw all active members moved into the reformed schemes on 1 April 2022 and the legacy schemes closed to all remaining members across the public service pension schemes including the TPS. The EIA completed by the Department for the prospective stage was informed by the [EIA completed by HM Treasury \(HMT\)](#) in 2021 to support the Public Services Pensions and Judicial Offices Bill; that Bill received royal assent on 10 March 2022 becoming the Public Service Pensions and Judicial Offices Act 2022 ([PSPJOA](#)). The policy and rule changes for the prospective stage, and the proposed policy and rule changes for the retrospective stage, have been decided centrally by HMT in consultation with the public service pension schemes to provide as much consistency as possible across those schemes.

- **The retrospective stage**

6. The Department is in the process of developing regulations which will change the rules for those within scope of the transitional protection remedy. These regulations will sit alongside and operate with the existing TPS regulations for the legacy scheme and reformed schemes and will enable the transitional protection remedy to be implemented. The remedy will return the reformed scheme service accrued by all tapered and transition members in the period 1 April 2015 to 31 March 2022 to their legacy scheme. Furthermore, when the member comes to retire or otherwise take scheme benefits, the remedy will provide them with a choice of pension accrual between the legacy and reformed schemes for the remedy period. This choice is known as the Deferred Choice Underpin (DCU). The PSPJOA (and [associated Treasury Directions](#) made under the Act) provides for key elements of the remedy policy and criteria that the TPS must follow which will be considered in the applicable areas throughout this EIA. This EIA will focus on the changes to the TPS rules which the PSPJOA, associated Treasury directions and the Teachers' Pension Scheme (Remediable Service) Regulations - a draft of which is provided alongside the Department's consultation - will implement.

Description of Policy

7. The TPS currently operates in line with the [Teachers' Pensions Regulations 2010](#) (TPR 2010) for the legacy scheme and [Teachers' Pension Scheme Regulations 2014](#) (TPSR 2014) for the reformed scheme. The rules regarding transitional protection are in [Schedule 3](#) to the TPSR 2014.

8. Between 1 April 2015 and 31 March 2022 the scheme that members accrued benefits in was dependent on whether they were granted transitional protection (TrP). The legacy scheme, which has two sections, and the reformed scheme have different normal pension ages (NPAs):

- **Final Salary (NPA60)**: The section of the legacy scheme for new entrants who first joined the TPS up to 31 December 2006, with an NPA of 60.
- **Final Salary (NPA65)³**: The section of the legacy scheme for new entrants who first entered the legacy scheme between 1 January 2007 and 31 March 2015, with an NPA of 65.
- **Career Average⁴**: The reformed scheme for existing members of the TPS who transitioned from the legacy scheme to the reformed scheme from 1 April 2015 under the transitional protection arrangements or joined the TPS for the first time after that date. NPA for this scheme is the later of 65 or State Pension Age (SPA).

9. From 1 April 2015 all active TPS members, unless they received protection, were moved into the reformed scheme. Members could only accrue benefits in one of the above schemes or sections of the legacy scheme at any given point in time, but they could accrue benefits within multiple schemes over the course of their careers. When members come to take payment of their benefits from the TPS, they will be provided with their benefit value at the appropriate date i.e. at NPA if they retire at their NPA, with early retirement factors if they retire before their NPA or with late retirement factors if they retire after NPA. The member is not currently entitled to receive a choice of which scheme their benefits should be calculated in relation to as this is determined by the date they joined and the transitional protection rules as referred to above.

³ Hereafter referred to as the legacy scheme alongside the Final Salary NPA 60 section

⁴ Hereafter referred to as the reformed scheme

Policy Changes

10. To address the discrimination that was identified in the McCloud case, all reformed scheme service accrued during the remedy period is being rolled back to the legacy scheme that the member was in immediately prior to their transition. Service that was accrued in the legacy scheme during the remedy period will remain in that legacy scheme. The members who have not taken scheme benefits prior to implementation of the remedy on 1 October 2023 will receive a DCU at the point of retirement where they will make a choice between the legacy or reformed scheme benefits for their remediable service. For those members who have retired or died prior to 1 October 2023, there will be a retrospective choice (known as Immediate Choice) with any necessary adjustment made to benefits in payment. This provides the member with a benefit option between schemes for the remedy period which was not previously available. In order to provide this benefit option, changes are required across the TPS rules to enable the benefit option to be communicated and then implemented by the scheme.

11. The below table shows the different protections initially afforded to members, which were ruled age discriminatory, and the impact of the policy changes on each member type:

Member Type	Benefit Choice	Pre-Remedy <31/03/2015	Remedy Period 01/04/2015 – 31/03/2022	Post Remedy >01/04/22
Protected	Existing FS Benefits		FS	CA
	New CA Choice	FS		CA
Unprotected	Existing CA Benefits	FS		CA
	New FS Choice		FS	CA
Tapered	Existing – Mixed Benefits ⁵		FS	CA
	New – FS Choice		FS	CA
	New – CA Choice	FS		CA

Table 1: Current Member Benefits based on Protection Type

12. All eligible members will be provided with a [Remediable Service Statement](#) (RSS) to make their DCU when appropriate. If a member fails to confirm their DCU, as their service will be in the legacy scheme, this is what they will receive for the remedy period unless the scheme implements a different outcome – see the [defaults](#) section for more information.

⁵ Tapered members had a transition date from the final salary scheme that was later than 1 April 2015 but before 1 February 2022. Therefore, some tapered members may have retired or left the legacy scheme prior to their transition to the reformed scheme and therefore not have mixed benefits.

13. To provide the legal framework for making the necessary changes to policy and scheme regulations, HMT has enacted the PSPJOA which provides the eligibility criteria for members to meet to then be in scope for receiving a DCU. In addition to the Act, HMT has published directions to support the required policy and regulatory updates. There is an accompanying EIA produced by HMT for these directions.

14. The existing, business as usual, rules continue to apply where possible, e.g. for calculating the value of benefits within the legacy and reformed schemes. This EIA will go through each policy area individually to highlight the changes that are being made.

Public Sector Equality Duty

General

15. This document records the analysis undertaken by the Department in accordance with the Public Sector Equality Duty (PSED) requirements set out in [Section 149](#) of the Equality Act 2010. The PSED requires a public authority to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

16. These aims are also known as the three limbs of the PSED. This involves having due regard to the need to:

- remove or minimise disadvantages suffered by people due to their protected characteristics, and
- take steps to meet the needs of people from protected groups where these are different from the needs of other people.

17. The equality duty covers nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race (ethnicity), religion or belief, sex, and sexual orientation.

18. The data available on TPS membership relates to a member's age and sex, as the scheme administrator only collects data that is necessary for the administration of the scheme, in line with General Data Protection Regulations. The data from the scheme administrator (Capita Teachers' Pensions) covers the membership across England and Wales and all the data is as of 3 April 2022. The data has been capped at age 82 as this was the age of the oldest member in scope for the remedy (at that time that the data was captured). The Department notes that sex and gender are two different concepts. A person's gender identity is not always the same as the sex assigned to them at birth, and some people may not identify as having one gender or the other. The TPS does not hold data on gender and the Department considers that it would not have been proportionate to try to obtain further information for the purposes of this EIA. Data relating to sex and age will be explored within the policy specific areas throughout this EIA.

19. Where TPS specific data is unavailable, the Department has obtained data from the School Workforce Census' (SWC) and the Office for National Statistics (ONS) with both

covering England and Wales. This data was collected over a slightly different timescale than the TPS data, however it provides for a reasonable representation of the potential scheme membership. Data is limited for the protected characteristics outside of age and sex, but the Department has, and will, consider all protected characteristics as far as possible based on the information available. For ease of accessibility, reduction of the document length and to save repetition, the analysis for the protected characteristics of race (ethnicity), disability, religion or belief, pregnancy and maternity, sexual orientation, gender reassignment and marriage/civil partnership are amalgamated into the [Equality Impact Analysis](#) section of this EIA and represents the Department's findings for all policy specific areas unless stated otherwise within a given section.

Direct Discrimination

20. Direct discrimination is covered in Section 13 of the Equality Act 2010, which provides:

“Direct discrimination

- 1) *A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*
- 2) *If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.”*

21. Both as a whole and separately, the policy areas covered by this EIA do lead to direct discrimination on age grounds which the Department has justified in this EIA. The changes remedy the direct discrimination on the grounds of age that were found as being a result of the 2015 public service pension scheme reforms, namely the transitional protections given.

Indirect Discrimination

22. Indirect discrimination is set out under Section 19 of the EA 2010, which provides:

“Indirect discrimination

- 1) *A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*
- 2) *For the purpose of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if –*
 - a) *A applies, or would apply, it to persons with whom B does not share the characteristic,*

- b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
- c) it puts, or would put, B at that disadvantage, and*
- d) A cannot show it to be a proportionate means of achieving a legitimate aim.”*

23. The Department acknowledges that the direct discrimination based on age from the transitional protections also led to indirect discrimination on the grounds of race and sex. As above, the policy areas covered by this EIA do lead to indirect discrimination according to the protected characteristics outlined in the Equality Act 2010 which the Department has justified.

Scheme Membership Data

24. Please read this section in conjunction with paragraphs 36 and 37 of the Consultation document.

25. This section outlines the data on the current membership of the TPS as a whole and those who are eligible to receive a DCU under the TrP remedy. [Section 1](#) of the PSPJOA sets out the criteria for service to be considered as being “remediable service” - those members with remediable service are within scope of the remedy. A prior consultation and EIA were undertaken by HMT in 2020/2021 prior to the introduction of the Bill which would become the PSPJOA; and HMT made directions under the PSPJOA to support delivery of the remedy. The Government [consulted on the remedy](#) in July 2020 and confirmed in the [response document](#) published in February 2021 what the remedy would be. Consequently, the TPS policy and draft regulations referred to in this document operate within the framework set by HMT and the enacted legislation. [Section 27](#) of the PSPJOA states the directions that the TPS is legally required to comply with. Under the criteria in section 1 of the PSPJOA the member must have accrued benefits within the remediable service period of 1 April 2015 to 31 March 2022 and have been an ‘active member’ of the scheme on or before 31 March 2012, without having had a disqualifying 5-year break in service.

26. Disqualifying breaks are covered by existing rules for the TPS and are therefore not isolated to the McCloud remedy. The TPS rules regarding breaks can be found in [regulation 53](#) of the TPR 2010 and [paragraph 2 of Schedule 3](#) of the TPSR 2014.

27. The Act and draft regulations also make provision for members who opted-out of the TPS during the remedy period because of the discrimination to have that service reinstated (please read this section in conjunction with paragraphs 82-85 and 208-210 of the consultation). Where a member successfully applies and elects for service to be reinstated they will be treated in the same way as all eligible members and will be given a DCU.

28. Those within scope of the DCU provided by the remedy are split into those who will exercise an immediate choice and those whose choice will be a deferred choice. The immediate choice and deferred choice both involve a choice between legacy or reformed scheme benefits. However, for those exercising the immediate choice they will have already received benefits during the remedy period. When the remedy is implemented from 1 October 2023 (implementation date), these members will need to make their choice as soon as possible within time limits set out in the Act. Hence, the DCU applies to these members soon after implementation date. For those members who have not taken their benefits prior to 1 October 2023, they will exercise their choice as provided by the DCU at whatever point in the future they decide to take their benefits (e.g., retire). This could be many years in the future.

29. The transitional protection membership totals 589,497; this is split into:

- IC (Immediate Choice) – 114,275
- DC (Deferred Choice) – 475,222

30. Males and females are represented proportionately within the remedy compared to scheme membership in general and eligibility rules of the remedy e.g., the requirement for the member to have had service in the legacy scheme on or before 31 March 2012 means there are few members in scope under the age of 30. The Department has not identified any equality considerations to explore with reference to the eligibility criteria and provision of the DCU.

31. The 5 data tables on the following pages show:

Table Number	Name	Description
3	TPS Membership as of 31 March 2021	<p>This table is split into 4 parts with part 1 showing the age and sex of the total membership of the TPS as of 31 March 2021.</p> <p>Parts 2-4 split this total into each member status of active, deferred or pensioner.</p>
4	Transitional Protection Total & Full Protection Members	<p>This table is split into 5 parts with part 1 showing the age and sex of all members in scope for the remedy.</p> <p>Part 2 shows how many of members within part 1 were initially awarded full protection.</p> <p>Parts 3-5 split part 2 into each member status of active, deferred or pensioner.</p>
5	Transitional Protection Total & Taper Protection Members	<p>Same as table 4, but part 2 shows how many members received taper protection which is then broken down in parts 3-5.</p>
6	Transitional Protection Total & Unprotected (Transition) Members	<p>Same as tables 4 and 5, but part 2 shows how many members were unprotected which is then broken down in parts 3-5.</p>
7	Pension Sharing Orders upon Divorce	<p>This table is split into 2 parts and shows the age and sex of pension debit members (PDM) and pension credit members (PCM). The PDM has been subject to a Pension Sharing Order that the TPS have implemented with the ex-spouse/civil partner becoming the PCM.</p>

Table 1: Overview of Scheme Membership and Transitional Protection Remedy Data Tables

	Total TPS Members ⁶			Active ⁷			Deferred ⁸			Pensioner ⁹		
	Female	Male	Total	Female	Male	Total	Female	Male	Total	Female	Male	Total
<25	15,354	5,298	20,652	11,973	3,018	14,991	1,713	679	2,392	1,668	1,601	3,269
25 - 29 ¹⁰	80,257	28,554	108,811	61,878	20,418	82,296	18,363	8,112	26,475	16	24	40
30 - 34	117,246	46,174	163,420	77,991	28,575	106,566	39,215	17,565	56,780	40	34	74
35 - 39	123,780	51,227	175,007	75,616	29,931	105,547	48,034	21,197	69,231	130	99	229
40 - 44	128,643	51,610	180,253	75,782	29,083	104,865	52,568	22,318	74,886	293	209	502
45 - 49	124,424	49,936	174,360	71,049	27,183	98,232	52,790	22,371	75,161	585	382	967
50 - 54	118,858	52,327	171,185	61,560	26,152	87,712	56,050	25,489	81,539	1,248	686	1,934
55 - 59	113,303	53,208	166,511	45,325	20,695	66,020	55,289	25,870	81,159	12,689	6,643	19,332
60 - 64	113,931	55,474	169,405	20,278	10,847	31,125	33,896	17,736	51,632	59,757	26,891	86,648
65 - 69	137,808	66,383	204,191	6,165	4,146	10,311	28,094	13,863	41,957	103,549	48,374	151,923
70 - 74	144,397	81,530	225,927	1,242	1,353	2,595	29,713	15,485	45,198	113,442	64,692	178,134
75 - 79	99,407	57,619	157,026	66	112	178	22,356	11,416	33,772	76,985	46,091	123,076
80 - 82 ¹¹	40,573	21,844	62,417	0	0	0	7,073	3,459	10,532	33,500	18,385	51,885
Total	1,357,981	621,184	1,979,165	508,925	201,513	710,438	445,154	205,560	650,714	403,902	214,111	618,013

Table 3: TPS Membership as of 31 March 2021¹²

⁶ The total member figures include active, deferred and pensioner members. Deceased members are not included in the overall TPS membership figures.

⁷ Members with pensionable service on 31/03/2021 and uncrystallised benefits.

⁸ Members without pensionable service on 31/03/2021, or a pension credit member, and uncrystallised benefits.

⁹ Members with crystallised benefits on or before 31/03/2021. This includes members who have taken ill-health retirement, but also dependants/beneficiaries of members and Pension Credit Members (in relation to divorce and dissolution cases) who did not accrue service in the scheme themselves.

¹⁰ The age brackets are members ages as of the 31/03/2021 i.e., 25-29 is anyone who turned 25 on the 31/03/2021 and goes up to 29 years, 11 months, and 364 days. The same method applies to the other age brackets.

¹¹ The data has been capped at age 82 as, at the time that the data was collected, this is the age of the oldest member who is in scope for the remedy.

¹² The total membership figures are as of the 31 March 2021. These are the latest figures available, as per the [Annual Report and Accounts](#), for the whole scheme.

	Transitional Protection Total ¹³			Full Protection Total ¹⁴			Active			Deferred			Pensioner ¹⁵		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
<25	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
25-29	20	28	48	0	0	0	0	0	0	0	0	0	0	0	0
30-34	4,468	18,260	22,728	0	0	0	0	0	0	0	0	0	0	0	0
35-39	19,637	62,580	82,217	0	0	0	0	0	0	0	0	0	0	0	0
40-44	25,576	71,265	96,841	0	0	0	0	0	0	0	0	0	0	0	0
45-49	25,807	66,086	91,893	0	0	0	0	0	0	0	0	0	0	0	0
50-54	27,004	62,162	89,166	9	18	27 ¹⁶	0	0	0	0	1	1	9	17	26
55-59	25,515	59,445	84,960	184	323	507	2	12	14	3	9	12	179	302	481
60-64	22,399	50,201	72,600	19,231	43,372	62,603	2,820	5,660	8,480	579	1,518	2,097	15,832	36,194	52,026
65-69 ¹⁷	12,510	27,685	40,195	12,504	27,679	40,183	995	1,459	2,454	338	799	1,137	11,171	25,421	36,592
70-74	3,526	4,429	7,955	3,526	4,429	7,955	253	240	493	134	197	331	3,139	3,992	7,131
75-79	401	434	835	401	434	835	0	0	0	64	67	131	337	367	704
80-82	29	30	59	29	30	59	0	0	0	5	5	10	24	25	49
Total	166,892	422,605	589,497	35,884	76,285	112,169¹⁸	4,070	7,371	11,441	1,123	2,596	3,719	30,691	66,318	97,009

Table 4: Transitional Protection Total & Full Protection Members

¹³ The TrP Total includes active, deferred, pensioner, and deceased members who are in scope for the remedy. For the deceased members, their age is recorded as their date of death and not their age on 03/04/2022. Dependants and pension credit members are recorded separately.

¹⁴ Members who were less than 10 years from NPA as at 01/04/2012

¹⁵ Within the pensioner figures, this includes members who have died as they remain in scope for the TrP Remedy, ill health retirements and pensioners.

¹⁶ These members are NHS55 members who were granted Full Protection at a younger age.

¹⁷ The age brackets are members ages as of the 03/04/2022 i.e., 65-69 is anyone who turned 65 on the 03/04/2022 and goes up to 69 years, 11 months, and 364 days. The same method applies to the other age brackets.

¹⁸ This total includes 626 deceased full protection members.

	Transitional Protection Total ¹⁹			Tapered Total ²⁰			Active			Deferred			Pensioner		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
<25	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
25-29	20	28	48	0	0	0	0	0	0	0	0	0	0	0	0
30-34	4,468	18,260	22,728	0	0	0	0	0	0	0	0	0	0	0	0
35-39	19,637	62,580	82,217	0	0	0	0	0	0	0	0	0	0	0	0
40-44	25,576	71,265	96,841	0	0	0	0	0	0	0	0	0	0	0	0
45-49	25,807	66,086	91,893	1	0	1	0	0	0	0	0	0	1	0	1
50-54	27,004	62,162	89,166	94	125	219	0	1	1	1	0	1	93	124	217
55-59	25,515	59,445	84,960	14,868	32,879	47,747	6,440	13,971	20,411	2,532	6,436	8,968	5,896	12,472	18,368
60-64	22,399	50,201	72,600	2,059	4,237	6,296	777	1,457	2,234	645	1,475	2,120	637	1,305	1,942
65-69	12,510	27,685	40,195	6	6	12	1	3	4	0	2	2	5	1	6
70-74	3,526	4,429	7,955	0	0	0	0	0	0	0	0	0	0	0	0
75-79	401	434	835	0	0	0	0	0	0	0	0	0	0	0	0
80-82	29	30	59	0	0	0	0	0	0	0	0	0	0	0	0
Total	166,892	422,605	589,497	17,028	37,247	54,275²¹	7,218	15,432	22,650	3,178	7,913	11,091	6,632	13,902	20,534

Table 5: Transitional Protection Total & Taper Protection Members

¹⁹ The TrP Total includes active, deferred, pensioner, and deceased members who are in scope for the remedy. For the deceased members, their age is recorded as their date of death and not their age on 03/04/2022. Dependents and pension credit members are recorded separately.

²⁰ Members who were between 10 and 13.5 years from NPA as at 01/04/2012

²¹ This total includes 385 deceased taper protection members.

	Transitional Protection Total ²²			Unprotected (Transition) Total ²³			Active			Deferred			Pensioner		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
<25	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
25-29	20	28	48	20	28	48	3	9	12	14	12	26	3	7	10
30-34	4,468	18,260	22,728	4,468	18,260	22,728	3,273	13,795	17,068	1,170	4,407	5,577	25	58	83
35-39	19,637	62,580	82,217	19,637	62,580	82,217	14,653	46,390	61,043	4,907	16,026	20,933	77	164	241
40-44	25,576	71,265	96,841	25,576	71,265	96,841	19,205	53,426	72,631	6,252	17,542	23,794	119	297	416
45-49	25,807	66,086	91,893	25,806	66,086	91,892	19,263	49,795	69,058	6,316	15,773	22,089	227	518	745
50-54	27,004	62,162	89,166	26,901	62,019	88,920	19,101	44,061	63,162	7,205	16,754	23,959	595	1,204	1,799
55-59	25,515	59,445	84,960	10,463	26,243	36,706	6,321	15,163	21,484	2,772	7,870	10,642	1,370	3,210	4,580
60-64	22,399	50,201	72,600	1,109	2,592	3,701	578	1,107	1,685	340	978	1,318	191	507	698
65-69	12,510	27,685	40,195	0	0	0	0	0	0	0	0	0	0	0	0
70-74	3,526	4,429	7,955	0	0	0	0	0	0	0	0	0	0	0	0
75-79	401	434	835	0	0	0	0	0	0	0	0	0	0	0	0
80-82	29	30	59	0	0	0	0	0	0	0	0	0	0	0	0
Total	166,892	422,605	589,497	113,980	309,073	423,053²⁴	82,397	223,746	306,143	28,976	79,362	108,338	2,607	5,965	8,572

Table 6: Transitional Protection Total & Unprotected (Transition) Members

²² The TrP Total includes active, deferred, pensioner, and deceased members who are in scope for the remedy. For the deceased members, their age is recorded as their date of death and not their age on 03/04/2022. Dependants and pension credit members are recorded separately.

²³ Members who were more than 13.5 years from NPA as at 01/04/2012

²⁴ This total includes 1,201 deceased unprotected (transition) members.

	Pension Debit Members ²⁵			Pension Credit Members ²⁶		
	Male	Female	Total	Male	Female	Total
<25	0	0	0	0	0	0
25-29	0	0	0	0	1	1
30-34	1	0	1	0	4	4
35-39	15	14	29	4	37	41
40-44	80	45	125	39	128	167
45-49	193	102	295	84	273	357
50-54	379	150	529	115	357	472
55-59	400	166	566	150	439	589
60-64	459	105	564	127	404	531
65-69	297	75	372	80	203	283
70-74	71	6	77	31	64	95
75-79	4	0	4	13	7	20
80-82	0	0	0	0	2	2
Total	1,899	663	2,562	643	1,919	2,562

Table 7: Pension Sharing Orders upon Divorce

²⁵ Pension Debit Members (PDM) are the member of the TPS whom an award was made against their benefits to their ex-spouse or civil partner through a Pension Sharing Order (PSO) upon divorce.

²⁶ Pension Credit Members (PCM) are the ex-spouse or civil partner of a member of the TPS who was awarded a share of their pension benefits through a PSO upon divorce. The ex-spouse or civil partner becomes a member of the TPS as a PCM.

Bereavements

32. Please read this section in conjunction with paragraphs 71-81 and 264-266 of the consultation document. The analysis in respect of deceased members is focused on the protected characteristics of those members although they themselves are not going to benefit from the DCU. It is the beneficiary/survivor who will benefit, however there is no impact analysis of this group due to the difficulty in obtaining relevant data.

33. The PSPJOA requires schemes to provide for a DCU which applies equally to all members, whether they are currently active, deferred, pensioner or deceased. In the case of deceased members, the choice will be provided to their beneficiary/survivor/dependant. Within [section 7](#) of the PSPJOA, schemes are required to specify who can make an election on behalf of a deceased member.

34. The draft regulations that the Department has included in the consultation set out how an eligible decision maker (DM) is to be identified. The DM will make an election on behalf of the member. The draft regulations include a framework to identify the different categories of eligible decision maker and outline the conditions to be met for each type. In most cases that decision maker would be the surviving adult (the member's spouse, civil partner or eligible cohabiting partner). There are some circumstances where there may be multiple beneficiaries, and therefore the regulations provide a clear route to identify who the eligible decision maker would be. Where no decision maker can be agreed or identified, the scheme manager would be the decision maker.

35. The rules regarding death benefits and the way they are calculated in the current TPS regulations remain the same – what changes is that the DCU will operate on the death benefits payable so that the DM will be able to make a choice between legacy scheme or reformed scheme death benefits. Where the scheme administrator receives notice of a member's death up to two weeks before the first payment of retirement benefits is due to be made to the member (or later if deemed appropriate in the circumstances), a DCU choice communicated by the member is revoked and is treated as never having been made. In this situation an RSS would be issued to the eligible decision maker and the decision process and time period are reset. This is due to the members having up until their pension is payable to alter their DCU, they could apply for retirement months before their chosen retirement date. The same and equal treatment will be applied upon death in that the DM is not going to be bound by a decision or election that the member still had the possibility of revoking.

36. Aside from the member themselves, dependant benefits are payable to eligible parties and those already in receipt of benefits will have their payments adjusted in line with the decision or election made by, or on behalf of, the member. The only exception to this is for any eligible children in receipt of a child pension who live in a separate household to the DM.

Age

37. As shown below, the age as of the point of death for members is varied, but all will require a DM to act on their behalf in making a choice:

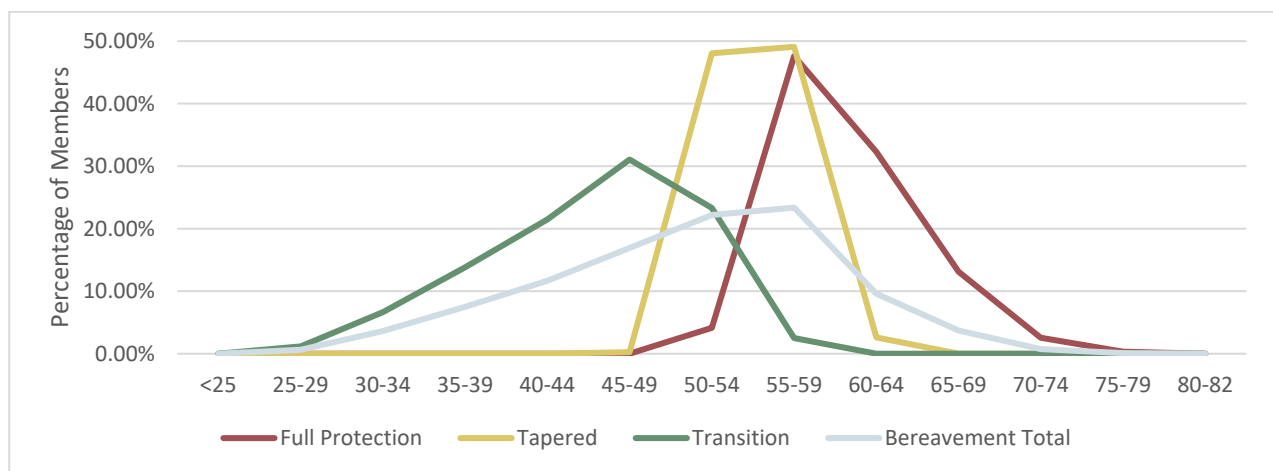


Figure 1: Bereavement Members by Protection Type

38. As mentioned above, the only difference in treatment is for eligible children in a separate household to the DM. This group of beneficiaries will not have their pensions reduced should the election result in a lower benefit amount than those already in payment. The reason for this difference in treatment is that the DM should be taking any children within their household into account when making the decision but may not know the circumstances of a child within a separate household. The Department therefore believes these children in a separate household, and their parent or carer, have a legitimate expectation to continue receiving pension payments of at least the same amount as they have previously received.

39. The Department has considered the potential equality impact of the reforms regarding this characteristic and has not found any evidence to suggest that they directly discriminate against members based on age. All dependants will be treated equally aside from eligible children, in a separate household to the DM, which the Department has explained above. Our analysis has similarly not identified any actual or potential indirect discrimination.

Sex

40. The below chart shows the sex of members within the TPS scheme and the total of bereavements that are in scope for the remedy. The chart then splits the bereavements into the 3 protection types:

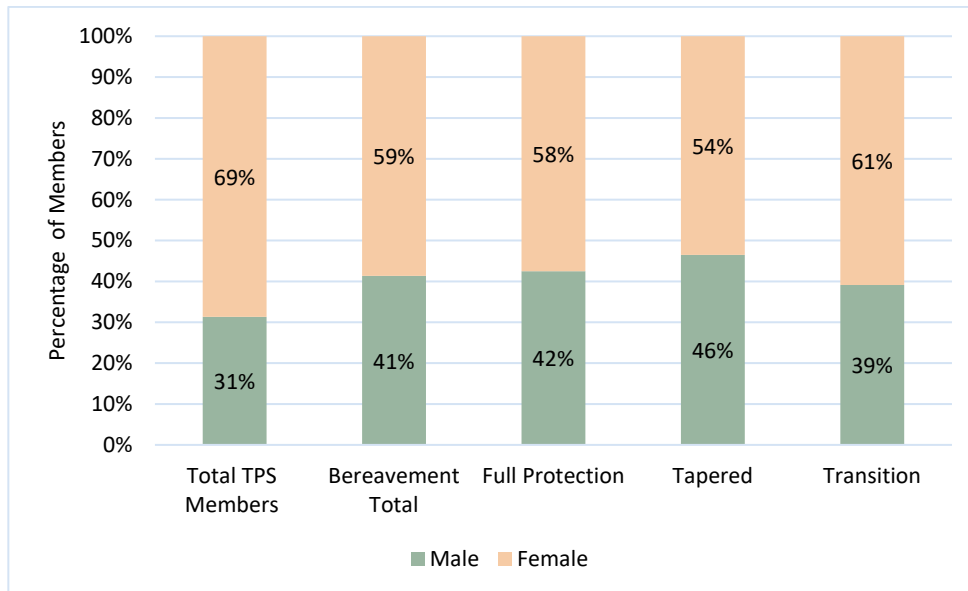


Figure 2: Sex Profiles for Deceased Members by Protection Type

41. Based on the data that is currently available, the Department has considered the potential equality impact of the reforms regarding this characteristic and has not found any evidence to suggest that they directly discriminate against members based on sex. Our analysis has similarly not identified any actual or potential indirect discrimination.

Retirements

42. Please read this section in conjunction with paragraphs 54-69 (Deferred Choice), 188-201 (Immediate Choice) and 272-275 (Premature Retirement) of the consultation document.

43. [Section 2](#) of the PSPJOA requires schemes to provide members with their DCU which requires the TPS to calculate benefits under both schemes and present the member with their options, as of the same retirement date, which could differ due to the NPA differences i.e., a higher or lower amount of early retirement factors could be applied. The variance between schemes may also impact on member contributions, but this will be outlined in the [RSS](#) so the members can make an informed decision.

44. The retirement impact table below outlines the different retirement types and where equalities considerations relating to the DCU have been identified.

	Description	Equality Considerations
Early Retirement	Pension benefits can be taken from age 55, but an actuarial reduction is applied where benefits are paid before the scheme NPA.	Unprotected members who elect reform scheme benefits would be subject to a lower actuarial adjustment on their benefits, due to the lower NPA in the legacy scheme, which may make their pension benefits accessible at an earlier age.
Age Retirement	Members applying for retirement on, or after reaching, NPA where benefits are paid in full without any reductions.	Nothing currently identified. There is no enhancement or reduction to accrued benefits, as they are taken at NPA, and therefore no equalities considerations.
Premature Retirement	Members who take early retirement due to redundancy, but with a compensation payment from the employer in addition to their pension benefits. The compensation payment paid by employers is separate to scheme benefits within the TPS and is therefore not considered as part of the TPS benefit amount. Premature retirements have therefore been considered alongside early retirements.	

Late Retirement	TPS regulations include provisions for legacy NPA 65 and reformed members to have their benefits actuarially enhanced where employment continued after reaching their NPA.	Nothing currently identified. Benefits provided at the same retirement date under both schemes.
Partial Retirement	Upon reaching NPA of a section of the TPS, members can choose to receive retirement benefits for one section only e.g. the NPA60 section, deferring retirement from any other section(s) they have accrued in, until a later date.	Nothing currently identified. Benefits provided at the relevant schemes' normal pension age.
Phased Retirement	Members may wish to reduce their working hours or responsibilities as they approach retirement. Providing a member reduces their annual contributable salary by at least 20%, the member may apply to receive up to 75% of their accrued benefits and continue working.	Nothing currently identified. Current scheme rules will continue to apply.
Small Lump Sum	Members can exchange their annual pension benefits for a lump sum payment provided the actuarial value doesn't exceed £10,000 from a single source.	Nothing currently identified. Benefits provided at the same retirement date under both schemes but may no longer be eligible for SLS if the benefit value has increased.
Trivial Commutation	Members can exchange their annual pension benefits for a lump sum payment provided the actuarial value doesn't exceed £30,000 from all sources.	Nothing currently identified. Benefits provided at the same retirement date under both schemes but may no longer be eligible for TC if the benefit value has increased.

Table 8: Retirements Member Impact Table

45. The Department is in the process of amending the TPS regulations to meet the provision of the DCU, as provided for by HMT, but otherwise the existing rules or regulations for the retirement benefit calculations remain unchanged.

46. Following on from **Table 8** above, early retirements will be analysed below against the protected characteristics due to an equality consideration being present for this retirement type. **Table 9** on the following page provides for members who have taken early retirement within the remedy period, their age, sex and protection type:

	Early Retirements Total			Full Protection			Taper Protection			Unprotected (Transition)		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
<54	0	0	0	0	0	0	0	0	0	0	0	0
55-59	5,103	10,621	15,724	47	50	97	4,137	8,632	12,769	919	1,939	2,858
60-64	8,447	17,087	25,534	7,897	16,034	23,931	408	746	1,154	142	307	449
65-69	1,403	2,816	4,219	1,402	2,816	4,218	1	0	1	0	0	0
70-74	20	22	42	20	22	42	0	0	0	0	0	0
75-82	0	0	0	0	0	0	0	0	0	0	0	0
Total	14,973	30,546	45,519	9,366	18,922	28,288	4,546	9,378	13,924	1,061	2,246	3,307

Table 9: Early Retirements within the Remedy Period

Age

47. Following the removal of the discriminatory protection types, unprotected and taper protected members have access to the legacy scheme for a longer period of service. As the legacy scheme has a lower NPA, if a member was to take early retirement, they would be subject to fewer years of actuarial adjustment from their NPA to their chosen retirement date. This may lead members to being able to access their benefits at a younger age, in comparison to the reformed scheme, due to a lesser reduction being applied and thus providing a higher pension value.

48. Using the data in **Table 9** above, this shows that early retirements are made up of 62% full protection members, 31% taper protection members and 7% of unprotected members. Given the protections were awarded based on age, most unprotected members will not yet meet the minimum pension age (MPA) of age 55 to access early retirement, which the figures appear to reflect. Looking back on **Table 6**, we can see that 72% of unprotected members remained active and within this active population:

- 8% are above age 55,
- 21% are aged 50-54,
- 23% are aged 45-49,
- 48% are aged 44 and under.

49. As mentioned above, the MPA is age 55 so if the above active unprotected members carry on working to age 55 or beyond, some will end up having equal reformed scheme service and legacy scheme service or more reformed scheme service than legacy, depending on their age and date of joining the scheme. The length of service a member completes would therefore be relevant to gauge the impact of the DCU on the availability of retirement. This interlinks with the potential for members to access their benefits earlier in that, although they could elect for legacy scheme service for the remedy period, a lot of members would have a substantial period of their overall service under the reformed scheme, given they joined on 1 April 2022, and this may therefore not have a significant impact on their ability to retire and a particular date. If a member's benefits are split evenly between the schemes, they would still be subject to an actuarial reduction on more than half of their benefits from the higher NPA of the reformed scheme.

50. Leading on from this, the impact of the DCU on the ability to access benefits would likely differ for unprotected members based on their ages. For members at, or close to, MPA of age 55, being able to keep the majority of their benefits in the legacy scheme is likely to be beneficial as this scheme would hold the substantial benefits accrued over a member's career. In comparison, for members who are not at, or close to, MPA of age 55, the impact is likely to be lesser. Given the age rise of state pension age we can assume that members may carry on working until a later age compared to members who

are currently at retirement age meaning it may therefore be more beneficial for members to remain in the reformed scheme to accrue further benefits beyond age 60.

51. Overall, having legacy scheme benefits for the remedy period would be beneficial to older unprotected and taper protected members and could be beneficial to the younger members dependant on their circumstances and planned retirement age. Reformed scheme benefits could be a better option for younger members of the TPS, but given the DCU, each member can make an election that is in line with their personal circumstances.

Sex

The below chart shows the sex of members within the TPS scheme, the total of early retirements that are in scope for the remedy and these total early retirements then split into the 3 protection types:

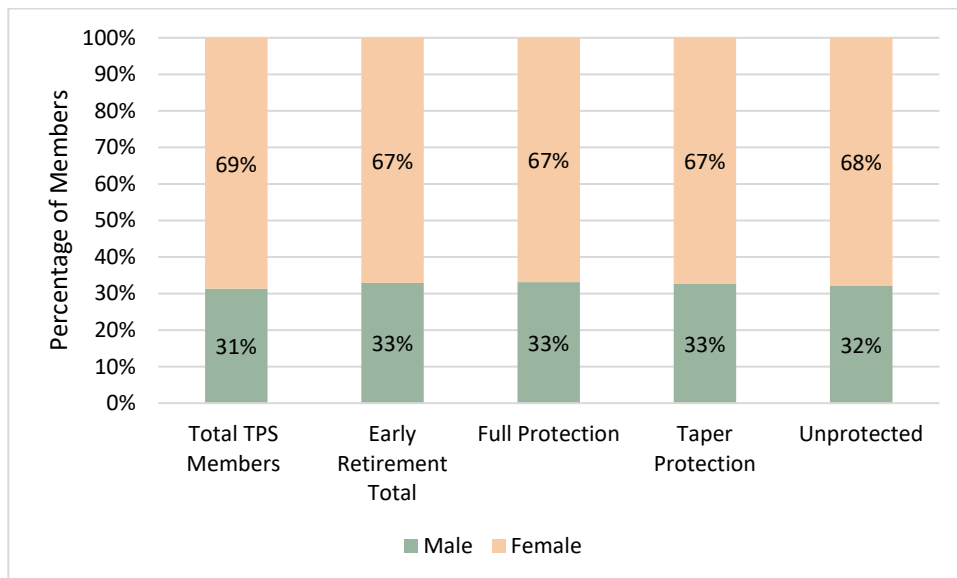


Figure 3: Sex Profiles of Early Retirements by Protection Type

52. Based on the data that is currently available, the Department has considered the potential equality impact of the reforms regarding this characteristic and has not found any evidence to suggest that they directly discriminate against members based on sex. Our analysis has similarly not identified any actual or potential indirect - discrimination.

III-Health Retirements

53. Please read this section in conjunction with paragraphs 146-159 and 267-271 of the consultation document.

54. The PSPJO provides that reform scheme remediable service must be rolled back to the legacy scheme and eligible members must then be given the choice to elect reformed scheme benefits at retirement. As the legacy and reformed schemes have different NPAs, this in turn may affect a member's eligibility for IHR given the criteria is in two tiers:

- 1) **Incapacity Condition:** being permanently unable to teach up to NPA.
- 2) **Total Incapacity Condition:** being permanently unable to teach and take up any other gainful employment up to NPA.

55. The Department is proposing new scheme regulations in respect of providing the member with a DCU, as required by the PSPJOA, but otherwise the existing rules or regulations remain in place.

56. The 2 data tables on the following pages show:

Table Number	Name	Description
11	III-Health Total & Legacy Final Salary III Health Applications and Rejections	This table is split into 4 sections with part 1 being the total number of ill-health applications and rejections that are in scope for the TrP remedy. Parts 2 and 3 show a breakdown of the legacy scheme IHR cases, from part 1, by tier and whether the member was in or out of service. Part 4 shows the total number of legacy IHR rejections.
12	III-Health Total & Reformed Career Average III Health Applications and Rejections	Same as table 17 above, but parts 2 and 3 show the reformed scheme IHR cases and part 4 shows the rejections.

Table 10: Overview of III-Health Data Tables

	III-Health Total			Tier 1 (Incapacity)						Tier 2 (Total Incapacity) ²⁷						Rejections		
	Male	Female	Total	In Service			Out of Service			In Service			Out of Service			Male	Female	Total
				Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total			
<29	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
30-34	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
35-39	9	43	52	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
40-44	36	130	166	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
45-49	77	270	347	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
50-54	214	584	798	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
55-59	446	1,090	1,536	43	84	127	9	21	30	78	224	302	0	0	0	20	43	63
60-64	308	699	1,007	69	118	187	9	20	29	157	404	561	0	0	0	49	89	138
65-69	38	84	122	5	13	18	1	2	3	27	61	88	0	0	0	5	8	13
70-74	1	1	2	0	0	0	0	0	0	1	1	2	0	0	0	0	0	0
75-82	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	1,129	2,902	4,031²⁸	117	215	332	19	43	62	263	690	953	0	0	0	74	140	214
	28%	72%	100%	35%	65%	100%	31%	69%	100%	28%	72%	100%	0	0	0	35%	65%	100%

Table 11: III-Health Total²⁹ & Legacy Final Salary³⁰ III-Health Applications and Rejections

²⁷ Tier 2 is only available for active scheme members or when a member applies for IHR within 2 years of leaving teaching for the same ill-health condition. The latter would fall under the out of service application heading

²⁸ Within this total, 403 members have since died following an ill health retirement or rejection

²⁹ The total is all ill-health cases within the scope of McCloud and the DCU provision i.e., tier 1, tier 2 and rejections under both legacy and reformed schemes

³⁰ This includes both legacy final salary arrangements of NPA60 and NPA65

	III-Health Total			Tier 1 (Incapacity)						Tier 2 (Total Incapacity)						Rejections		
				In Service			Out of Service			In Service			Out of Service					
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
<29	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
30-34	0	1	1	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0
35-39	9	43	52	1	10	11	1	4	5	6	27	33	0	0	0	1	2	3
40-44	36	130	166	8	21	29	2	9	11	19	87	106	0	0	0	7	13	20
45-49	77	270	347	28	71	99	4	13	17	36	158	194	0	0	0	9	28	37
50-54	214	584	798	63	128	191	8	24	32	109	348	457	0	0	0	34	84	118
55-59	446	1,090	1,536	88	141	229	4	32	36	147	427	574	0	0	0	57	118	175
60-64	308	699	1,007	6	8	14	4	4	8	11	38	49	0	0	0	3	18	21
65-69	38	84	122	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
70-74	1	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
75-82	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	1,129	2,902	4,031	194	379	573	23	86	109	328	1,079	1,407	0	0	0	111	263	374
	28%	72%	100%	34%	66%	100%	21%	79%	100%	23%	77%	100%	0	0	0	30%	70%	100%

Table 12: III-Health Total & Reformed Career Average III-Health Applications and Rejections

Age

57. Due to the difference in NPA, members who were rejected under the reformed scheme may satisfy the criteria under the legacy scheme. This is due to the burden of proving incapacity or total incapacity being for a shorter time period, since the NPA is lower, and may in turn bring members into scope for IHR who previously did not satisfy the criteria. As shown in **Tables 11 and 12** above, there are 588 members who have previously been rejected from IHR with 214 being rejected from the legacy scheme and 374 from the reformed scheme. The legacy scheme rejections have older members compared to the reformed scheme, but this reflects the original discrimination where those closest to retirement age remained in the legacy scheme. The DCU could therefore bring more members in scope for IHR, which has a higher impact on those under the age of 60 and removes the age discrimination identified in McCloud.

Sex

58. The below chart shows the sex of members within the TPS, those who are currently in payment for IHR benefits and IHR application rejections:

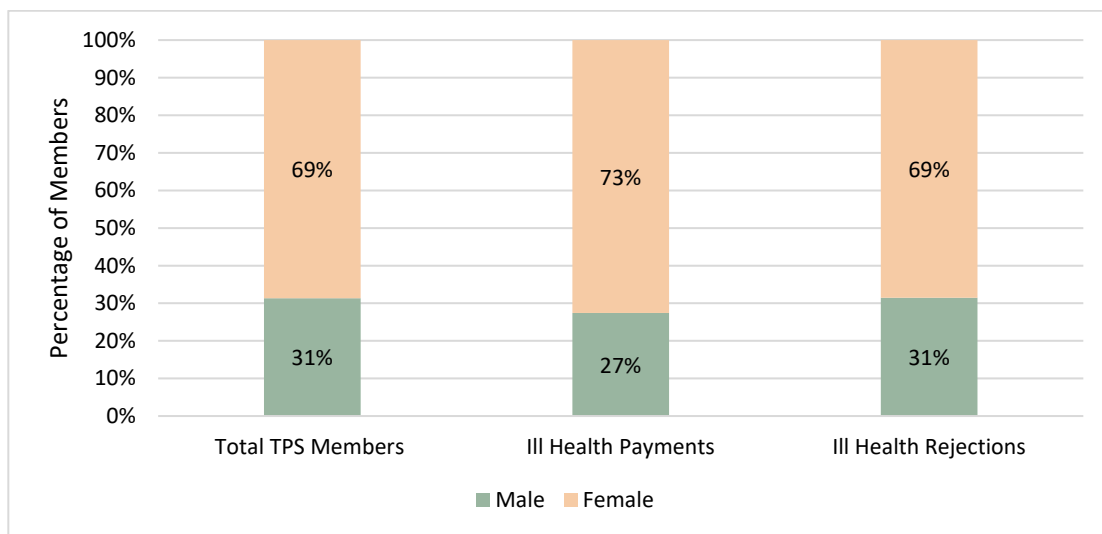


Figure 4: Sex Profiles Overview for Ill-Health Payments & Rejections

59. Overall, males are underrepresented within IHR payments, but the sex profiles will be explored in further detail. For the IHR rejections, 64% occurred within the reformed scheme and therefore will be reconsidered within the legacy scheme criteria, due to the lower NPA, to check for eligibility. Within the reformed rejections, 70% of these relate to female members and 30% male members. This might suggest that female members are more likely to be further advantaged by the McCloud remedy as they are overrepresented currently, but the disparity could be increased further as females have a higher likelihood of being eligible for IHR following a rejection.

60. For the IHR payments, females are overrepresented compared to scheme membership. The below chart shows a breakdown of the sex profiles for the different IHR payment tiers:

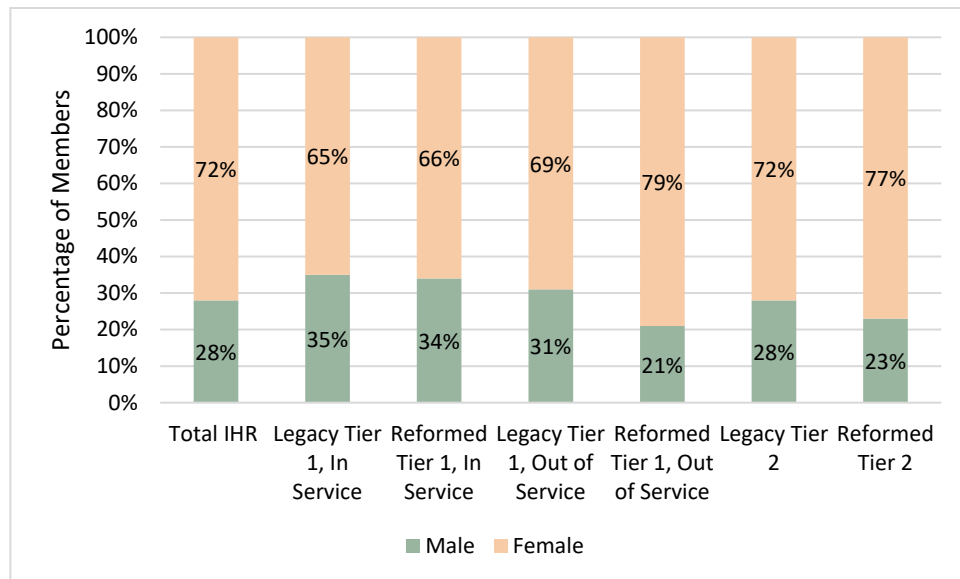


Figure 5: Sex Profile for Ill-Health Payments

61. Looking at the sex profiles above, tier 1 in-service IHR applications are equivalent in both schemes between the sexes. Yet, for tier 1 out-of-service IHR applications, there are 31% males in the legacy scheme, but only 21% in the reformed scheme. Similarly, for tier 2 applications, there are 28% in the legacy scheme, but only 23% in the reformed scheme. The data suggests that the legacy scheme has a proportionate representation of males compared to the overall IHR rates (28% males compared to 72% female) and the make-up of the scheme as a whole.

62. Moreover, the data may suggest that males are less likely to be approved for IHR under the reformed scheme. Under the DCU, members will be assessed for IHR under both schemes and provided with an IHR option in the alternate scheme, if they meet the criteria. This might suggest that males are less likely to be given an IHR option in the reformed scheme when they have satisfied the criteria in the legacy scheme. Under tier 2, members have their benefits enhanced up to NPA meaning an IHR under the reformed scheme would provide further benefits than the legacy scheme, due to the difference in NPA. In turn, this could suggest that female members are more likely to receive additional benefits through this enhancement due to the underrepresentation of males within tier 2 of the reformed scheme.

63. Despite the above, the Department are satisfied that there are no direct or indirect discriminations against male members of the TPS with regards to the ill-health provisions. When looking at the overall application rates, there were 9% less applications from males under the reformed scheme compared to the legacy scheme which the Department believe accounts for the disparities in the data. In addition, the IHR criteria

applies irrespective of whether an individual is a particular sex, so there is no disproportionate impact on this group.

Transfers

64. Please read this section in conjunction with paragraphs 124-145 and 247-263 of the consultation document.

65. The HMT directions set out that schemes must provide both the legacy and reformed benefit values for remediable service upon a transfer to another public service pension scheme. These values are to be held on record until the member reaches their DCU and makes a benefit choice with those corresponding benefits then being paid. This exercise will be done retrospectively for members who have already taken a transfer within the remedy period either within or outside of the Club. For future non-club transfer cases, the Cash Equivalent Transfer Value (CETV) will be completed under both schemes and the highest value paid. The draft regulations set out this process, but otherwise the existing rules or regulations apply.

66. The number of transfers that have already occurred within the remedy period is 889 which is split into the below:

	Transfers In			Transfers Out		
	Male	Female	Total	Male	Female	Total
<29	0	0	0	0	0	0
30-34	5	9	14	0	0	0
35-39	22	64	86	1	2	3
40-44	30	66	96	2	2	4
45-49	44	94	138	0	2	2
50-54	59	97	156	2	0	2
55-59	59	115	174	0	1	1
60-64	49	98	147	0	0	0
65-69	18	40	58	0	0	0
70-74	3	5	8	0	0	0
75-82	0	0	0	0	0	0
Total	289	588	877	5	7	12

Table 13: Transfers in and out of the TPS within the remedy period

67. All active members who moved into the reformed scheme as of 1 April 2022 in line with the prospective stage of the remedy to the discrimination found in the McCloud case were able to access a 12-month transfer window to allow them to transfer benefits into the TPS under existing (business as usual) rules. However, the Department is proposing to move the 12-month transfer window with regards to unprotected and taper protected members. This is due to them being unable to request a transfer earlier than the date that the remedy is implemented – the implementation date is 1 October 2023 which is when the regulations (which are currently draft regulations) providing for the retrospective stage come into force. Consequently, these members cannot make use of their current 12-month transfer window from 1 April 2022 – 1 April 2023 and the TPS will instead delay their transfer window to start on 1 October 2023. This issue does not arise with protected

members as they were entered into the reformed scheme arrangement on 1 April 2022 and can therefore access their transfer rights.

Age

68. Members are permitted to transfer their benefits out, or transfer benefits in, within the 12-month timeframes of their date of joining or leaving to take advantage of Club rules, but on a non-Club basis they could transfer their benefits out at any given time. The current rules and regulations apply equally to all members, irrespective of age, as will the remedy approach which is to pay the highest value or hold both legacy and reformed benefits on record. The Department has therefore not found any evidence to suggest that the remedy (including the HMT directions made to support and implement it) directly discriminate on an age basis. Our analysis has similarly not identified any actual or potential indirect discrimination.

69. The decision to delay the transfer window for unprotected and taper protected members has age related impacts given the initial protections were awarded on an age basis. As these members were moved to the reformed scheme prior to 1 April 2022, they remained in the reformed scheme beyond 1 April 2022 and have therefore not yet moved scheme to access the 12-month transfer period. This is due to the rollback activities commencing in October 2023, when legislation is in place, which would be after the 12-month window expires. Protected members can access their 12-month transfer window from 1 April 2022 since they have moved from the legacy to reformed arrangements. If the transfer window was not delayed for unprotected and taper protected members, until their pre-1 April 2022 service can be moved back into the legacy scheme from October 2023, this would create differential treatment regarding the accessibility of a transfer into the scheme based on protection type which has a direct link to members ages. The Department has therefore not found any evidence to suggest that the accessibility of the transfer window directly discriminates on an age basis, as measures are already in place to allow for equity across all protection types and therefore ages. Our analysis has similarly not identified any actual or potential indirect discrimination.

Sex

70. For the sex profiles of transfers in and out of the TPS, these are broadly comparable to scheme membership. As within the age section above, the current rules and regulations apply equally to all members, irrespective of sex, as will the remedy provisions set out in the PSPJOA, HMT directions and the regulations that will come into force on 1 October 2023.

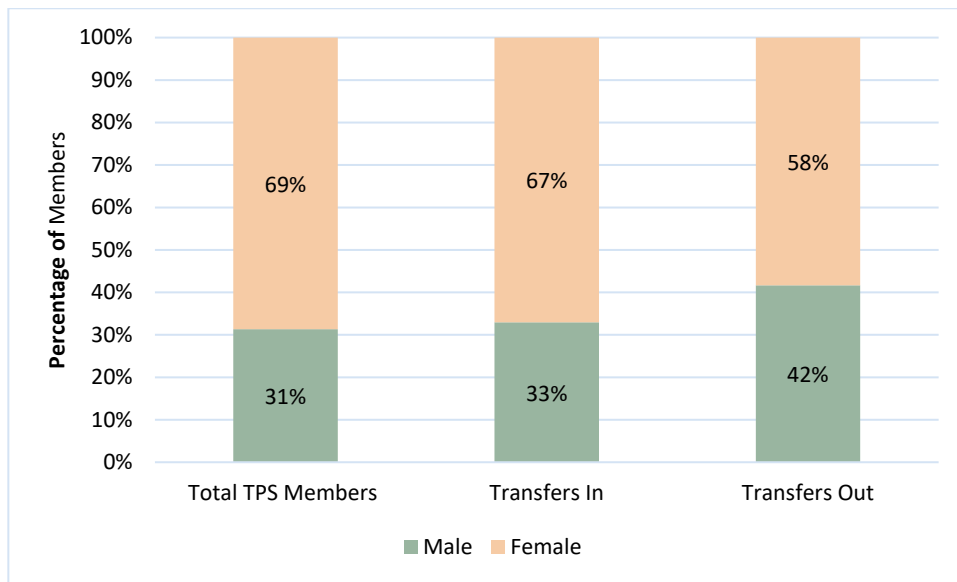


Figure 6: Sex Profiles of Member Transfers In or Out of the TPS

71. As there have only been 12 transfers out of the TPS, comparing the sex breakdown of these members to those who have transferred in and the total scheme membership, could be unrepresentative given the small group of members. Hence, caution must be taken when reviewing the chart above as this could potentially not be accurate to gain an insightful trend into the sex of impacted members due to the small group size.

72. The Department has considered the potential equality impact of the reforms regarding this characteristic and has not found any evidence to suggest that they directly discriminate against members based on sex. Our analysis has similarly not identified any actual or potential indirect - discrimination.

Divorce

73. Please read this section in conjunction with paragraphs 86-97 and 212-225 of the consultation document.

74. [Section 19](#) of the PSPJOA requires schemes to make provision about the benefits payable to pension credit members (PCM) and pension debit members (PDM), following a Pension Sharing Order (PSO), regarding the impact of the DCU on remediable service and thus the benefits in payment for both members. The PSO process has developed in consultation with HMT and applies across all affected Public Service Pension Schemes, which states that schemes must:

- 1) Calculate two Cash Equivalent Transfer Value' (CETV) for remedy period service.
- 2) For pre-implementation PSOs, compare this to the CETV used in the original PSO:
 - a. If there's a lower value – no adjustment is required to the current credit
 - b. If there's a higher value - ringfence the excess and calculate this as a credit:
 - i. PCM with credits in both scheme arrangements - calculate the credit in both schemes and pay the PCM the highest scheme credit. The TPS will provide a letter confirming both credit values to the PCM thereby allowing them to contact the scheme and elect for the alternate, lower, scheme credit, should they wish.
 - ii. PCM with sole credit – pay the credit into the scheme they hold benefits in.
- 3) For post implementation PSOs, the higher of the two CETVs will be used, but both values are held on record for the PDM until they make their DCU.

Age

75. Within the Scheme Membership Data section, [Table 5](#) outlines the PDM and PCM in scope for the Remedy. The data within this table has been transposed into the chart below:

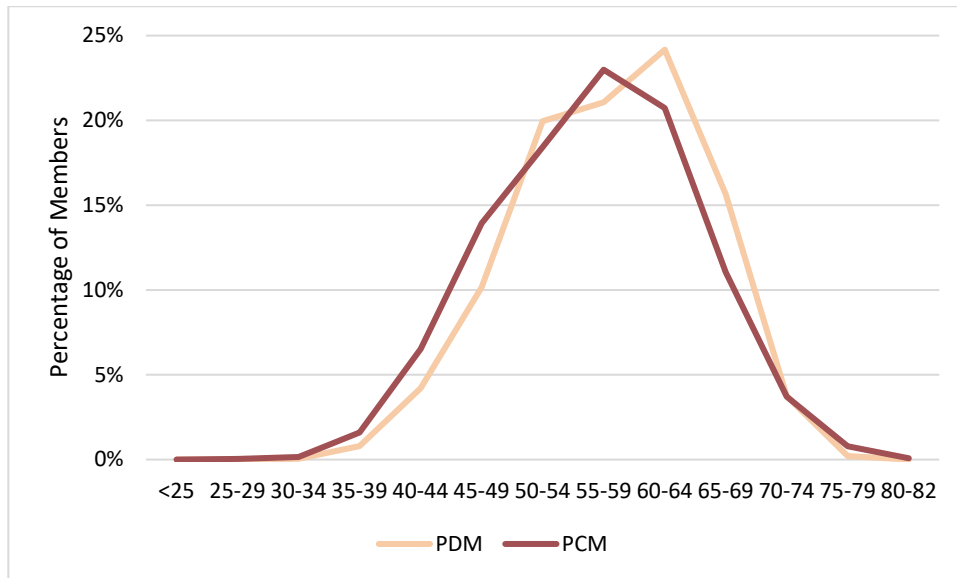


Figure 7: Banded Age Profiles of PDM and PCM

76. There are a range of ages affected by PSOs with most members between 55-64, but very few being under the age of 40 which reflects the ages of the members in scope for the remedy.

77. The below table shows the protection type of the PDM eligible for the remedy, and the scheme credits awarded to the PCM following implementation of the PSO:

	PCM Scheme Credits			
	FS Only	CA Only	Mixed	Total
Full Protection	998	0	11	1,009
Taper Protection	341	1	61	403
Unprotected	457	16	677	1,150
Total	1,796	17	749	2,562

Table 14: PCM Scheme Credits by PDM Protection Type

78. PSOs use a CETV which is an actuarially neutral calculation used across all pension schemes. The CETV calculation takes into account differing NPAs to allow for a cross-scheme comparative value accounting for scheme variances. Therefore, the top-up amount that may be received by PCMs should be worth the same value in either scheme, but there are occasions when the CETV value could have small differences due to a number of factors involved in the calculation. As per paragraph 72, the 749 members with credits in both schemes would have top up amount applied to the scheme that would be most beneficial to the PCM. There are age related impacts since only 29% of PCM members are potentially eligible for a scheme credit in either scheme, but 90% of these PCMs relate to an unprotected PDM. Members with a sole credit in either scheme would have any additional CETV value paid as a credit within the scheme they hold benefits in. This means that the 1,796 FS only and 17 CA only PCMs would not receive a scheme choice regarding the placement of their top up credit. These 1,813 members are similarly

composed of 55% relating to a full protection member, 19% taper protection and 26% relate to an unprotected member.

79. Nevertheless, the PCMs themselves do not hold remediable service and it is the Department's view that the differential treatment outlined above is justified. The remedy is for PDMs who hold remediable service, however, as a result of the remedy, it is possible that the value of the pension at the time of the divorce/dissolution would have been different had the PDM always been a member of the alternative scheme for the remedy period. This means that though the percentage quoted in the pension sharing order remains the same, the actual amount credited to the pension credit member may have been different. For equity amongst both parties, all PCMs will have a new CETV calculated and compared to the original PSO with any additional amounts being paid via a scheme credit. If a PCM does not have any benefits in a particular scheme, the remedy is not able to allocate them benefits in that scheme as this was not the award of the court during the divorce proceedings in which the original PSO was made. The original decision of the court is not revisited.

80. Based on the data currently available, the Department has considered the potential equality impact of the reforms regarding this characteristic and has not found any evidence to suggest that they directly discriminate against members based on age. Our analysis has similarly not identified any actual or potential indirect - discrimination. The main reason for this being that the PCM will receive the additional CETV via a scheme credit in a manner which relates to the benefits awarded to them by the courts during the PSO divorce proceedings.

Sex

81. The below chart shows the sex of members within the TPS and the PCMs who are in scope for the remedy:

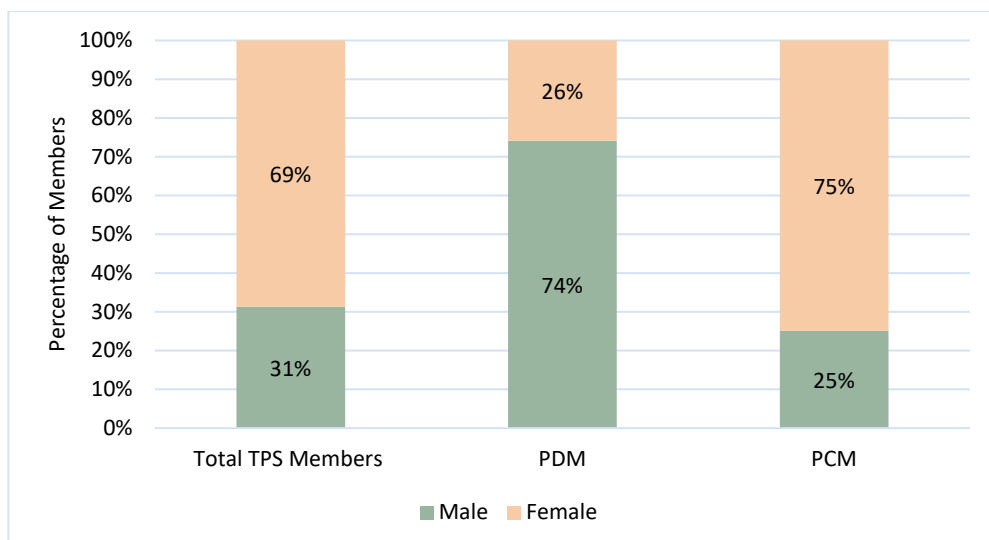


Figure 8: Sex Profiles of PDM and PCM

82. Based on the data that is currently available, the Department can see that males feature heavily as PDMs in comparison to the makeup of scheme membership and therefore those in scope for the remedy. Our analysis therefore took this into consideration, but no evidence has been found to suggest that the reforms directly discriminate against members based on sex. Our analysis has similarly not identified any actual or potential indirect discrimination.

Flexibilities

83. Please read this section in conjunction with paragraphs 98-123 and 226-246 of the consultation document.

84. [Section 20](#) of the PSPJOA requires schemes to make provision about existing voluntary contribution payments and how these will be treated. [Section 25](#) provides that members may retrospectively purchase a flexibility in the legacy scheme arrangement if they would have done so absent the discrimination.

85. HMT directions provide that schemes must decide how flexibilities may need to be varied, or extinguished, to allow members to be placed in the position they would have been absent the discrimination. For members of the TPS who have already purchased a flexibility, there are different impacts upon rollback because the available flexibilities differ depending upon whether a person is a member of the legacy or reformed scheme.

86. There are 3 flexibilities that are impacted by the reforms:

Flexibility	Scheme(s)
Additional Pension Benefits (APB)	Legacy and Reformed
Faster Accrual (FA)	Reformed
Early Retirement Reduction Buy Out (Buy-Out)	Reformed

Table 15: Flexibility Options within the Legacy and Reformed Schemes

87. When reformed scheme service is rolled back to the legacy scheme, any reformed scheme flexibilities cannot be maintained. All members who hold a reformed scheme flexibility and require rollback to the legacy scheme, will be given the following three options:

- 1) Contributions already paid will be reconstructed as legacy scheme APB.
- 2) Cancellation of the original election, thereby being provided with a refund of any payments made, by way of compensation.
- 3) Contributions to be held until DCU decision or election and used for the original reformed scheme flexibility purchase, if reformed scheme is chosen at DCU, or refunded by way of compensation if legacy scheme service is elected.

Age

88. The availability of flexibilities between the schemes impacts members who are in the reformed scheme more than those currently in the legacy scheme. This is due to APB being available in both schemes meaning legacy scheme members can keep their existing legacy APB or reconstruct to APB under reformed scheme rules. Some members have purchased flexibilities in the reformed scheme during the remedy period but, following rollback and in accordance with section 2(1) of the Act, they will be treated

as though they were always members of the legacy scheme. Any reformed scheme elections must therefore be managed.

89. The Act extinguishes the rights arising from reformed scheme flexibilities taken during the remedy period and the draft regulations provide for members to be offered alternative rights in the legacy scheme or compensation for those additional contributions that were made.

90. Reformed scheme members are unprotected or taper protected members which therefore has age related impacts given the protection types directly correlate to age. Although APB is available in both schemes, there are differences in NPA between the schemes which may impact the members choice on whether to purchase the flexibility.

91. Consequently, the reforms impact younger scheme members more, but the options these members receive means that they can be placed in the position they would have been in absent of the discrimination under options 1 and 2 referred to in paragraph 85. Option 1 allows them to continue holding a scheme flexibility which is reconstructed into the available flexibility in the legacy scheme whereas option 2 allows the member to take a refund if they would not have wanted to take the APB flexibility. Option 3 in paragraph 85 allows for these members to stay in their current position since the discrimination has placed them in the reformed scheme earlier than necessary. The member can therefore decide if they want to keep their purchased flexibility when they make their DCU decision or election which involves the same equality considerations as referred to in HMT's [consultation](#) in members knowing more about their retirement plans and using less assumptions to make their benefit choices.

92. There is a direct age impact for members who are over their NPAs or above age 65 with reference to APB. If the member has exceeded NPA60, their APB will be based on a pension age of 65 and the appropriate factors, but any member who is over age 65 will have their payments refunded. These rules are in line with the current regulations and therefore keeps equal treatment amongst members in and out of scope for the remedy but all with access to the same scheme arrangements.

Sex

93. The below chart shows the sex of members who hold a flexibility, split by their protection type:

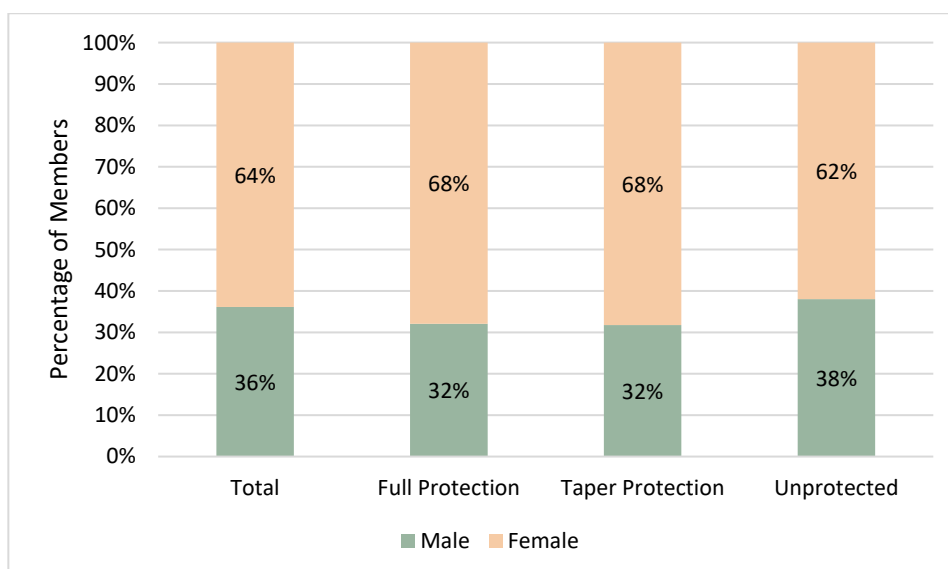


Figure 9: Sex Profiles of Members with a Flexibility by Protection Type

94. There is a higher proportion of unprotected male members who hold a flexibility compared to overall scheme membership, but full protection and taper protection members are representative. Any member can opt to take a flexibility irrespective of their sex.

95. The Department has considered the potential equality impact of the reforms regarding this characteristic and has not found any evidence to suggest that they directly discriminate against this particular group. The Department notes that in the original McCloud judgement there was indirect sex discrimination identified across the public sector due to recent increases in female public sector workers. Yet, with relation to the teaching workforce in [England](#), this has been consistently and predominantly female; 75.5% as at November 2021 (2021/22), up from 74.4% in 2010/11. Due to this, our analysis has not identified any actual or potential indirect discrimination and the Department therefore concludes that there is no disproportionate impact on this group.

Race (Ethnicity)

96. Data obtained from the School Workforce Census' for [England](#) and [Wales](#) show that 14.9% of teachers in England and 1.1% in Wales identified as being from a minority ethnic background. Based on the [2011 Census](#), 20.2% of England and 6.8% of Wales identified as being from a minority ethnic background to allow for comparison against the School Workforce. The Department has considered the potential equality impact of the reforms regarding this characteristic and has not found any evidence to suggest that they directly discriminate against this particular group. Still, our analysis has identified a potential indirect discrimination with the main basis for this conclusion being, as per the McCloud case, that the ethnic diversity of the teaching workforce has increased from 11.2% in England since 2010/11. This might suggest that unprotected members are perhaps more likely to be in an ethnic minority. Nevertheless, as unprotected members

need to be placed in the correct position absent of the discrimination and the reforms apply irrespective of the race of an individual, there is no disproportionate impact on this group. The differential treatment based on age, and indirectly on race, is required to remove the unlawful discrimination identified.

Contingent Decisions

97. Please read this section in conjunction with paragraphs 310-311 of the consultation document.

98. In line with the implementation of the second phase of remedy from 1 October 2023, a contingent decision process will be introduced to consider any potential claims from members who may demonstrate that they would have made alternative choices or taken other actions had the identified discrimination not occurred. This will ensure a fair and consistent approach is applied.

99. The TPS website will be updated to set out the process for making a contingent decision claim and will include the relevant application form to be completed. It will also include details of the appeal process if needed.

Age

100. A CDC could be made by any eligible member, and the eligible members are a range of ages as can be seen in **Tables 4-6**. The current, business as usual, processes remain in place of claims being made online or by post. The Department has considered the potential equality impact of the reforms regarding this characteristic and has not found any evidence to suggest that they directly discriminate against members based on age. Our analysis has similarly not identified any actual or potential indirect discrimination.

Sex

101. Similarly, the sex of members in scope for the remedy and therefore able to submit a CDC is varied, as per Tables 4-6. The Department has considered the potential equality impact of the reforms regarding this characteristic and has not found any evidence to suggest that they directly discriminate against members based on sex. Our analysis has similarly not identified any actual or potential indirect discrimination.

Excess Teacher Service

102. Please read this section in conjunction with paragraphs 179-187 and 300-309 of the consultation document.

103. Where members have an additional teaching employment to a full-time teaching employment, it is not pensionable in the TPS legacy scheme. This non-pensionable service is referred to as Excess Teacher Service in this EIA.

104. Excess Teacher Service may be pensionable in the Local Government Pension Scheme (LGPS) if the member's employer at that time was also an accepted employer of the LGPS. Where a member has Excess Teacher Service and their employer was not an LGPS employer, the service is not pensionable in the TPS legacy scheme or the LGPS.

105. Whilst Excess Teacher Service is pensionable in the TPS reformed scheme, the rollback of remediable service from the reformed scheme to the legacy scheme on 1 October 2023 will also affect the treatment of that service.

106. Given the administrative and legal complexity of the TPS / LGPS connection, the Department established a working group to identify and analyse all the options that were available to rectify the McCloud age discrimination. The working group included the following parties:

- Department for Education
- Department for Levelling Up, Housing and Communities (formerly called the Ministry of Housing, Communities and Local Government)
- HM Treasury
- Scottish Public Pensions Agency
- Capita Teachers' Pensions
- Local Government Association
- LGPS Fund Administrators

107. The aim of the working group was to identify an approach that would most closely place members in the position they would have been in absent of the discrimination. This included ensuring there was no extension of the discrimination, which would be unfair and unequitable for scheme members.

108. The identified approach to this issue is as follows:

- Unprotected and tapered protection members who have not taken scheme benefits prior to 1 October 2023 will have reformed scheme service rolled back to the legacy scheme. As Excess Teacher Service contracts are not pensionable in the legacy TPS scheme they cannot be rolled back.

- Excess Teacher Service is included in the definition of remediable service allowing it to be rolled back to the appropriate public service pension scheme (i.e., the LGPS) where appropriate. This roll back will happen automatically if the member would have been eligible to join the LGPS (i.e., their employer was an LGPS employer for the relevant period of employment). The Excess Teacher Service will then be subject to LGPS rules.
- Where a member's Excess Teacher Service was not pensionable in the LGPS either (i.e., because their employer was not an accepted employer of the LGPS), the member would be entitled to be paid compensation for their Excess Teacher Service member contributions.
- Where Excess Teacher Service is moved into the LGPS, active members will have the option under 'business as usual' processes to transfer their LGPS service into the TPS reformed scheme. Members would have 12 months from the issue of their RSS to transfer LGPS service into the reformed scheme. This option is not available where a member takes retirement benefits from the TPS before a transfer is complete.
- Protected members who have not taken scheme benefits prior to 1 October 2023 will see no change, as their service will already be held in the appropriate scheme. It is not administratively possible to offer these members with equivalent service in the reformed scheme if they were to choose reformed scheme benefits at their DCU – although these members have had the option to transfer their service into the TPS when they were moved into the reformed scheme on 1 April 2022.
- Where retirement benefits have already been taken from the TPS, there will be no immediate changes to benefits in payment from 1 October 2023.
- Where a protected member had Excess Teacher Service during the remedy period that service will either have been pensionable in the LGPS (and is therefore subject to the rules of that scheme) or not pensionable in either the LGPS or TPS and no member contributions will have been paid. No further action is therefore required in respect of Excess Teacher Service for protected members.
- Where an unprotected or tapered protection member had Excess Teacher Service during the remedy period their Immediate Choice options will depend upon whether that service was pensionable in the LGPS.
- If these members make an Immediate Choice decision to elect reformed scheme benefits for the remedy period, their Excess Teacher Service will be included in their reformed scheme benefit calculations.
- If these members make an Immediate Choice decision to take legacy scheme benefits for the remedy period, their Excess Teacher Service will be treated as follows: -
 - i. If the Excess Teacher Service would have been pensionable in the LGPS at the time (because the employer was an LGPS employer) then that service will be moved to the LGPS and will be treated in accordance with the rules of that scheme. Information will be communicated to the member by the LGPS in respect of that service.

- ii. If the Excess Teacher Service would not have been pensionable in the LGPS at the time (because the employer was not an LGPS employer) the contributions for that service will be refunded by way of compensation. The member's RSS will detail any amounts owed to or by the member in relation to under or over paid contributions and/or benefits.

107. The availability of a transfer for active members is separate from the McCloud Remedy and falls under the TPS existing (business as usual) rules of allowing a transfer into the scheme within a member's first 12 months of service. The 12-month transfer window will be delayed for unprotected and tapered protected members until they receive their RSS, given they were unable to access the window from 1st April, as highlighted in the [transfers](#) section.

Age

108. Full protection members were within 10 years or less of NPA on the 31 March 2012 and therefore any differential treatment for this cohort will have age related impacts. The analysis of the LGPS policy against age, and the other protected characteristics, has been completed using the data that is currently available to the Department, but there are constraints in place as provided for in the next paragraph.

109. The TPS/LGPS working group has worked together to obtain the relevant data and ensure the operational activities relating to Excess Teacher Service are defined. The LGPS data is only for indicative purposes as further work is ongoing to establish which members would be eligible for rollback to the LGPS as not all employers are eligible for or have opted to join the LGPS. The data therefore shows the number of unique members that may be eligible for rollback into LGPS due to them holding a +1FTE, but members may hold more than one +1FTE contract at a different, or the same, employer. A member could have one contract that is eligible for LGPS and one that is not, depending on the eligibility/enrolment status of each employer. This means that the number of +1FTE contracts to be rolled back into LGPS will likely exceed the current numbers shown in Table 24 below. Members could hold multiple +1FTE contracts for multiple remediable service years. The working group will need to obtain details on the years an employer was an LGPS employer, as they may have joined or left during remediable service years, which then impacts on the members ability to be rolled back into LGPS. Given the challenges above, the exact members and employers impacted by this issue will not be known until summer 2023, but the working group are currently addressing these challenges.

110. Bearing in mind the above, the below table shows the number of unique members with legacy service, reformed service, or service in both schemes during the remedy period, where the member holds a full-time teaching contract plus a part time teaching contract (+1FTE) at the same time:

	Legacy Scheme Service		Reformed Scheme Service		Both Legacy & Reformed		Total
	Male	Female	Male	Female	Male	Female	
<25	0	0	0	0	0	0	0
25-29	0	0	1	2	0	0	3
30-34	0	0	208	817	0	0	1,025
35-39	0	0	777	2,484	0	1	3,262
40-44	0	0	1,039	2,856	0	0	3,895
45-49	0	0	1,021	3,010	0	0	4,031
50-54	0	0	1,059	2,824	0	0	3,883
55-59	11	32	698	1,681	1	5	2,428
60-64	19	38	194	336	0	4	591
65-69	4	8	118	164	0	1	295
70-74	2	1	36	36	0	0	75
75-79	1	0	6	2	0	0	9
80-82	0	0	0	0	0	0	0
Total	37	79	5,157	14,212	1	11	19,497

Table 16: Members who hold a +1FTE contract

111. Full protection members will not be given an option to take their +1FTE benefits into the reformed scheme. The below table provides an overview justification for this differential treatment, based on the members status, and the options members have regarding their +1FTE at the TPS:

	Number of Members	Justification
All	112,169	Members service sits in the correct schemes, and they are in the position they would have been absent of the discrimination, which is the focus of option 2.
Active	11,441 (10%)	Any +1FTE service will remain in LGPS unless the member requests a transfer into the reformed scheme. Members have the option of transferring any benefits accrued in the LGPS into the reformed scheme using the existing (business as usual) transfer rules, but this is time restricted to the first 12 months after they enter the reformed scheme. This would require all LGPS service to be transferred into the reformed scheme and is not limited to the LGPS service accrued within remediable service years for +1FTE. This would put them in a similar position as unprotected members.
Deferred	3,719 (3%)	Members will remain in the LGPS for their remediable +1FTE service, but if they re-enter pensionable employment after 1 April 2022, they will have access to the same 12-month transfer in window as per active members above. Otherwise, their +1FTE benefits will remain in the LGPS.
Retired & Deceased	97,009 (86%)	Any +1FTE service will remain in the LGPS and cannot be taken into the reformed scheme. Administrative difficulties would be extremely complex and burdensome to attempt to overcome, for example,

		<p>member benefits may have crystallised in relation to their TPS service (NPA 60) but have not crystallised in relation to their LGPS service (NPA 65). For deceased members, there could be different beneficiaries for each of the schemes. These complexities do not arise in relation to unprotected retired members. Within the LGPS scheme, retired members have underpin protection which affords them the 'higher of' when it comes to legacy or reformed scheme benefits for their remediable service.</p>
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Table 17: Full Protection Member Impact Table

112. As protected members are already in the correct position absent of the discrimination, they ordinarily would never have had the option to take any pre-1 April 2022 +1FTE benefits into the reformed scheme. For unprotected members who are eligible for the LGPS, they would also not be able to take any pre-1 April 2022 +1FTE benefits into the reformed scheme as these contributions would be paid to the relevant LGPS fund.

113. Contrary to this, unprotected members who are not eligible for rollback to the LGPS would be able to retain their +1FTE service for the remedy period in the reformed scheme up until their DCU. If the member opts for legacy scheme service at their DCU, any +1FTE contributions would be refunded meaning these benefits would not be available in the legacy scheme but would be retained if the member chose reformed scheme service at DCU.

114. Removing this option from unprotected members would be unfair and inequitable, as discussed within Option 1, as we would be removing an existing benefit. The Department therefore believes this differential treatment based on age is justified and is a proportionate way of achieving the overall aim of removing the unlawful age discrimination.

Sex

115. For the sex of those with a +1FTE, this is broadly comparable to the TPS membership, except for members with mixed service:

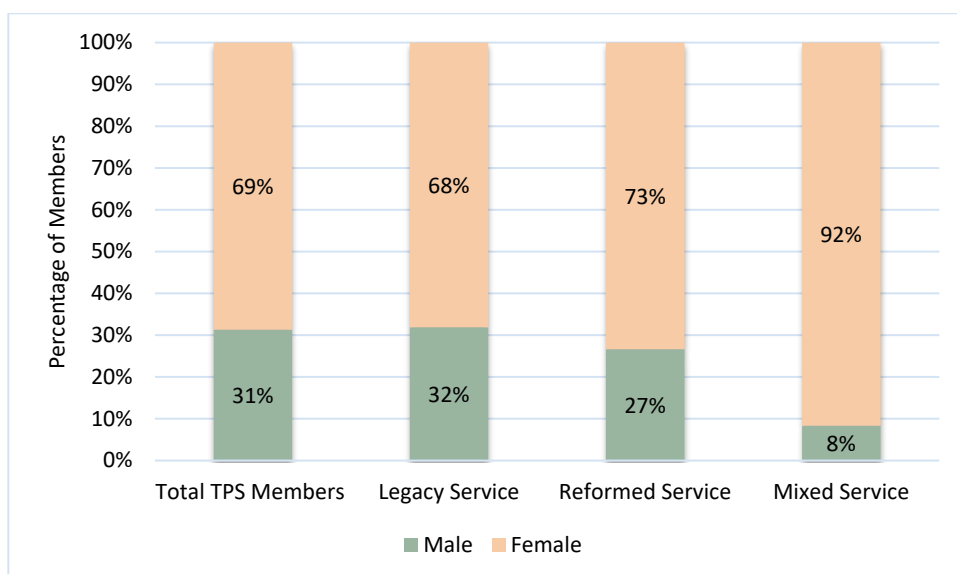


Figure 10: Sex Profiles for Members who hold a +1FTE Contract

116. As there have only been 12 members with mixed service identified as holding a +1FTE, comparing the sex breakdown against the other bars would be unrepresentative given the small group of impacted members. This can therefore not be used to gain an insightful trend into the sex of impacted members in isolation and must be look at in conjunction with all members impacted by the LGPS TPS excess service issue.

117. The Department has considered the potential equality impact of the reforms regarding this characteristic and has not found any evidence to suggest that they directly discriminate against this particular group. The Department notes that in the original McCloud judgement there was indirect sex discrimination, linked to the age discrimination, identified across the public sector due to recent increases in female public sector workers. Yet, with relation to the teaching workforce in England, this has been consistently and predominantly female; 75.5% as at November 2021 (2021/22), up from 74.4% in 2010/11. Due to this, our analysis has not identified any actual or potential indirect discrimination and the Department therefore concludes that there is no disproportionate impact on this group.

Race (Ethnicity)

118. Data obtained from the School Workforce Census' for [England](#) and [Wales](#) show that 14.9% of teachers in England and 1.1% in Wales identified as being from a minority ethnic background. Based on the [2011 Census](#), 20.2% of England and 6.8% of Wales identified as being from a minority ethnic background to allow for comparison against the School Workforce. The Department has considered the potential equality impact of the reforms regarding this characteristic and has not found any evidence to suggest that they directly discriminate against this particular group. Still, our analysis has identified a potential indirect discrimination with the main basis for this conclusion being, as per the original McCloud judgement, that the ethnic diversity of the teaching workforce has

increased from 11.2% in England since 2010/11. This might suggest that protected members are perhaps less likely to be in an ethnic minority. Though, as protected members are in the correct position absent of the discrimination and the reforms apply irrespective of the race of an individual, there is no disproportionate impact on this group. The differential treatment based on age, and indirectly on race, represents a proportionate means of achieving the legitimate aim.

Compensation (Refunds of Contributions)

119. Please read this section in conjunction with paragraphs 167-169 and 288-290 of the consultation document.

120. [Sections 15-17](#) of the PSPJOA require schemes to revisit the calculations for contributions and provide compensation where a member has overpaid contributions. They will receive any overpaid contributions by way of compensation. The PSPJOA contains powers to reduce or waive liabilities under section 18 which the TPS may seek to use – this is discussed in the [De-Minimis and Finance Discretions](#) section of this EIA. Where a member owes an amount to the scheme for underpaid contributions or overpaid benefits, the administrator will send written notice informing the member of the liability. The member will be required to pay the amount before the end of 6 months beginning on the day after the member receives the notice. By agreement, the liability may be paid in full, via instalments, or by a deduction from the member's benefits. Should the member fail to pay any amount via a lump sum or instalment plan, the scheme may determine that amounts are to be deducted from the member's benefits.

121. The Department has made the decision to allow members to enter into an agreement with the scheme for compensation for the immediate correction of overpaid contributions to be waived until they make their DCU. This would prevent members from having a double correction of contributions where they anticipate an election for reformed scheme benefits at retirement. Instead of receiving compensation for any adjustments to reformed scheme service at the point of rollback, such as overtime or non-pensionable excess teacher service (ETS)³¹, the TPS intends to provide the member with an option to waive the compensation for the excess contributions to the point that they will make their DCU election. A potential double correction of contributions paid could occur, whereby the member receives compensation at rollback which they would be required to repay at DCU, if they choose reformed scheme service for the remedy period. The option for holding contributions in the scheme would prevent this double correction of contributions from occurring.

Age

122. As the PSPJOA requires schemes to treat all remediable service as being pensionable under the legacy scheme, this has age related impacts as to which members could be subject to an alteration of contributions. Protected members remained in the legacy scheme whereas unprotected and tapered protection members will have

³¹ Where a member holds a part time contract in addition to a full time contract. Only the full time contract is pensionable under the legacy scheme, but all contracts are pensionable in the reformed scheme.

their reformed scheme service rolled back to the legacy scheme. A contribution adjustment would therefore be required for any unprotected or tapered protection member who completed overtime or ETS whereas protected members will see no such adjustment.

123. Subsequently, those members who may choose to waive the payment of compensation until DCU are younger scheme members as they would have been unprotected or tapered protection initially and are therefore most likely to be impacted by the compensation policy. The differential treatment based on age is required to remove the unlawful discrimination identified in McCloud and put members into the position they would have been in.

Sex

124. The Department has considered the potential equality impact of reforms with regard to this characteristic and has concluded that reforms do not discriminate against this particular group. The Department notes that in the original McCloud judgement there was indirect sex discrimination identified across the public sector due to recent increases in female public sector workers. Yet, with relation to the teaching workforce in England, this has been consistently and predominantly female; 75.5% as at November 2021 (2021/22), up from 74.4% in 2010/11. Due to this, our analysis has not identified any actual or potential indirect discrimination and the Department therefore concludes that there is no disproportionate impact on this group.

Race (Ethnicity)

125. Data obtained from the School Workforce Census' for [England](#) and [Wales](#) show that 14.9% of teachers in England and 1.1% in Wales identified as being from a minority ethnic background. Based on the [2011 Census](#), 20.2% of England and 6.8% of Wales identified as being from a minority ethnic background to allow for comparison against the School Workforce. The Department has considered the potential equality impact of reforms with regard to this characteristic and has concluded that reforms do not discriminate against this particular group. Still, our analysis has identified a potential indirect impact discrimination with the main basis for this conclusion being, as per the original McCloud judgement, that the ethnic diversity of the teaching workforce has increased from 11.2% in England since 2010/11. This might suggest that protected members are perhaps less likely to be in an ethnic minority compared to unprotected and taper members. As the reforms apply irrespective of the race of an individual the Department does not believe that there is a disproportionate impact on this group. The differential treatment based on age, and indirectly on race, is required to remove the unlawful discrimination identified.

De-Minimis & Finance Discretions

126. Please read this section in conjunction with paragraphs 170-174 and 291 of the consultation document.

127. Due to variances in the definition of pensionable employment between the legacy and reformed schemes, it is possible that there will be an overpayment or underpayment of member contributions or pension payments upon rollback to the legacy scheme. The current de-minimis and finance discretions are remaining the same as per current (business as usual) processes, which includes the availability of payment plans for recovering any underpaid monies or a single lump sum payment.

128. [Section 18](#) of the PSPJOA enables schemes to reduce or waive a member's liability of debt to the scheme where an overpayment has occurred. Although section 18 may only be used on an individual case-by-case basis, this may be applied to reduce or waive the liability of a cohort of members, such as taper protected pensioners who cannot keep their mixed service for the remedy period. It may be possible in extreme cases that both options presented to a taper protected member could result in lower benefits than those already in payment, causing a total overpayment which cannot be avoided. As per **Table 5**, there are 20,534 taper protected members who have crystallised their benefits on, or prior, to the 3 April 2022 (an explanation of this date is provided in paragraph 18). As the situation of an overpayment may be unavoidable due to the inability to retain mixed service for the remedy period, it could be inequitable to expect these members to repay any overpaid entitlement whilst receiving a lower pension in future.

Age

129. Taper protection was awarded to members who were between 10 and 13.5 years from NPA as of 1 April 2012. As this initial protection was based on age, the impact of section 18 on taper protected members has age related impacts, but the inability to retain mixed service for the remedy period is a proportionate action to remove the discrimination identified within the McCloud case. Given this, section 18 will likely be used on particular cohorts of members, such as tapered protection members, which has age related impacts. The Department has considered the potential equality impact of the reforms regarding this characteristic and has not found any evidence to suggest that they directly discriminate against members based on age as s18 could be used for any member. Our analysis has similarly not identified any actual or potential indirect discrimination.

Sex

130. The below chart shows the sex of pensioner members within the TPS compared with taper protected pensioners:

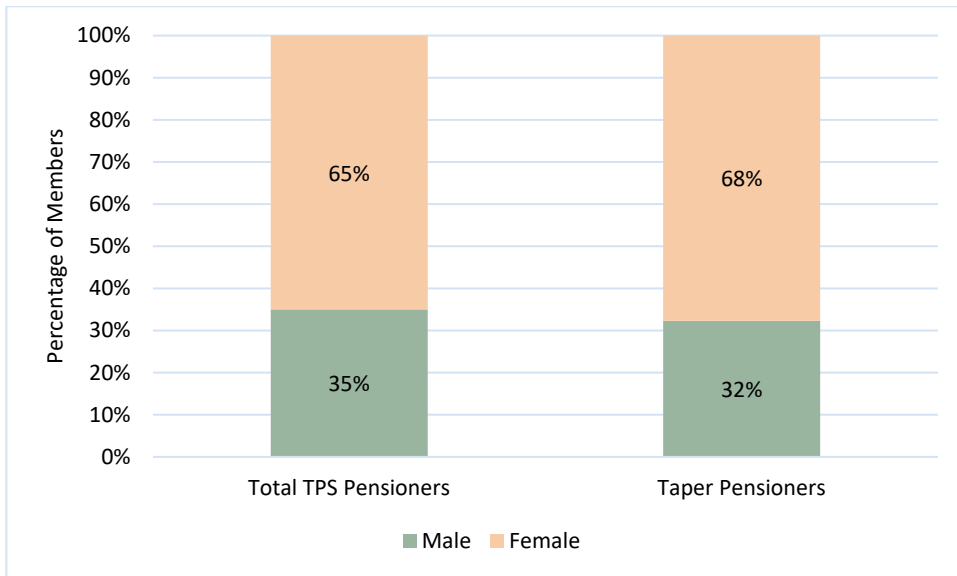


Figure 11: Sex Profiles of TPS Pensioners & Taper Protected Pensioners

131. The Department has considered the potential equality impact of the reforms regarding this characteristic and has not found any evidence to suggest that they directly discriminate against members based on sex. This is due to the current data showing that taper pensioners sex is broadly comparable to pensioners within the scheme. Consequently, if this cohort of members is subject to a more frequent use of s18 this would impact members of both sexes in a way that reflects the makeup of the TPS membership. Our analysis has similarly not identified any actual or potential indirect discrimination.

Tax & Interest

132. Please read this section in conjunction with paragraphs 165-166, 281-282 and 312 of the consultation document.

133. Both tax and interest apply, where applicable, to the McCloud remedy as they operate to put members back into the position, they would have been in absent the discrimination. Within the previous HMT consultations, both elements have been covered and tax is also dealt with in the PSPJOA EIA. [Section 24](#) of the PSPJOA gave schemes the power to make provisions regarding tax loss that may have occurred due to the retrospect nature of the remedy. Although [Section 26](#) of the PSPJOA covers interest, it is not heavily prescribed for as the detail has been given through the HMT directions. The content of these directions can be seen within the [letter from HMT to GAD](#) and in the [GAD reply to HMT](#) which state the interest rate that applies, how long interest applies for and the method of applying interest.

Tax

134. As pension contributions made into the TPS are not subject to tax, certain restrictions are in place to limit the amount of benefits that a member can build up either in one year, known as the Annual Allowance (AA), or over a lifetime, known as the Lifetime Allowance (LTA). If a member exceeds their AA or LTA, they would become subject to a tax charge and this usually only impacts high earners.

135. Within the TPS, the highest earners are usually males and are of a non-minority ethnic background. The [School Workforce Census](#) provides data on teachers' pay and males earn more than their female counter parts in secondary schools, and they are also more likely to hold a leadership position which commands the highest salaries. The changes to the tax regulations within the TPS are not expected to adversely impact anyone, but to put members in the position they would have been in absent of the discrimination. Whilst the Department recognises that, in practice, non-minority ethnic males are most likely to be subject to AA/LTA tax charges, it is not a direct consequence on this policy update, and we do not believe that the McCloud reforms are the correct forum to address the inequalities within leadership positions and salaries.

136. The Department has considered the potential equality impact of the tax provisions within the reforms and has not found any evidence to suggest that they directly discriminate against members based on any of the protected characteristics. Our analysis has similarly not identified any actual or potential indirect discrimination on any of the protected characteristics.

Interest

137. Whilst the Department must comply with the HMT directions, it needs to consider whether differential treatment is created between the cohort in scope for the McCloud remedy and those who are not.

138. Those within the scope of the McCloud remedy can be seen in **Tables 4-6** and there are few members under the age of 30 due to the eligibility criteria described in paragraph 25. Those outside of the scope for McCloud are therefore likely to be younger members compared to those in scope. The changes to the interest provisions within the TPS are not expected to adversely impact anyone, but to put members in the position they would have been in absent of the discrimination. As the provision of interest is to account for any payment delays or benefit changes, this would not be relevant to members who are not eligible for the McCloud remedy as their pension payments and contributions would remain as they currently are. Any amendments to payments or contributions for ineligible member would be as a result of an existing, business as usual, process that would be dealt with using the current tax and interest provisions. The updates to interest are to account for the discrimination that members have been subject to and to remedy this discrimination in a fair and equitable manner.

139. The Department has considered the potential equality impact of the interest provisions within the reforms and has not found any evidence to suggest that they directly discriminate against members based on any of the protected characteristics. Our analysis has similarly not identified any actual or potential indirect discrimination on any of the protected characteristics.

Remediable Service Statements

140. Please read this section in conjunction with paragraphs 61-70 and 195-198 of the consultation document.

141. All eligible members will be presented with a Remediable Service Statement (RSS) for their remediable service. An initial RSS will be presented to all members within 18 months of the remedy implementation (1 October 2023). [Section 1](#) of the PSPJOA sets out the eligibility criteria and in turn defines who needs to receive an RSS. The Department has not identified any equality considerations to explore regarding the requirement to provide an RSS as this provides members with an accessible route to understanding their benefit options. In addition to an RSS, some members may require information in order to make decisions following the roll-back of reformed scheme service to the legacy scheme on 1 October 2023. Information will be provided via notices separate to the RSS.

142. The Department is proposing the below deadlines for responding to the RSS and equivalent notices:

- [Contributions](#) rollback, [flexibilities](#) rollback and [Pension Credit Members](#) (PCM) with legacy and reformed scheme credits will receive a 6-month window to consider and respond to any notice they receive. None of these equate to an RSS as, in particular, PCMs do not hold remediable service themselves, but are impacted by the McCloud remedy and will therefore receive an equivalent notice to make their benefit choice. Similarly, contributions and flexibility decisions need to occur to enable an RSS to be provided, but do not constitute an RSS in their own right under Section 1 of the PSPJOA.
- Active, Deferred and Pensioner members will all receive a 12-month window to reply to their RSS which includes [decision makers](#) acting on behalf of any deceased members. This is for benefits outside of contributions and flexibilities, as described above, but the choices made will be reflected in the RSS.

143. The RSS will be more complicated for certain members of the scheme depending on their personal circumstances, such as if they have a pension sharing order in place. Members are able to request an extension to the above deadlines if they require more time to make an informed decision before responding to the TPS with their RSS choices.

Age

144. An RSS must be provided to all eligible members which includes a range of ages as can be seen in **Tables 4-6**. All members receive the same timescale, and have the same ability to request an extension, which applies irrespective of their status. The Department

have therefore not found any evidence to suggest that this deadline directly discriminates against members based on their age. Our analysis has similarly not identified any actual or potential indirect discrimination.

Sex

145. Similarly, the sex of members in scope to receive an RSS and therefore abide by the deadlines is varied, as per **Tables 2-4**. The Department has considered the potential equality impact of the reforms regarding this characteristic and has not found any evidence to suggest that they directly discriminate against members based on sex. Our analysis has similarly not identified any actual or potential indirect discrimination.

Disability

146. Data obtained from the School Workforce Census³² for [England](#) and [Wales](#) inform that a very low proportion of teachers, less than 1%³², have declared a disability. The Department has considered the potential equality impact of the reforms regarding this characteristic and has not found any evidence to suggest that they discriminate against this particular group. The main basis for this conclusion is that the RSS deadline provides members with a 6 or 12-month timeframe to reply, and more time can be requested, if the member needs. Giving a 6 or 12-month timeframe allows the member to take advice from an Independent Financial Advisor or appoint a representative (a friend, family member, union representative or other) to act on their behalf should they need additional support. The Department therefore believes this timeframe accommodates for any members who may have a disability and require additional support with their decision making so there is no disproportionate impact on this group. Our analysis has similarly not identified any actual or potential indirect discrimination.

³² In England, information on disability was not obtained by schools for 53% of teachers in the November 2021 census. The information provided suggests 1% of teachers are disabled, however, this may not truly reflect the real position given the large amount of missing data. Therefore, a breakdown is not provided in the Census publication, and this should only be used for indicative purposes.

Defaults

147. Please read this section in conjunction with paragraphs 75-80 and 204-207 of the consultation document.

148. The effect of [Section 2](#) of the PSPJOA is that all members eligible for the DCU will receive legacy scheme benefits unless the member elects to receive reformed scheme benefits. Consequently, if a member fails to exercise their DCU choice, retirement benefits will be paid as legacy scheme benefits as this is the scheme that the member is legally a member of for the remedy period. [Section 8](#) and [Section 12](#) of the PSPJOA make provision for schemes to deem that an election for reformed scheme benefits has been made by the member. Members (or their representatives) will be presented with an IC or DC choice when they receive their RSS. If a decision is not received from the member or DM within the appropriate timescale, the TPS will deem that a reformed scheme benefit election has been made if these benefits provide a higher monetary value.

149. The below table explores when the default position would be implemented and where the power to deem an election could be used by the TPS:

All Protection Types³³	
Active & deferred	No default position as the member must confirm their DCU as part of the application process to allow for benefits to be calculated and paid. The power to deem an election is therefore inapplicable.
Pensioner & deceased (including deceased DCU member)	The default position is for legacy benefits, but where reformed benefits would be more beneficial for the member, the TPS can use Section 8 or Section 12 of the PSPJOA to deem an election for reformed benefits rather than implement the default.

Table 18: Default Position by Protection Type

150. The difference in treatment above, relating to the member status, reflects that benefits are already in payment, or have been paid, for pensioner/deceased members and the DCU decision is therefore required before the discrimination can be removed. Where a DCU member dies before confirming their choice, the scheme will use the power under s.12 to deem that an election has been made where a DM fails to confirm a choice and reformed scheme benefits would be more beneficial. This would avoid a situation where no decision is made and therefore no payments can be made to

³³ Protected, Unprotected/Transition and Tapered Members

beneficiaries. For active and deferred members, the DCU will be incorporated into the existing benefit application process to ensure a decision is received and the discrimination removed, prior to payment.

	TrP Total			Active			Deferred			Pensioner		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
<25	0	0	0	0	0	0	0	0	0	0	0	0
25-29	20	28	48	3	9	12	14	12	26	3	7	10
30-34	4,468	18,260	22,728	3,273	13,795	17,068	1,170	4,407	5,577	25	58	83
35-39	19,637	62,580	82,217	14,653	46,390	61,043	4,907	16,026	20,933	77	164	241
40-44	25,576	71,265	96,841	19,205	53,426	72,631	6,252	17,542	23,794	119	297	416
45-49	25,807	66,086	91,893	19,263	49,795	69,058	6,316	15,773	22,089	228	518	746
50-54	27,004	62,162	89,166	19,101	44,062	63,163	7,206	16,755	23,961	697	1,345	2,042
55-59	25,515	59,445	84,960	12,763	29,146	41,909	5,307	14,315	19,622	7,445	15,984	23,429
60-64	22,399	50,201	72,600	4,175	8,224	12,399	1,564	3,971	5,535	16,660	38,006	54,666
65-69	12,510	27,685	40,195	996	1,462	2,458	338	801	1,139	11,176	25,422	36,598
70-74	3,526	4,429	7,955	253	240	493	134	197	331	3,139	3,992	7,131
75-79	401	434	835	0	0	0	64	67	131	337	367	704
80-82	29	30	59	0	0	0	5	5	10	24	25	49
Total	166,892	422,605	589,497	93,685	246,549	340,234	33,277	89,871	123,148	39,930	86,185	126,115

Table 19: Transitional Protection Members split into Active, Deferred or Pensioner Status

Age

151. There is differential treatment on when a default position could be implemented. This differential treatment relates to the status of the member and therefore correlates to the member's age. The below table shows the status of the member against the protection initially afforded:

	Full Protection	Tapered Protection	Unprotected (Transition)
Active	10%	42%	72%
Deferred	3%	20%	26%
Pensioner/Deceased	86%	38%	2%

Table 20: Transitional Protection Members by Status & Protection Type

152. The data shows that the protection type of the member correlates to the possibility of a default position being implemented. As a default could only be implemented for a pensioner or deceased member, this has a much higher prevalence rate amongst full protection members compared to unprotected members. This could therefore be said to correlate back to the original discrimination, but age-related impacts are inevitable given access to retirement benefits is from age 55 as a minimum i.e., pensioner status relates to age. Due to this, the Department has considered the potential equality impact of the reforms regarding this characteristic and has not found any evidence to suggest that they directly discriminate against this particular group. Our analysis has similarly not identified any actual or potential indirect discrimination.

Sex

153. The below chart shows the sex of members within the TPS compared with those in scope for the remedy in total and split by protection type:

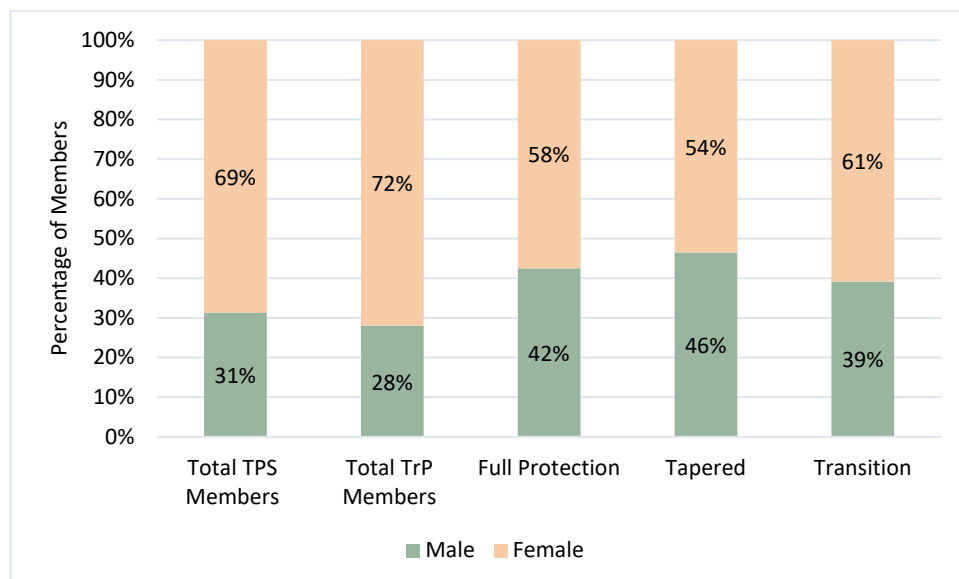


Figure 12: Sex Profiles for Transitional Protection Members by Protection Type

154. There are variances between the sex profiles within the protection types compared to overall scheme membership, but the Department has considered the potential equality impact of reforms with regard to this characteristic and has concluded that reforms do not directly discriminate against this particular group. The Department notes that in the original McCloud judgement there was indirect sex discrimination identified across the public sector due to recent increases in female public sector workers. Yet, with relation to the teaching workforce in England, this has been consistently and predominantly female; 75.5% as at November 2021 (2021/22), up from 74.4% in 2010/11. Due to this, our analysis has not identified any actual or potential indirect discrimination and the Department therefore concludes that there is no disproportionate impact on this group.

Race (Ethnicity)

155. Data obtained from the School Workforce Census' for [England](#) and [Wales](#) show that 14.9% of teachers in England and 1.1% in Wales identified as being from a minority ethnic background. Based on the [2011 Census](#), 20.2% of England and 6.8% of Wales identified as being from a minority ethnic background to allow for comparison against the School Workforce. The Department has considered the potential equality impact of the reforms regarding this characteristic and has not found any evidence to suggest that they directly discriminate against this particular group. Our analysis has identified a potential indirect discrimination with the main basis for this conclusion being, as per the original McCloud judgement, that the ethnic diversity of the teaching workforce has increased from 11.2% in England since 2010/11. This might suggest that protected members are perhaps less likely to be in an ethnic minority. Still, the default position applies to more protected members due to the minimum age requirement to access pension benefits and the reforms apply irrespective of the race of an individual meaning there is no disproportionate impact on this group. The differential treatment based on age, and indirectly on race, is required to remove the unlawful discrimination identified and is unavoidable due to pension provisions directly relating to age.

Equality Impact Analysis

156. Due to the General Data Protection Regulations, the TPS is not able to hold data on any of the characteristics outside of age and sex as this information is not required for the purposes of administering the pension scheme, as per [Article 5](#) 1(c) and (e).

Nevertheless, data can be obtained from other sources, to provide an indication on how the other characteristics could be represented within the TPS, which aids the Department in assessing how the proposed policy changes could impact members. The below summaries the impacts on each of the protected characteristics within the wider context of the pensions reforms that are being undertaken to address the discrimination identified in McCloud.

Age

157. The age of members is held by the scheme administrators, and we therefore have TPS specific data throughout the EIA. Using the data available, the Department has considered the potential equality impact of reforms with regard to this characteristic, in terms of the elimination of discriminatory conduct, the advancement of equality of opportunity, and the fostering of good relations.

158. Within the McCloud reforms, age related impacts have been found within multiple policy areas however the reforms are to remove the discriminatory protections initially afforded, that were awarded based on age, so this situation is wholly unavoidable. Where age impacts have occurred, the Department believes that these are justified and a proportionate means of achieving a legitimate aim. The justifications are provided for throughout this EIA within each policy sections analysis. The removal of the protection types affords members the same benefit options, and they have all been placed in the position, or best position possible, had the discrimination not occurred. This offers the chance to advance equality of opportunity by providing all members with equal options and benefit choices or as close to equal as possible given the retrospective nature of the remedy. The reforms do not offer the change to foster good relations. The Department has not found any evidence to suggest that the McCloud reforms provide for a disproportionate discrimination on this group either directly or indirectly.

Sex

159. The sex of members is held by the scheme administrators, and we therefore have TPS specific data throughout the EIA. Using the data available, the Department has considered the potential equality impact of reforms with regard to this characteristic, in terms of the elimination of discriminatory conduct, the advancement of equality of opportunity, and the fostering of good relations.

160. As per the McCloud judgement, age impacts have an indirect impact on the protected characteristic of sex given the increasing diversity of the public sector workforce over recent years, which interlinks with age. Within the teaching workforce specifically, the sex has been consistently and predominantly female however there are some policy areas where the data shows a disproportionate representation of sex compared to the overall scheme membership.

161. Whilst the Department recognises that, in practice, there is an uneven representation of sex within some policy areas, this is not a direct consequence on these policy updates, and we do not believe that the McCloud reforms are the correct forum to address this. The Department has therefore concluded that scheme reforms do not discriminate against these particular groups, and nor does it offer the opportunity to advance equality of opportunity and foster good relations. The Department has concluded that no element of the reforms discriminates against an individual's sex, on the basis that the reform provisions apply irrespective of these characteristics of the member and there is no evidence to suggest that they discriminate against these particular groups. Our analysis has similarly not identified any actual or potential indirect discrimination.

Race (Ethnicity)

162. The scheme administrator does not hold data on the race of TPS members, but data from the School Workforce Census' for [England](#) and [Wales](#) is available on the protected characteristics of staff in schools, which is regarded as a reasonable proxy for the characteristics of the TPS, given the high percentage of those eligible to be members.

163. The data shows that 14.9% of teachers in England³⁴ and 1.1% in Wales³⁵ identified as being from a minority ethnic background. Based on the [2011 Census](#), 20.2% of England and 6.8% of Wales identified as being from a minority ethnic background³⁶ to allow for comparison against the School Workforce. Using the data available, the Department has considered the potential equality impact of reforms with regard to this characteristic, in terms of the elimination of discriminatory conduct, the advancement of equality of opportunity, and the fostering of good relations.

164. As per the McCloud judgement, age impacts have an indirect impact on the protected characteristic of race given the increasing diversity of the teaching workforce over recent years, which interlinks with age. The Department believes that the indirect

³⁴ As of November 2021, for the 2021/22 school year

³⁵ As of date of publication on 30 June 2022

³⁶ Minority ethnic background here being anyone who identifies as an ethnicity that is not White British

impacts are therefore limited, but present. Where race impacts have occurred, the Department believes that these are justified and a proportionate means of achieving a legitimate aim. The justifications are provided for throughout this EIA within each policy sections analysis. The removal of the protection types affords members the same benefit options, and they have all been placed in the position, or best position possible, had the discrimination not occurred. This offers the chance to advance equality of opportunity by providing all members with equal options and benefit choices or as close to equal as possible given the retrospective nature of the remedy. The reforms do not offer the chance to foster good relations. The Department has not found any evidence to suggest that the McCloud reforms provide for a disproportionate discrimination on this group either directly or indirectly.

Disability

165. The scheme administrators do not hold data on the disability status of TPS members, but the School Workforce Census³⁷ for [England](#) and [Wales](#) are available on the protected characteristics of staff in schools, which is regarded as a reasonable proxy for the characteristics of the TPS, given the high percentage of those eligible to be members. For England, the information on disability was not obtained by schools for 53% of teachers in the November 2021 census. The information provided suggests 1%³⁷, of teachers are disabled, however, this may not truly reflect the real position given the large amount of missing data and therefore a breakdown is not provided in the Census publication. The England data should therefore be used with caution, but the Department believes it is the best proxy we currently have available.

166. Notwithstanding the low proportion of teachers declaring a disability, the Department has considered the potential equality impact of reforms with regard to this characteristic, in terms of the elimination of discriminatory conduct, the advancement of equality of opportunity, and the fostering of good relations. The Department has concluded that the scheme reforms do not discriminate against this particular group, and nor does it offer the opportunity to advance equality of opportunity and foster good relations. The main basis for this conclusion is that the reform provisions apply irrespective of whether an individual has a disability and there is no evidence to suggest that they provide for disproportionate impact on this group.

167. Under the existing (business as usual) rules, if a member is unable to make their own decisions through being incapacitated then the TPS can accept a Power of Attorney

³⁷ In England, information on disability was not obtained by schools for 53% of teachers in the November 2021 census. The information provided suggests 1% of teachers are disabled, however, this may not truly reflect the real position given the large amount of missing data. Therefore, a breakdown is not provided in the Census publication, and this should only be used for indicative purposes.

or Court of Protection Order to allow another person to make decisions on the member’s behalf. If neither of these are present, but the member is still able, we can accept a Letter of Authority from the member appointing someone else to act on their behalf and help them make any choices regarding their pension benefits. This may be relevant to members within the scope of McCloud as if they do not feel able to make their own benefit choice or if their health deteriorates before they reach the age to receive their DCU then they could appoint someone to act on their behalf.

Religion or Belief

168. There is no available data on this group specifically in relation to the teaching workforce. Data is available from the [ONS](#) which provides a comparison of the religious groupings within England and Wales, but this is not necessarily representative of the religious groupings within the teaching workforce.

	Buddhist	Christian	Hindu	Jewish	Muslim	Sikh	No Religion	Other
England	0.5%	51.2%	1.7%	0.6%	5.9%	0.7%	37.9%	1.5%
Wales	0.3%	48.2%	0.3%	0.1%	1.8%	0.1%	47.3%	2.0%

Table 21: Population Estimates by Religion in England and Wales³⁸

169. Nevertheless, the Department has considered the potential impact of reforms with regard to this characteristic, in terms of the elimination of discriminatory conduct, the advancement of equality of opportunity, and the fostering of good relations.

170. The Department has concluded that scheme reforms do not discriminate against these particular groups, and nor does it offer the opportunity to advance equality of opportunity and foster good relations. The Department has concluded that no element of the reforms discriminates against an individual’s religion or belief, on the basis that the reform provisions apply irrespective of these characteristics of the member and there is no evidence to suggest that they directly discriminate against these particular groups. Our analysis has similarly not identified any actual or potential indirect discrimination.

Sexual Orientation

171. There is no available data on this group specifically in relation to the teaching workforce. Data is available from the [ONS](#) which provides for the sexual orientation of the

³⁸ All the data within the table is considered as precise except for the Welsh data on Buddhist and Hindu which are considered acceptable and Jewish and Sikh are considered unreliable for practical purposes.

population in England and Wales, but this is not necessarily representative of the sexual orientations that are present within the teaching workforce.

	Heterosexual or Straight	Gay or Lesbian	Bisexual	Pansexual	Asexual	Queer	Other
England	89.37%	1.54%	1.29%	0.23%	0.06%	0.03%	0.02%
Wales	89.42%	1.49%	1.24%	0.18%	0.06%	0.02%	0.01%

Table 22: Population Estimates by Sexual Orientation in England and Wales³⁹

172. Nevertheless, the Department has considered the potential impact of reforms with regard to this characteristic, in terms of the elimination of discriminatory conduct, the advancement of equality of opportunity, and the fostering of good relations.

173. The Department has concluded that the McCloud reforms do not directly or indirectly discriminate against these particular groups, and nor does it offer the opportunity to advance equality of opportunity and foster good relations. The Department has concluded that the scheme reforms do not discriminate against this particular group, and nor does it offer the opportunity to advance equality of opportunity and foster good relations. The main basis for this conclusion is that the reform provisions apply irrespective of whether an individual has a disability and there is no evidence to suggest that they provide for disproportionate impact on this group.

Gender Reassignment (Including Transgender)

174. There is no available data on this group specifically in relation to the teaching workforce. Data is available from the [ONS](#) which provides for the gender identity of the population in England and Wales, but this is not necessarily representative of the gender identities that are present within the teaching workforce.

	Same as registered sex at birth	Different from registered sex at birth	Trans Woman	Trans Man	Non-Binary	Other
England	93.47%	0.25%	0.10%	0.10%	0.06%	0.04%

³⁹ As the sexual orientation question was voluntary on the 2021 Census, percentages do not total 100%, as “Not Answered” has been excluded from the table. The percentage of the population that did not answer was 7.5% in England and 7.6% in Wales.

Wales	93.28%	0.16%	0.07%	0.08%	0.06%	0.04%
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Table 23: Population Estimates by Gender Identity in England and Wales⁴⁰

175. Nevertheless, the Department has considered the potential impact of reforms with regard to this characteristic, in terms of the elimination of discriminatory conduct, the advancement of equality of opportunity, and the fostering of good relations.

176. The Department has concluded that the McCloud reforms do not directly or indirectly discriminate against these particular groups, and nor does it offer the opportunity to advance equality of opportunity and foster good relations. The Department has concluded that the scheme reforms do not discriminate against this particular group, and nor does it offer the opportunity to advance equality of opportunity and foster good relations. The main basis for this conclusion is that the reform provisions apply irrespective of whether an individual has a particular gender identity and there is no evidence to suggest that they provide for disproportionate impact on this group.

Marriage/Civil Partnership

177. There is no available data on this protected characteristic in relation to the teaching workforce, but the Department has considered the potential impact of reforms with regard to this characteristic, specifically in terms of the PSED requirement to eliminate discriminatory conduct. The Department has concluded that no element of the reforms directly discriminates against those who are married or are in a civil partnership, on the basis that the reform provisions apply irrespective of the marital status of the member and there is no evidence to suggest that they discriminate against this particular group. Our analysis has similarly not identified any actual or potential indirect discrimination.

Pregnancy/Maternity

178. There is no available data on this group specifically in relation to the teaching workforce. Data is available from the [ONS](#) which provides for the rate of conceptions in England and Wales which could provide an indication of pregnancy, but this is not necessarily representative of the pregnancy ages or rates within the teaching workforce.

179. The data shows that the rate of conception is highest amongst the 30-34 age bracket, which is closely followed by the 25-29 age bracket, as per the chart below:

⁴⁰ As the gender identity question was voluntary on the 2021 Census, percentages do not total 100%, as “Not Answered” has been excluded from the table. The percentage of the population that did not answer was 5.98% in England and 6.32% in Wales.

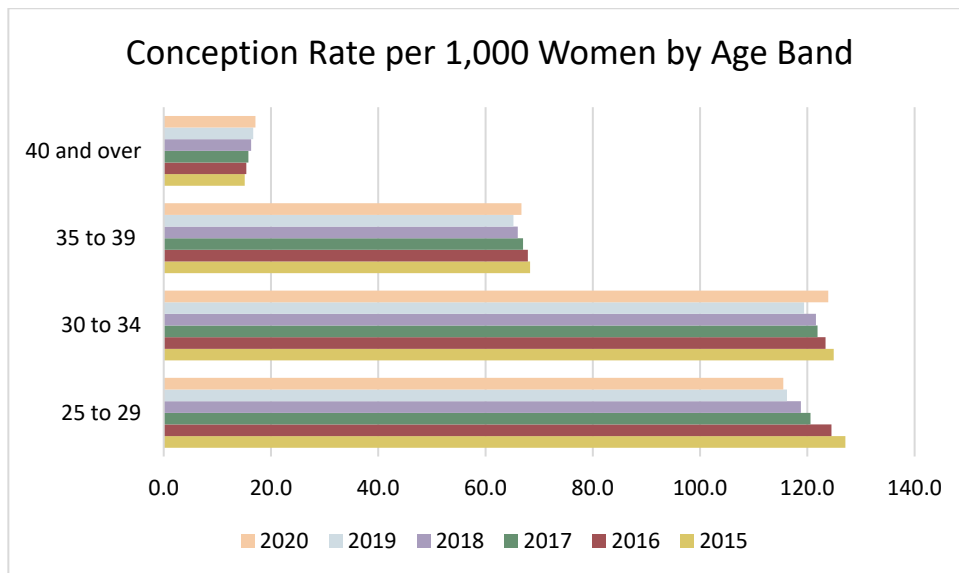


Figure 13: Conception Rate per 1,000 Women in England and Wales

180. Within the TPS, there are 139,689 active females between ages 25-34 and 18,288 of those are in scope for the TrP remedy. Notwithstanding the lack of available data in relation to the teaching workforce, the Department has considered the potential impact of reforms with regard to this characteristic, in terms of the elimination of discriminatory conduct, the advancement of equality of opportunity, and the fostering of good relations.

181. The Department has concluded that no element of the reforms directly discriminates against those who are pregnant or on maternity, on the basis that the reform provisions apply irrespective of the pregnancy/maternity status of the member and there is no evidence to suggest that they discriminate against this particular group. Our analysis has similarly not identified any actual or potential indirect discrimination.

Conclusion

182. Having due regard to the Public Sector Equality Duty, the Department has carefully considered the impact of the transitional protection remedy on members of the TPS in respect of each of the following protected characteristics: age, sex, race (ethnicity), disability, religion or belief, pregnancy and maternity, sexual orientation, gender reassignment and marriage or civil partnership. The three limbs of the PSED are to:

- 1) eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the Equality Act 2010,
- 2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it,
- 3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

183. The Department does not believe that the transitional protection remedy provides an opportunity to foster good relations and we therefore consider that the third limb is not applicable in this instance. As unlawful discrimination is being removed, there is also limited opportunity to advance equality of opportunity as per the second limb. The below table shows the impact of the above first two limbs on each of the protected characteristics:

Protected Characteristic	Potential effect of proposed policy (positive / negative / neutral ⁴¹ / no impact)		
	Limb 1	Limb 2	Limb 3
Marriage or civil partnership	No Impact	Does not apply	Does not apply
Age	Positive	Positive	Not Applicable
Race (ethnicity)	Positive	Not Applicable	Not Applicable
Disability	Neutral		
Pregnancy and maternity	Neutral		
Religion or belief	Neutral		
Sex	Neutral		
Sexual orientation	Neutral		
Gender reassignment	Neutral		

Table 24: Equality Impact Assessment Conclusion Table

⁴¹ A decision which maintains a positive impact and/or doesn't introduce a negative impact can be assessed as neutral

184. The Department has concluded that a disproportionate adverse impact on eligible members is unlikely and that the reforms represent a proportionate means of achieving the legitimate aim of removing the direct age and indirect sex and race/ethnicity discrimination that has been identified. There are positive impacts on age and race as the removal of transitional protections provide for members with the same, and equal, benefit options irrespective of age. Any age impact is likely to impact the race of members due to the recent increase in the diversity of the teaching workforce. This protected characteristic is therefore judged to be positively impacted, despite the lack of specific scheme data. The other protected characteristics are marked as neutral as there is no evidence to suggest that the changes being implemented are likely to discriminate against these particular groups, but there is also no evidence to suggest that these groups would see a positive impact, as per age and race.

Next Steps

Data Collection & Future Data Considerations

185. Teachers' Pensions are due to commence a customer survey programme in March 2024. It is intended that this programme will, in the future, obtain member views on the reforms and the administration services provided. An online survey campaign will be used to contact members who have already received their RSS statements. The intention is to expand the surveys to incorporate questions that establish the characteristics of the respondent and will focus on all the protected characteristics that we do not hold TPS specific data for. This will provide an update on the characteristics of the membership, and identify changes, which could inform policy revisions. The precise details of the survey are still to be determined, but it is likely to involve around 5000 members. A sampling approach will be developed alongside statistical colleagues to ensure a representative view is gained, that is reflective of wider scheme membership, and to consider any demographic differences between England and Wales. Participation in the survey will be voluntary, with its primary purpose being to support Teachers' Pensions operational service delivery.

Member and Employer Communications

186. We will continue to work with the scheme administrators to deliver member and employer communications, so that all teaches are fully aware of and understand:

- the impact of the reforms
- the value of staying in the scheme
- the benefit choices at their Deferred Choice Underpin, or Immediate Choice if the DCU is being retrospectively applied
- the option for earlier retirement within the legacy scheme
- the change of benefit value and whether any over or underpayments have occurred with regards to pension benefits or contributions
- the availability of transfers into the scheme given they have now moved to a new arrangement from 1 April 2022

Ongoing Analysis Activity

187. The Department recognises its ongoing obligation to comply with the Public Sector Equality Duty. With that in mind, equalities considerations will continue to be considered as we take forward the implementation and application of the new regulations and policy from October 2023. The Department will continue to work closely with the scheme administrator to monitor and identify any potential equality issues that may be identified during the operational delivery of the reforms.

Acronym Table

188. An overview of the acronyms used within this EIA are below:

Acronym	Description
+1FTE	Full time equivalent contract with an additional part time contract(s) which is also known as ETS
ABS	Annual Benefit Statement
APB	Additional Pension Benefits
CA	Career Average Revalued Earnings Scheme
CDC	Contingent Decision Claim(s)
CETV	Cash Equivalent Transfer Value
DCU	Deferred Choice Underpin
DM	Eligible Decision Maker
EIA	Equality Impact Assessment
ERRBO	Early Retirement Reduction Buy Out
ETS	Excess Teacher Service which is also known as +1FTE
FA	Faster Accrual
FS	Final Salary Scheme
HMT	HM Treasury
IC	Immediate Choice, Deferred Choice Underpin
IHR	Ill-Health Retirement
LGPS	Local Government Pension Scheme
MPA	Minimum Pension Age
NPA	Normal Pension Age
ONS	Office for National Statistics
PCM	Pension Credit Member
PDM	Pension Debit Member
PSED	Public Sector Equality Duty
PSO	Pension Sharing Order
PSPJOA	Public Services Pension & Judicial Offices Act 2022
RSS	Remediable Service Statement
SPA	State Pension Age
TPR	Teachers' Pension Regulations 2010
TPS	Teachers' Pension Scheme
TPSR	Teachers' Pension Scheme Regulations 2014
TrP	Transitional Protection

Table 25: Acronym Table

Terms Table

189. An overview of the terms used within this EIA are below:

Term	Description
Active member	Members who are working (in pensionable service) and accruing additional pension benefits from that work and from contributions paid by their employer on their behalf. In most cases the member is also making contributions
Added or additional pension benefit	Flexibility that is available in the legacy or reformed scheme allowing members to purchase additional amounts of pension by a lump sum or through regular salary deductions
Annual Benefit Statements	The statement which members receive each year telling them how much their pension is worth
Business as Usual	Processes that were in place with the scheme administrators before the McCloud case that can be utilised to deliver the remedy and remove the unlawful discrimination
Career Average Revalued Earnings Scheme	A defined benefit pension scheme that gives individuals a pension based on a percentage of the salary earned in each year of their working life. Accrual is based on 1/57th of your pensionable earnings each year ⁴² (including overtime) plus index linking. This amount is banked each year with your eventual pension made up of all the amounts that have been banked each year.
Cash Equivalent Transfer Value	A value placed on accrued pension rights in particular circumstances, such as when any worker ceases to be an active member of a scheme before pension is payable and wishes to transfer those pension rights to certain types of other pension scheme such as a private sector defined benefit scheme. Everyone can request a CETV except in the year before retirement, but schemes can refuse to accept the CETV request
Contingent Decision	Refers to an alternative choice or course of action that a member may have taken had the circumstances around their benefits been different.
Deferred choice underpin	The benefit option for removing unlawful discrimination identified by the Court. Formerly unprotected members would be returned to their legacy scheme for the remedy period (2015 – 2022). At the point benefits are payable they would be able to choose legacy or reformed scheme benefits for the remedy period.
Deferred member	A member who has stopped accruing benefits in their scheme, for example, after leaving employment covered by that scheme, or opting out of the scheme. No pension benefits have yet come into payment for the member from

⁴² Unless the faster accrual flexibility is purchased which changes the accrual rate

	the scheme and the pension previously accrued is called a deferred or preserved pension.
Early retirement reduction buy-out	Flexibility that is available in the reformed scheme that allows the member to buy out the actuarial reduction that is applied to any benefits taken before NPA, where the NPA is over 65. Up to three years actuarial reduction can be bought out depending on the number of years between age 65 and the NPA under career average. E.g., a member with an NPA of 66 would be able to buy out 1 year
Faster Accrual	Flexibility in the reformed scheme where instead of the standard accrual rate of 1/57 th , active members can purchase an improved accrual rate of 1/45 th , 1/50 th or 1/55 th of pensionable earnings for a particular scheme year (1 st April – 31 March)
Final salary scheme	A type of defined benefit scheme that gives individuals a pension based on the number of years of pensionable service, the accrual rate and final salary as defined by the scheme
Full Protection	Members 10 years or less from the Normal Pension Age (NPA) of their existing scheme on 31 March 2012 received full protection and were allowed to stay in the legacy scheme
Government Actuary's Department	A government department responsible for providing actuarial advice to public sector clients
Ill health retirement	A type of pension available to a member who meets the relevant test in scheme regulations when they are unable to continue working due to ill health
Immediate choice	Members who will be asked which scheme they want to be a member of for the remedy period as soon as possible due to their DCU date having passed as benefits are already payable i.e., the member is already in retirement or is deceased
Legacy scheme	The public service pension schemes members were in prior to 1 April 2015
McCloud Remedy or Transitional Protection Remedy	The overarching name of the reforms that are taking place to remedy the discriminatory protections afforded to members during the move to the reformed scheme arrangements. This refers to the availability of a DCU alongside the movement of members from the reformed scheme to the legacy scheme.
Minimum Pension Age	The earliest age at which ordinary retirement benefits can be brought into payment for a member under the rules of that scheme, and subject to tax limits. Ill health and survivor pensions are not subject to MPAs
Normal Pension Age	The age at which a pension scheme member can start taking pension benefits on a voluntary basis without any reductions. NPA is set in scheme rules. A member can retire voluntarily before NPA, if they are over their MPA, but will then face a reduction to their benefits
Pension Sharing Order, Pension Debit Member	A method of financial settlement during divorce where an ex-spouse or civil partner will be awarded a percentage share of their spouse or civil partners pension(s). The member of the scheme is referred to as a Pension Debit Member and the

and Pension Credit Member	share awarded to their ex-spouse or civil partner is a Pension Credit Member in the scheme.
Pensioner member	Individuals who are drawing a pension and who are mainly former employees. However, they may also include widows, widowers, and other dependants of former active members. For the data within this EIA, pensioner members also include the data for deceased members of the scheme who are in scope for the McCloud/Transitional Protection remedy.
Reformed scheme	The reformed public service pension schemes introduced under the Public Service Pensions Act 2013 which all members joined on the 1 st April 2022, if they were active
Remediable Service	All benefits accrued between 1 April 2015 and 31 March 2022 are remediable service benefits where the member is entered into the legacy scheme arrangement, but has the choice to move into the reformed arrangement for this period
State Pension age (SPA)	The age at which an individual can begin claiming their state pension. The ages vary between individuals with different birthdays. This is also the retirement age of the reformed scheme, if SPA is above age 65.
Taper Protection	Members more than 10 years but less than 13½ years from the NPA of their existing scheme received tapered protection. They stayed in the legacy scheme until their transition date when they were then moved to the reformed scheme. This meant that their transition date was later than 1 April 2015 but before 1 February 2022.
Unprotected, Transition or Transitional Protection	Members more than 13 ½ years from the NPA of their existing scheme did not receive protection and were moved to the reformed scheme on the 1 April 2015

Table 26: Terms Table



Department
for Education

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