Freelancers’ pensions

This note sets out the background to pension provision for different types of freelance workers, the issues they face in relation to saving for retirement and what we could do about those.

- **Summary**

The following table summarises a potential agenda for improving the retirement outcomes for freelance Bectu (and Prospect) members.

Area	Proposal	Note
Improve Automatic Enrolment for freelancers who are employees / workers	Reduce the earnings trigger from £10,000	This would bring more freelancers who are employees / workers and on multiple engagements into the scope of automatic enrolment. (We are already lobbying for this because it would also reduce the gender pension gap.)
	Remove the option to postpone automatic enrolment	This would bring more freelancers who are employees / workers into the scope of automatic enrolment. (We are trying to find examples of where this option is currently being abused to organise / campaign around this.)
	Increase the maximum age for Automatic Enrolment to 75	There is no real justification for not automatically enrolling employees / workers who are over State Pension Age.
	Increase minimum contribution levels beyond 5% / 3%	The minimum contribution levels are not enough. These contribution rates could only be increased after contributions from the first pound are implemented. Any such measure would have to be phased in.
Greater clarification / enforcement of the legal definition of worker	Clarify and simplify the legal test for employment status	This would reduce the number of engagers who fail to automatically enrol eligible workers.
	Better enforcement of automatic enrolment in our industries	Check for disguised employees / workers in the industries we organise in and ensure there is appropriate enforcement.
Better private pensions for the self-employed	A new private pension system for the self-employed	This would have implementation and resource issues. It is important that design is appropriate to this population. It is also important that there is sufficient government contribution to make it attractive / worthwhile

		to save into.
Impact of the National Insurance system	Move qualification for State Pension to a per person / annual basis	Freelancers disproportionately lose out on “qualifying years” for the State Pension due to idiosyncrasies in the National Insurance system. The system should be aligned with income tax (or there should be an underpin to ensure that people do not lose out because of the differences).
Greater consolidation of small pots	There should be a statutory consolidation regime	The government should move forward with either a default consolidator or a pot-follows-member approach.
Information	We should improve the information provided to freelance members to help them make the most out of the present system and mitigate some of its impacts	Lots of information / messages have already been developed by Paul – it’s mainly a case of delivering them to members.

- **Background**

The self-employed, as a group, are at risk of some of the worst retirement outcomes of any section of the workforce.

There are a couple of main reasons for this:

- In the UK, retirement savings is a tripartite endeavour between workers, the government (through the state pension and tax-relief for private pensions) and employer (through compulsory workplace pensions). When there is no employer, the burden of saving enough for a comfortable retirement falls on just the worker (with relatively limited support from the government as the UK state pension is much less generous than countries where workplace pensions are less important).
- As a result, the self-employed need to save more for retirement than other workers. The evidence shows that they save less and that they save a lot less than they did in the past. For example, the IFS found that the proportion of self-employed workers saving into a pension collapsed from 48% in 1998 to 16% in 2018. (The cause is unclear – not much of the decline can be explained by changes in the economic or demographic profile of the population of self-employed.)

The above issues affect the “genuinely” self-employed (ie those paying Class 2 / Class 4 National Insurance Contributions) and also some “hidden” self-employed who are engaged through Personal Services Companies.

Similar issues also affect freelancers who are engaged as employees / workers and therefore eligible for workplace pension provision. However, while they are eligible in theory, they are often excluded from automatic enrolment by the consistent application of the option to defer automatic enrolment for up to 3 months or the earnings trigger (£192pw / £833pm). Even when they have access to a workplace scheme, the statutory contribution rates are minimal (the 5% / 3% that are quoted are only on a band of earnings and amount to less than 2.5% / 1.5% for many freelancers).

For all the above reasons, the retirement outcomes for the self-employed are unacceptably bad. By some measures, they are worse than the outcomes for women as a group (and we obviously do a lot of campaigning around the issue of the gender pension gap and have been successful in getting the government to publish its own measure of this).

(While I have not seen any data on self-employed women specifically, it goes without saying that this group is probably the worst off of all, due to the impact of factors affecting both these groups. Our motion to the Women's TUC this year specifically called for action on the gender pension gap that addressed issues affecting freelancers.)

- **Addressing freelancers' pension issues**

There are a number of ways that we could potentially improve the retirement outcomes for Bectu members who are freelancers (whether that means genuinely self-employed, engaged through a Personal Services Company or an employee / worker on a series of different engagements):

1. Lobbying to change the law around automatic enrolment

Automatic enrolment is the single most significant policy development in private pension savings in a generation. While the scale is huge, with many millions of workers automatically enrolled into workplace pension schemes, this is not yet matched by the ambition for what it can deliver (the headline contribution rates of 5% / 3% are diluted by the fact they only apply to a band of earnings, and many people are excluded from automatic enrolment by the earnings trigger and postponement).

The current government has accepted two improvements to automatic enrolment arising out of a recent review. These improvements were legislated for (in a private member's Bill that received government support) and a consultation on regulations to implement the changes is expected in the autumn. The two improvements are: requiring contributions from the first pound of earnings rather than just on earnings above £6,240pa (which will bring the actual statutory minimum contribution rates up to 5% / 3% for most workers) and reducing the minimum age from 22 to 18.

The main remaining obstacle to these measures being introduced in the "mid 2020s", as the government has previously committed to, is probably Treasury agreement. If fiscal conditions tighten, Treasury may not want to approve regulations that reduce tax yield (through the greater availability of pension tax relief on pension contributions).

The above improvements are welcome but we need to go further.

(a) Reduce the earnings trigger from £10,000pa (£192pw / £833pm)

You must have earnings of at least £192pw / £833pm with an engager to qualify for automatic enrolment.

All full-time workers qualify. The only people who do not are part-time workers (or full-time workers who have multiple engagements at the same time).

Hence the earnings trigger disproportionately excludes women and freelancers from the benefits of automatic enrolment.

The earnings trigger has been frozen at £10,000pa for a number of years. This means it is effectively falling slowly in real terms.

If it was reduced in nominal terms, say to the level of the LEL for National Insurance, this would bring more people into automatic enrolment, disproportionately women and freelancers.

In the past an argument used against lowering the earnings trigger was that it would result in a proliferation of smaller pots that cost more to administer than they delivered to members.

This will no longer be the case once the requirement to pay contributions from the first pound of earnings is implemented.

Another argument against lowering the earnings trigger has been that the state pension provides more than £10,000 anyway and replacements income rates of more than 100% are unnecessary.

But people who earn under £10,000 in one role do so because they are part-time or working multiple roles, and this does not mean that the state pension alone will be sufficient for them.

We have written to Frances O'Grady, as part of her review of the gender pay gap, to suggest that she recommend lowering the earnings trigger in order to tackle income inequality in retirement.

(b) Remove the option to postpone assessment for automatic enrolment

The option for engagers to postpone assessment for automatic enrolment for up to three months was recommended by a review commissioned shortly after the Coalition government took office (called 'Making Automatic Enrolment Work').

Many of the reasons given for recommending this option no longer apply.

Alongside the option for engagers to postpone assessment for automatic enrolment, is an option for employees / workers to opt in from the start of their contract (in practical terms, from the first day of the pay reference period after the opt in notice is received, or the following pay reference period if payroll had closed already).

But many freelancers are unaware of this option, and employers do not have to tell them they have been postponed for up to six weeks. Consequently, take-up of this option is reported to be low (according the 2017 review of Automatic Enrolment for the DWP).

(Indeed, the review had considered removing the option to opt in and decided not to due to the fact that take-up was so low.)

Freelance reps have reported to us that many engagers are automatically postponing assessment for automatic enrolment without taking the required steps to do us (ie notifying the employees / workers concerned in writing and telling them about the option to opt in).

We are seeking to identify specific examples of where this has happened in order to seek back payment of contributions for members and make a case for better enforcement in these industries (this will hopefully be an issue we can organise / campaign around).

Evidence of the failure of engagers to comply with the statutory requirements for properly postponing assessment could also be used to lobby the Minister (and opposition) to eliminate their ability to do so at all (and thus bring far more freelance employees / workers into automatic enrolment).

(c) Increase the maximum age for automatic enrolment to 75

There is no direct link between retirement and State Pension Age. Many freelancers will draw pension before State Pension Age (a form of partial retirement) and many others will work beyond State Pension Age in order to increase their retirement savings.

It does not make sense to automatically enrol a 66 year old but not a 67 year old. The fact that State Pension has become payable has very little relevance to whether someone needs or wants to save for retirement from their employed earnings.

(d) Going beyond 5% / 3%

The immediate priority is to make contributions under automatic enrolment payable from the first pound of earnings (and eventually all earnings). This will bring the minimum contribution level to 5% / 3%.

However, 5% / 3% is not enough to give people a good chance of retiring at a reasonable age with a decent standard of living.

Eventually, automatic enrolment will have to go beyond requiring contributions at 5% / 3%. It is important that increases are weighted towards employers in order to maintain affordability.

Any future increases in minimum contribution levels will have to be phased in after contributions from the first pound are implemented.

It could be that increases are implemented if / when employer National Insurance contributions are eventually reduced.

2. Greater clarification / enforcement of the legal definition of ‘workers’ (entitled to automatic enrolment)

The issue of employment status is much wider than just pensions, as it covers the applicability of many other fundamental employment rights.

But it is very important in pensions as non-employee ‘workers’ are entitled to be automatically enrolled into a workplace pension scheme.

It is not always clear who is covered by this requirement and enforcement provisions are weak. The case of Uber drivers highlighted the problem, it took a Supreme Court judgment to determine they were workers (and therefore eligible for automatic enrolment). It is widely believed that many other drivers for other operators have very similar contracts but are not being treated as workers (and therefore do not have access to workplace pension schemes).

Clearly, treating workers as if they are self-employed can reduce engagers’ pension costs and there is therefore an incentive to do so.

It is important to follow through on the proposal to clarify and simplify the legal test for employment status.

It is also important to investigate the extent to which workers are being treated as self-employed in the industries that Bectu (and Prospect) organise in and lobby for greater enforcement if necessary.

3. Pensions for the self-employed / those operating through personal services companies

It is important to improve the minimum levels of pension provision for freelancers who are engaged as employees / workers and to ensure that those who are genuinely workers are not wrongly excluded from automatic enrolment.

There will still be many freelancers who are either genuinely self-employed or are operating through personal services companies and hence do not have access to a workplace pension scheme.

It is important to note that the self-employed are a very diverse group. Many will have adequate savings and can expect a comfortable retirement. As an overall group the self-employed have some of the worst retirement outcomes of all. Many freelancers particularly miss out on any employer contribution to their retirement (and do not factor the need to provide for retirement into their rates).

The government’s current approach for the genuinely self-employed (based on the 2017 Automatic Enrolment review) is to promise trials and research but no concrete proposals. While trials and research are important, we need to go beyond this.

The best way for government to promote pension savings for the self-employed is through the tax system.

It is important that a pension system for the self-employed reflected their particular characteristics. One approach could be:

(a) Administered through the tax system on an opt-out basis.
(b) Centrally administered (like the proposed Irish approach to automatic enrolment).
(c) Include an element of “side-car” savings to protect against fluctuating earnings.
(d) Include a specific government contribution that is more generous than ordinary tax-relief.

4. The impact of multiple jobs on the state pension

National Insurance contributions operate on a different basis to income tax. They are on a per job (not per individual taxpayer) basis and per pay period (ie weekly / monthly) rather than annual.

Both these features make it harder for a freelancer to have a “qualifying year” for National Insurance and can result in higher expenditure on voluntary National Insurance contributions or, more likely, lower State Pension entitlement.

This is because freelancers are more likely to be doing multiple jobs simultaneously. In total they may have earnings over the qualifying level but if their earnings are below this level in each job individually then they will not get a “qualifying year”.

They are also more likely to have fluctuating earnings. They may have more than the required earnings over the full year, but they can miss out if they do not have the minimum level of earnings in each pay period.

Changing the qualifying rules for State Pension so that freelancers with multiple jobs and / or fluctuating earnings would be treat them more fairly and improve outcomes.

5. Greater consolidation for small pension pots

The proliferation of small pension pots is a well understood consequence of introducing automatic enrolment. Government has been considering potential solutions for many years.

A DWP consultation earlier this year called for evidence on two potential approaches to a solution: a default consolidator and a pot-follows-member approach.

We should push for the early implementation of a solution to problem of small pension pots and raise awareness of the benefits (and risks) of consolidation with members (as well as helping explain how to do it in practice).

6. Information

Simply providing freelance members with information about the above features would help them avoid some of the issues caused by the current rules.

As well as informing members, we should support officers and reps to have conversations about these issues with members.

Paul has already done lots of work on clear, concise, simple messages that can get the relevant ideas across. It’s mainly an issue of putting the resources into delivering them.