

NHS Pension Scheme Scotland

Scheme Advisory Board

Minutes

Date: 27 April 2018

Meeting reference:

Location: Victoria Quay, Edinburgh

Chair: Derek Lindsay (NHS Ayrshire & Arran)

Attendees: Members

Willie Duffy (Unison), Alan Robertson (BMA), Jane Christie-Flight (UNITE), Ros Shaw (RCN), May Elphinstone (NHS Grampian) (substitute for Lorraine Hunter)

Scottish Government

Lorimer Mackenzie (SPPA), Jim Preston (SPPA)

By invitation

Michael Rae (GAD), Garry Swann (GAD)

By telephone link

Phil McEvoy (BDA)

Secretariat: Sharon Liptrott (SPPA)

Apologies: Lorraine Hunter (NHS Grampian), Graham Pirie (SCP)
Dorothy Wright (NES), Jackie Mitchell (RCM) and Colin Cowie (SGHD)

1. Welcome and Apologies

1.1 The Chair welcomed everyone to the meeting including May Elphinstone who was attending on behalf of Lorraine Hunter. He also advised that Katy Lewis had stepped down and Margo McGurk, from NHS 24, would be joining the SAB as her replacement but she was not able to attend today's meeting.

1.2 All confirmed that they had no conflicts of interest.

1.3 Lorimer Mackenzie thanked the chairs for their help in dealing with new appointments.

2. Minutes of the meeting held on 13 March 2018

2.1 The chair asked about the accuracy of the statement in paragraph 2.8 and GAD confirmed that it was correct.

2.2 The minutes were approved as a correct record of the meeting and updated action points noted.

3. Matters Arising

3.1 Lorimer Mackenzie advised that the scheme valuations had not concluded as the Treasury Directions were not finalised. SPPA were in communication with Treasury and expect that they will be finalised in the next few weeks. SPPA will advise SAB as soon as they have information.

3.2 Garry Swann said that GAD were doing as much as they were able, to be in a position to adjust their calculations as necessary, once the final directions were released.

3.3 Phil McEvoy asked how the pay award would filter into the cost cap and GAD confirmed it could provide examples if the pay award were to result in a breach. Garry Swann advised that HMT may need to adjust the pay assumptions going forward to reflect this year's award but that they would expect it to have little effect in respect of the cost cap.

3.4 Willie Duffy said that the pay offer in E&W proposed removing some of the pay points and shortening the AfC bands and in effect this would wipe out band one of the pay scale. Scotland is currently negotiating a similar pay deal and he asked if this and the different tax bands in Scotland would make a difference to the valuation? Michael Rae confirmed it would feed into the next valuation.

4. Lifetime and Annual Tax Allowances

4.1 Jim Preston explained that the paper provided was for information and to refresh members of how the AA and LTA can impact on members. Slides from a previous presentation had been brought up to date with the current allowances.

4.2 Alan Robertson highlighted the fact that tax allowances now affected anyone with a normal career pattern and more people are being caught for tax charges. He considers that it is a major issue which is not taken into account when we consider the tax relief aspect when setting the contribution rates.

4.3 Phil McEvoy reported that the E&W SAB were aware of the issues and their independent actuary had done some modelling. He agreed to circulate the papers to Scottish SAB members for information. He said that if a member uses scheme pays it was the equivalent to halving the accrual rate. He highlighted that the Local Government Scheme have an option to pension only 50% of income which SAB might consider although any options to reduce a members AA charge would need to meet with HMRC anti-avoidance regulations.

Action Point 2018/05: Phil McEvoy to email SAB members with a copy of paper on tax modelling.

4.4 Michael Rae pointed out that high earners are still better off staying in the pension scheme with some pension growth even when on a tapered AA. Members need to consider scheme pays

and what the resulting net increase in pension would be taking into account the costs of providing a similar net pension growth from outwith the scheme.

4.5 The Chair asked if SPPA still advised members they might breach the annual or lifetime allowances. Sharon Liptrott said she would check with the relevant colleagues and advise SAB.

4.6 Alan Robertson noted that the tax position was a disincentive for GPs or consultants to take on extra work. He also asked how the purchase of additional pension was treated for AA purposes and in particular at the point a member opts out of the scheme.

Action Point 2018/06: SPPA to confirm the position with regards to advising members that they might breach the AA and/or LTA and how the purchase of additional pension is treated for AA purposes.

4.7 The Chair asked if the AA and LTA were going to be devolved to Scotland. SPPA confirmed that both remain reserved matters.

4.8 It was noted that it is difficult to come up with a solution for high earners in the scheme as there are different ways a member could breach the annual allowance e.g. a modest earner receiving a large pay rise in one year compared to a member consistently earning higher levels of pay. It was agreed that this discussion should be revisited and possible solutions explored once the valuation and contribution discussions had concluded.

Action Point 2018/07: SPPA to add to a future agenda once discussions on the valuation and contributions had concluded.

5. Employee Contribution Structures from 1 April 2019

5.1 Garry Swann explained paper ref 27/04/18/01 was the paper previously considered by SAB but had now been updated into the same format as E&W and included additional options. He confirmed that E&W discussions had not progressed due to the pay negotiations so it remains that there is no clear steer as to a contribution structure at this point. He believes the majority seem to favour using actual income and confirmed the legal challenge to WTE in Northern Ireland had been withdrawn.

5.2 Phil McEvoy confirmed the position in E&W saying that there were no stated positions and that they were working to the same timescale as Scotland.

5.3 Willie Duffy asked what the position would be if SAB decided to use WTE pay for setting the contributions and a later challenge was successful. Lorimer Mackenzie confirmed that if this was the case we would have to amend the scheme regulations in line with any court judgment.

5.4 Willie Duffy said that Scottish pay negotiations are currently happening alongside the contribution discussion and that the TUs would be unable to make any decisions until after E&W had confirmed acceptance of the pay offer.

5.5 Garry Swann said that for modelling purposes the outcome of the pay agreement would affect where the pay bands fit but SAB could continue to explore the principles.

5.6 Discussion continued around whether the yield would be met in the current tiers based on the pay uplift. Garry Swann confirmed that if a 6% pay rise was assumed with no indexation of the

salary boundaries, it would raise 9.8% average yield over 4 years. If the salary boundaries correspondingly increase with the pay rise, this would remove the increase in yield produced the pay rise.

The SAB broke for lunch at this point.

5.7 In the afternoon session Garry Swann took the SAB through the paper. He confirmed that the main options were summarised on page 2 and included a number of options covering bandings and tiered rates using both WTE and actual pay

5.8 In considering banding it was appreciated that this may be difficult to communicate to members who may just see the higher rates rather than the staging of rates a banding approach would provide. Willie Duffy said members in Scotland currently pay 0.2% more in contribution rates than NHS E&W members so that the pay bands could be adjusted each year, which was expected to achieve the 9.8% yield when the contribution structure was introduced in 2015. Would members pay less if moving to banding and how would that be communicated to members? Garry Swann agreed to take the question away and consider a response.

Action Point 2018/08: GAD to consider communications around the above and advise SAB

5.9 Michael Rae confirmed that if E&W move to banding they will have to increase contribution rates but Scotland would not need to do this.

5.10 Discussion followed around using WTE vs. Actual pay. It was noted that in using actual pay the contribution could be referenced by either current monthly pay periods or the previous year's pay. May Elphinstone stated that using current pay periods would be problematic for pay rolls when arrears were paid. It would be easier to review a contribution rate at the point of change (new post, promotion etc.) rather than on a monthly basis. Lorimer Mackenzie agreed to find out how the local government scheme deal with actual pay. Jim Preston also noted that the Teachers' scheme based contributions on actual pay.

Action Point 2018/09: SPPA to investigate how other public service schemes manage contributions based on actual pay.

5.11 Discussions continued around the various illustrations provided. It was noted that table 5 could be considered the fairest in respect of most people now being in the CARE scheme. There was concern as to what could be agreed prior to the outcome of the pay discussions. Willie Duffy considered that the outcome of the pay negotiation would not be known until the end of July therefore they were unlikely to agree a position on contributions until August.

5.12 Willie Duffy proposed obtaining a mandate from UNISON as to whether they prefer actual pay/WTE/tiers or banding by the next SAB meeting and asked that others seek the same from their constituents. He also asked that the Scottish Government state their position as to whether they consider using WTE is discriminatory.

Action Point 2018/10: Staff side to agree their preferred option by next SAB

Action Point 2018/11: SPPA to provide a paper at the next SAB stating their position on the use of WTE in setting contributions.

5.13 Lorimer Mackenzie advised the SAB that they were in a different position to when the SPG agreed the last contribution structure. On the previous occasion they had negotiating powers

however the SAB's remit is to advise ministers. If the SAB does not agree a position then the different positions would be put to the Cabinet Secretary but he retained the right to impose a contribution structure.

5.14 It was noted that AfC band 1 would disappear if contributions were based on WTE but would still be needed if based on actual pay. Garry Swann will amend the tables when structure is agreed.

5.15 Consideration was given as to whether a discounted contribution rate for new joiners should be retained even if the current band 1 was to disappear. The Chair said that if an agreed principle was to reduce the number of tiers then there would need to be a justifiable reason for this. Garry Swann said that it was his understanding that those in the current tiers 2 and 3 pay less than the 9.8% to give a slight reduction for new nurses joining the scheme. Whereas a flat rate is not charged any discounts provided need to be reflected in the rates paid by other members.

5.16 Garry Swan took SAB through the various illustrations in the paper showing the effect of different numbers of tiers on contribution rates and numbers which fell into each band and also net and gross of tax. SAB also looked at the effect of a central tier being based on the average yield of 9.8%. It was noted in table 4 on page 18 that if actual pay was used on this scenario this would have a disproportionate effect on other groups. Using WTE as in table 3 on page 15 most people would move down a tier. Phil McEvoy noted that whilst it seemed sensible to have a middle tier of 9.8% it would be unfair if this means many people pay less than they currently do. Garry Swann suggested a wider band for 9.8% lowering the pay level used based on the current structure could be adopted to address the concern of many people contributing less than 9.8%.

5.17 Derek Lindsay said there was a current legal minimum of 5% total contribution for DC Schemes under Auto-Enrolment, which will increase in the coming years. However it was noted that DB schemes fell under different legislation for Auto-Enrolment based on the value of benefits accrued rather than the contribution rate paid. It was suggested that if the middle tier paid a bit extra the majority would fall in that band.

5.18 SAB discussed whether to consider members paying more for those in CARE with protected final salary benefits than those members with only CARE benefits, as it can be argued that even after transfer to the CARE scheme some members would still have substantial final salary benefits linked to their final salary at retirement. Phil McEvoy said that it was his view that the final salary link has now been paid for so the transition group should not be used to justify WTE.

5.19 Alan Robertson said he was concerned that if high earners leave the scheme there would be a greater burden on lower paid members due to the loss of income to the scheme.

5.20 In addition to the 0.2% increases required to meet the 9.8% yield it was also noted that an extra 0.5% would be needed to meet the yield if contributions were to move to being based on actual pay.

5.21 It was noted that option 5 illustrated what the percentages and numbers would like if everyone paid the same net of income tax.

5.22 Option 6 on page 24 set out contribution rates for a banding option. The overall percentage could look off putting and hard to explain to members. It was noted in E&W they were looking at this possibility to avoid the cliff edges in the scheme as now but because Scotland had changed

the pay bandings each year there had not been the same problem. Jim Preston said that with the changes to the Scottish tax system, banding might be easier to explain to Scottish members. Michael Rae said it would be important to set a top rate percentage and work from there to derive the spread in effective contributions across the membership

5.23 The discussion on contributions concluded with the position that SAB members would reflect on what they had heard and consult with their own constituencies as to what principles they wished to apply.

6. A.O.B

6.1 The Chair noted that it was Sharon Liptrott's last meeting and thanked her for her contribution over the years.

7. Date of next meeting

7.1 The next meeting will be held on 14 June 2018 at Victoria Quay, Edinburgh. A room has been booked from 11.00 a.m. for the full day.