

NHS Pension Scheme Scotland

Scheme Advisory Board

Minutes

Date: 9 May 2019

Meeting reference:

Location: St Andrew's House Edinburgh

Chair: Derek Lindsay (NHS A&A)

Attendees: Members

Alan Robertson (BMA)
Graham Pirie (CoP)

Scottish Government

Lorimer Mackenzie (SPPA)
Jim Preston (SPPA)
Greg Walker (SPPA)
Laura Zeballos (SGHD)

By telephone link

Lorraine Hunter (NHS Grampian)
Phil McEvoy (BDA)
Garry Swann (GAD)

Secretariat

Carole Bertram (SPPA)

Apologies:

Colin Cowie (SGHD)
Margo McGurk(NHS24)
Dorothy Wright (NES)
Willie Duffy (Unison)
Jane Christie-Flight
(UNITE)
Ros Shaw (RCN)
George Russell (GAD)
Jackie Mitchell (RCM)

1. Welcome and Apologies

1.1 The Chair welcomed everyone to the meeting and led introductions.

1.2 All confirmed that they had no conflicts of interest.

1.3 Chair advised it had been 6 months since last meeting and this was because of the pause in the cost cap process due to the McCloud/Sargeant court cases about discrimination in the 2015 scheme's transitional protections.

2. Minutes of the meeting held on 16 November 2018

2.1 Graham Pirie asked for his title to be amended to College of Podiatry

2.2 The Chair requested 6.2 to be amended from "felt" to "stated"

2.3 The Chair requested 6.13 to remove reference to 'point 7' and insert 'reduction in Early Retirement Factor (ERF)'.

2.5 The minutes were approved, subject to amendments, as a correct record of the meeting. The minutes of 16 November 2018 and all previous minutes will be published on SPPA website.

2.6 There was a discussion about action point 2018/10 and the timescales for considering changes to the contribution structure in light of the pause in the cost cap process, and the outcome of the McCloud/Sargeant litigation. It was agreed to carry this forward until the outcome of McCloud/Sargeant is known.

2.7 Lorraine Hunter again highlighted the required lead time for any payroll system development once changes to the contribution structure are known.

2.8 In reference to action point 2019/01 the Chair asked if the minutes could record the process SPPA went through with the SAB's draft letter to Ministers, including why it couldn't be submitted to Ministers.

2.9 The process was as follows. On 26 November 2018 SPPA circulated to the SAB the final agreed draft of the letter to the Minister confirming the SAB recommendations on cost cap rectifications. At the same time SPPA confirmed that before presenting the advice to the Minister it had approached HMT for its view on the proposals to establish what, if any, issues it may have on the agreed points. A response was not received from HMT and following the announcement of the McCloud/Sargeant Court of Appeal case on 17 December HMT's consideration on how the cost cap rectification work across the public service schemes became subject to review. Details of HMT's view on the proposed rectification was therefore not received and HMT announced in January that work on the cost cap should be paused due to the Court of Appeal case. On that basis those schemes where rectification recommendation had still to be presented to the Minister were similarly paused.

3. Matters arising

McCloud Litigation

3.1 Lorimer Mackenzie summarised the McCloud/Sargeant litigation which is based on the transitional protections in the 2015 scheme and determined by the Court of Appeal to discriminate on the grounds of age. The UK Government sought leave to appeal that decision to the Supreme Court on 17 January 2019, and a decision is not expected before July. If the UK Government are not granted leave to appeal it is understood that the case will be returned to the Employment Tribunal (ET) and a remedy to remove the age discrimination will be prepared. If this is the case it is estimated that the ET will consider the case towards the end of the year. The Employment Tribunal cases cover the transitional protections provided in the Judicial and Firefighters scheme and given similar protections were provided in other public service schemes expect this outcome to read across to those other schemes including the NHS.

3.2 Lorimer Mackenzie discussed potential remedies, including returning all members to the final salary schemes until a date in the future but highlighted that there are many unknowns. SPPA is part of both a Treasury Steering Group looking at the potential outcomes from the McCloud/Sargeant cases and an associated technical working group.

3.3 Phil McEvoy highlighted the importance of all parties having a say in developing the remedy for the scheme and asked if it was a realistic outcome that some people might lose out as a result of the changes.

3.4 Lorimer Mackenzie replied that the landscape timescale of any changes will depend on the details of any remedy and the period that it applies. It would seem convenient to include the period of the remedy up to March 2022 which would tie in with the date when all those with full protection will have reached their scheme's normal pension age. The overriding expected principle will be that a member is no worse off than they would have been and details of any impact will become clear once details of any remedy are known.

3.5 Lorimer Mackenzie highlighted that the estimated cost of the McCloud/Sargeant remedy for all UK public sector pension schemes is about £4 billion and HM Treasury have advised that this is roughly the same cost as rectifying the cost cap across all public sector schemes.

3.6 The Chair raised the issue that if the cost of McCloud remedy removed the breach in the cost cap would this remove the SAB's opportunity to change the contribution structure and improve benefits as had been planned as part of the cost cap rectification.

3.7 There was further discussion around the remedy and potential implications, including managing pension events that take place in the interim between the start of the CARE scheme in 2015 and the potential new CARE start date.

3.8 Lorimer Mackenzie discussed two potential solutions one being a choice exercise where members could choose whether their service, in the interim period, should count as service in the final salary or CARE scheme or an underpin where a calculation is done at retirement to assess which pension, final salary or CARE, is most beneficial.

3.9 Garry Swann advised that there are a number of moving parts, in terms of any remedy, and the next steps are unknown, GAD are working with all schemes to provide advice. Garry Swann

also commented that initial estimates for the cost of McCloud/Sargeant for the NHS Scheme in Scotland will be close to the amount of the cost cap breach.

3.10 Graham Pirie asked if all UK public sector schemes are in the same position and Lorimer Mackenzie confirmed that this was the case.

3.11 Jim Preston suggested that, in all likelihood, the post remedy scheme will be the current CARE arrangements.

Annual Allowance – Pension Flexibilities

3.12 The Chair advised that the issues with AA are becoming more prevalent and increasingly consultants are choosing not to take on additional ‘waiting list’ work for fear of incurring an AA tax charge.

3.13 Lorimer Mackenzie summarised that AA is affecting high earners – senior clinicians and GP’s and it’s a complex landscape. There is anecdotal evidence of this issue and Lorimer highlighted the work SG Health colleagues, employers and the BMA are undertaking to establish the evidence base, and commented that pension tax issues are not the only reason why GPs are retiring early, things like workload are also a driver.

3.14 The Chair asked if Trusts in England and Wales have more flexibility in terms of paying consultants the employer pension contributions directly where the member has opted out of the scheme. Lorimer Mackenzie confirmed that Trusts in England and Wales do have more flexibility.

3.15 The Chair commented that allowing flexibility, in terms of the level of member pension contributions, will lead to reduction in income for HM Treasury and therefore it seems unlikely they will allow this.

3.16 Laura Zeballos gave a brief update on discussions with the BMA on this issue at a recent bilateral meeting. The BMA and SG agreed to look at establishing the evidence base in terms of evidence of consultants reducing PAs and the impact on retirements arising from the impact of AA and LTA charges.

3.17 Lorimer Mackenzie commented on the data that SPPA currently hold around opt outs does not tell us anything about members who opt out as a result of AA/LTA.

3.18 Alan Robertson highlighted the issues with waiting on evidence of consultants dropping PAs or members opting out of the scheme, as there is an obvious time lag in gathering this evidence and by the time we have it, it may be too late to protect service delivery. Alan informed the group of the increased frequency of which he is now having pension discussions with BMA members.

3.19 Alan Robertson discussed the main issues which Doctors dropping sessions and that the service in total reward package includes the employer contribution to the pension scheme so therefore there are grounds to pay that amount to the member where they opt out of the scheme due to the AA impact.

3.20 Alan Robertson commented on the difficulties Doctors have getting good financial advice and highlighted the BMA’s plans to develop a calculator in order to provide its members with ‘ball park’ figures.

3.21 Lorimer Mackenzie confirmed that SPPA are having regular conversations with HM Treasury and are aware that the only flexibility they are minded to allow is 50/50. Lorimer advised there is lack of evidence on the impact 50/50 in the Local Government Pension Scheme. Any flexibilities in the scheme would be complex and expensive to administer and HM Treasury will not want flexibility to lead to a reduction in contribution income.

3.22 Laura Zeballos confirmed the Cabinet Secretary Health is aware of the issues, and is committed to a programme of work to find solutions.

3.23 Phil McEvoy explained that anecdotal evidence is all that exists at the moment and by the time we get the empirical evidence it'll be too late. Phil asked if 50/50 is adopted in England & Wales would we adopt it in Scotland

3.24 Lorimer Mackenzie commented that workforce issues could be influencing Doctors decisions and not necessarily pensions, there is no evidence at the moment that pension taxation issues are making Doctors leave the NHS. Any changes to the scheme in England and Wales that provide greater flexibilities will be considered by the Scottish Ministers having considered the advice of the SAB.

3.25 The Chair summarised that the reason Doctors are leaving the NHS/refusing to take on additional work is due to the interaction between pensions, pay and tax policy

3.26 Laura Zeballos commented that the extent to which AA issues are driving behaviours is unknown at the moment.

3.27 The Chair asked Lorraine Hunter if there is any evidence from payroll departments about consultants choosing to reduce work. Lorraine Hunter replied that she has experienced issues around clinical lead allowances and whether they can be non-pensionable. Lorraine commented that the issue is less about Doctors leaving the NHS but more about consultants giving up sessions and refusing to take clinical lead roles.

3.28 Alan Robertson asked if we could capture data on the reasons why Doctors were dropping EPA's and Laura Zeballos replied SG could potentially do an exercise.

3.29 The Chair asked if consultants are opting out and in again during the same tax year. Alan Robertson replied that this is more common amongst GPs than amongst consultants. Lorraine Hunter noted that she has not seen much evidence of doctors opting out and back in again but more evidence of doctors opting out and staying out of the scheme.

4. Participation and Opt Out Statistics

4.1 Greg Walker talked through the participation rate figures for 1 April 2017 – 31 March 2019. Overall participation has remained broadly stable amongst those on the AfC pay bands, with only a marginal decrease in participation over the period from 90.6% to 90.3%. Medical and Dental hospital staff participation remains steady, and above the hospital staff average, decreasing slightly over the period from 94.0% to 93.8%.

4.2 Greg Walker commented that one noticeable trend was that participation rates taper off after age 60. The Chair asked if this was related to AA/LTA issues. Greg replied that it is not clear

why, the figures are likely influenced by members retiring from the pension scheme and returning to work but opting out of the scheme.

4.3 Greg Walker presented the opt out paper covering opt out data between 1 January 2017 to 31 March 2019. The stand out statistics in the opt out paper were the number of people opting out for 'personal financial reasons' which was considerably higher than the other reasons. However, it's unclear how many of these opt outs for financial reasons relate to AA/LTA reasons.

4.4 Jim Preston commented that financial matters could relate to those lower paid employees who find the pension scheme unaffordable. 50/50 was originally introduced into the LGPS for lower paid staff and not as a flexibility for higher paid staff to manage tax charges.

4.5 Phil McEvoy commented that the opt out figures reinforced the case for flexibility within the scheme.

4.6 Lorimer Mackenzie discussed reviewing the questions members are asked upon opting out with a view to improving the usefulness of the opt out data. Lorimer asked the SAB what question they would like to see asked.

4.7 The Chair said that the 'other' option as a reason for opting out needs to be refined. Alan Robertson asked if SPPA capture this information for Practitioners and it was confirmed that SPPA did.

4.8 Alan Robertson commented that it is important we capture if members who are opting out are doing so on a permanent or temporary basis.

4.9 The Chair asked Phil McEvoy why dentist's participation is low at 80%. Phil McEvoy replied that he was surprised how low the figures were although the figures are higher in England. Greg Walker confirmed Dental practitioner figures for 18/19 should be available soon.

AP2019/02 – SPPA to circulate 2018/19 GP and Dentist participation rates

5. Walker v Innospec Judgement

5.1 Jim Preston gave a brief summary of the paper on the proposed changes to survivor benefits in the NHS Pension Scheme as a result of the Walker v Innospec judgement.

5.2 The Chair commented that providing widower's pension in the NHS Scheme based on pre 88 service would be too expensive. Lorimer Mackenzie confirmed Walker pre 88 discrimination had been ruled by the Barber case in the European Court as being too expensive to allow.

5.3 Jim Preston highlighted the risk of challenge in the event of mixed sex civil partnerships being introduced depending on how male survivors of those relationships were treated.

6. Annual Allowance - Information for members

6.1 Alan Robertson raised the issue of when and how information about Annual Allowance is provided to members. Alan clarified that members are only sent a Pension Savings Statement (PSS) if they have a single scheme breach in either the 1995/2008 or 2015 scheme

6.2 Jim Preston confirmed that if a member breaches the AA limit as a result of a combination of their benefits in the 1995/2008 scheme and the 2015 scheme then no PSS is currently issued as they are treated as separate schemes. This meets SPPA's legislative requirements.

6.2 Alan Robertson highlighted concerns about HMRC investigating combination breaches and requested that clear PSS are issued for combination breaches.

6.3 Jim Preston highlighted that this would be a resource issue for SPPA Customer Services, particularly due to the number of high earners in the NHS Scheme. Members can request a PSS and SPPA are required to provide one within 3 months.

6.4 Alan Robertson asked about the availability AA information, could members potentially download their own data for the purposes of calculating any potential AA breach; this would be particularly helpful for GP members to download dynamisation information. Having access to this information would help them to at least get ballpark figures.

6.6 Lorimer Mackenzie committed to ask SPPA Customer Services about what can be done and what their plans are to make AA information more accessible to scheme members.

AP2019/03 – SPPA to consult with Customer Services team to establish what can be done and what their plans are to make AA information more accessible to scheme members.

8. A.O.B.

8.1 Date of next meeting

The secretariat will send out poll to find best date for next meeting in early September and a further meeting in early December.