

NHS Pension Scheme Scotland

Scheme Advisory Board

Agreed Minutes

Date: 5 September 2019

Meeting reference:

Location: St Andrew's House Edinburgh

Chair: Willie Duffy (Unison)

Attendees:

Members

Derek Lindsay (NHS A&A)

Margo McGurk (NHS24)

Jackie Mitchell (RCM)

Scottish Government

Lorimer Mackenzie (SPPA)

Jim Preston (SPPA)

Greg Walker (SPPA)

Laura Zeballos (SGHD)

By telephone link

Lorraine Hunter (NHS Grampian)

Phil McEvoy (BDA)

Alan Robertson (BMA)

By Invitation

George Russell (GAD)

Secretariat

Carole Bertram (SPPA)

Apologies:

Dorothy Wright (NES)

Jane Christie-Flight
(UNITE)

Ros Shaw (RCN)

Garry Swann (GAD)

Graham Pirie (CoP)

Colin Cowie (SGHD)

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.

2. Minutes of the meeting held on 9 May 2019

2.1 The Chair asked if there was any amendments to the minutes of previous meeting on 9 May 2019.

2.2 The minutes were approved with no amendments, and will now be published on the SPPA website.

3. Matters arising

3.1 There was a discussion about action point 2019/03 and what information can be made available to members around Annual Allowance (AA). Jim Preston highlighted that this issue will be discussed later on the meeting agenda as part discussions around pension flexibilities and the Department for Health and Social Care's (DHSC) proposals for creating a modeller to help consultants make decisions about proposed flexibilities.

3.2 Lorimer Mackenzie highlighted the issues SPPA have with data around AA for certain groups of staff.

3.3 Alan Robertson highlighted issues with navigating the website and asked if it could be made easier for members to request a Pension Savings Statement when they are on the SPPA Website/My Pension Online site. SPPA will investigate as part of action 2019/03 which is carried forward.

3.4 Phil McEvoy asked SPPA to send out GP and Dentist participation rates to SAB members (Action Log 2019/02). Greg Walker confirmed this will be issued before the next SAB meeting.

4. Annual Allowance – Pension Flexibilities

4.1 Jim Preston summarised consultation paper issued by DHSC on 22 July 2019 and confirmed the revised consultation document, previously announced by DHSC, will be issued in week commencing 9 September.

4.2 Jim Preston highlighted that the new consultation will go beyond the 50:50 flexibility and will offer full flexibility from 10:10 (e.g. 10% accrual with 10% contributions) to 90:90. The new consultation will propose to allow senior clinicians to select their level of accrual at a personal 'safe' level in order to avoid a tax charge, before the start of each scheme year (1 April), and at the end of the year they will then be able to fine tune their accrual, by updating their initial elected accrual rate, when they are clearer on total earnings (e.g. rising from 50%:50% to 60%:60%).

4.3 Phil McEvoy commented on the proposal that employee and employer costs, arising from changes in accrual at the end of the financial year, will be payable as a lump sum in March pay.

4.4 Phil also informed the group that the revised consultation document will seek views on the principle of phasing the pensionability of large pay increases for high earners, in order to avoid an AA tax charge and on possible ways to give this effect.

4.5 Alan Robertson emphasised the issues with AA are a tax issue and cannot be resolved by making changes to pension scheme regulations.

4.6 Phil McEvoy highlighted that the Technical Advisory Group (TAG) in England and Wales was commissioned by the England and Wales SAB to explore and analyse various options for introducing scheme flexibilities. The TAG came up with the option of calculating a combined pension input amount (PIA) across the 1995, 2008 and 2015 schemes as it is currently calculated separately under HMRC rules. The impact of the combined PIA calculation would make it easier for members to understand their pension tax position and if the PIA is negative in one of the schemes it could reduce the combined PIA figure and may help mitigate an AA charge.

4.7 Greg Walker advised that he understood the 'combined PIA' proposal will not feature in the DHSC consultation paper as it was felt this would require a change to HMRC legislation rather than a change to pension scheme regulations.

4.8 Willie Duffy asked if it was SPPA's intention to issue a separate consultation on pension flexibilities in Scotland.

4.9 Jim Preston replied, due to time constraints, SPPA will primarily consult with the SAB around developing any response to the England and Wales consultation. SPPA will also issue a circular to the NHS in Scotland asking for views from across the service to be communicated to SAB members, or directly to SPPA, for consideration by the SAB prior to submitting any consultation response or providing advice to Scottish Ministers.

4.10 Laura Zeballos commented on the timescales for the consultation which has now been shortened to 8 weeks and highlighted that the outcome of the consultation and the UK Government's response will determine the flexibilities which will be available for use in the scheme in Scotland.

4.11 Lorimer Mackenzie highlighted that there is an understanding that the scheme in England and Wales and the scheme in Scotland should remain similar for the purposes of staff who transfer employment between the England and Wales and Scotland. HM Treasury are aware of this and therefore any agreement between HM Treasury and DHSC, around flexibilities allowed in the scheme in England and Wales, should also apply to the scheme in Scotland.

4.12 Derek Lindsay raised the point that the SAB may wish to advise that we do something different in Scotland because the framework if the NHS in Scotland is different. For example, the flexibility to recycle employer contributions to senior clinicians as salary might be something we choose not to do in Scotland.

4.13 Laura Zeballos highlighted the guidance that had been issued by NHS Employers setting out flexibilities that could be used in the current financial year to deal with AA issue which included recycling of employer contributions.

4.14 Willie Duffy asked for Lorraine Hunter's view on the pension flexibilities and the potential implications for NHS Boards' payroll.

4.15 Lorraine Hunter replied that flexibilities bring a lot of technical issues for payroll, particularly around having varying levels of contributions for individuals. Lorraine suggested that the technical aspects of this proposal should be discussed by the Technical Working Group but she is unaware if they still meet regularly.

4.16 Jim Preston set out the time line for implementing changes to the scheme by April 2020. The consultation will be published in week commencing 9th September and will close towards the end of October. We should expect a consultation response from DHSC in November/December where proposal will be agreed. At that point SAB will provide advice to Ministers and final decision taken on flexibilities for the scheme in Scotland, following that Regulations will be consulted on in January 2020 and come into effect from April 2020.

4.17 Phil McEvoy commented on the time line, that if the proposals are implemented from April 2020 members will have to make a choice on any election in February/March 2020. Phil asked if SPPA would have time to develop a modeller and make additional information available to consultants by that date.

4.18 Jim Preston said that he would need to discuss with Customer Services department at SPPA and highlighted that the England and Wales modeller is being funded by the Department of Health.

4.19 Willie Duffy asked if flexibilities are adopted for the scheme in Scotland and they are popular amongst senior clinicians, will this have an impact on reducing the contribution yield from 9.8%, and could that impact on everybody else in the scheme through increases in member contributions.

4.20 Alan Robertson commented that if we failed to implement any flexibilities we would also see a drop in the yield through an increase in the number of senior clinicians opting out of the scheme.

4.21 Jim Preston advised the yield is fixed a 9.8% and if the scheme was generating a lower yield then the contribution levels would be adjusted at the next valuation for the scheme. Jim highlighted that the bulk of the contribution yield comes from members earning between £25k and £40k

4.22 There was further discussion about the impact of implementing flexibilities on funding for the scheme and whether or not HM Treasury will reduce funding/claw money back from Departments and how that would be reflected in Scotland, possibly through Barnett consequentials. Lorimer Mackenzie advised that this was currently unclear but we would receive an early warning of impact on funding.

4.23 George Russell commented that it was estimated that 50:50 would reduce the yield by 0.2% in the scheme in England and Wales and if HMT insisted on keeping the yield at 9.6% that shortfall would have to be met by the Department for Health or members through increased contributions.

4.24 Jim Preston commented that alongside the proposed flexibilities, there is also commitment by HMT to review the operation of the AA taper. There is a clear message from HMT that pension tax relief is very expensive but consideration is being given to the impact the AA taper is having across the public service.

5. Pension Allowances

5.1 Jim Preston gave a summary of the Pensionable Allowance paper and the aim of reviewing these allowances which is to try and establish what allowances across the service were being treated as pensionable and whether there was a consistent approach being taken. Not having a consistent approach not only creates issues with administering the scheme but also on member's pensions, where one employer may be treating an allowance as pensionable whilst another doesn't.

5.2 Lorraine Hunter gave a summary of her comments on the document which was drafted by representatives from the Technical Working Group (TWG). Lorraine made the point that views around pensionability of some allowances and whether or not they should be updated goes against guidance issued to employers by SPPA. Lorraine feels the paper should be returned to the TWG to be updated with information about how these allowances are currently being treated in NHS Boards and identify where there are inconsistencies.

5.3 There was a discussion about what is current practice across the service and whether or not the document currently reflects this and is in line with SPPA's own guidance. There was a feeling that the document should go back to the TWG and be amended to capture how allowances are treated across Scotland.

5.4 Jim Preston explained this has already been to TWG and they have exhausted discussions on it. Jim highlighted that there has recently been a focus on the uprating of unsociable hours allowance and setting the contribution rate for part time members, as a result of a Pension Ombudsman decision, which has been communicated to employers via a circular.

5.5 Alan Robertson noted that the comments on the document were helpful but it would be better if the document could be tidied up to reflect the current position on each allowance.

5.6 Greg Walker to pass the document to TWG for consideration before tidying it up presenting to the SAB at a future meeting.

5.7 Phil McEvoy asked if the SPPA guidance on Pensionable Allowances, referenced in the comments on the document, can be circulated.

AP2019/04 – SPPA to circulate copies of SPPA's pensionable allowances guidance to SAB

5.8 Lorraine Hunter highlighted the link with HRG and MSG and a potential role those groups could have in ensuring consistency. Phil McEvoy emphasised that these allowances must be treated consistently.

5.9 Jackie Mitchell highlighted a potential issue with changes to midwives contracts and the pensionability of on-call payments. There followed a discussion about the on-call payments.

5.10 Jim Preston reiterated the issue with pensionable allowances being agreed without consideration of the impact on the scheme.

5.11 Willie Duffy queried why overtime which is contracted is not pensionable and there was a discussion about the pensionability of overtime in final salary and career average schemes. It was agreed that the issue of overtime being pensionable in the career average scheme was beyond the scope of this document and is perhaps something that could be discussed by the SAB in the future.

5.12 There was a discussion around a number of specific allowances where there appeared to be consensus in the document. There followed a discussion about 'regular payments' and what constituted regular and the interpretation of regular often led to inconsistencies in how NHS Boards are treating allowances.

5.13 Derek Lindsay commented that an agreed position on whether each allowance was pensionable or not would be desirable as it would remove the inconsistency across different Health Boards.

5.14 Alan Robertson highlighted the situation with pensionable allowances in England and Wales where there was flexibility for Consultants to choose whether or not they wanted to make allowances, like responsibility allowance, pensionable or not."

5.15 Lorraine Hunter highlighted the issues for payroll teams where they are unable to establish whether an allowance is regular and that allowances are 'hard coded' in the payroll system to be pensionable or non-pensionable and whether or not they are to be updated.

5.16 Willie Duffy summarised discussions and asked TWG to reconsider and submit paper to SAB on 30 September 2019 if possible

AP2019/05 – SPPA to circulate document to TWG for feedback on position across the service and present clean document back to a future meeting of the SAB

6. A.O.B.

Cost of McCloud Remedy

6.1 Willie Duffy asked about the £4 bn cost of the McCloud remedy across the public sector which was quoted by HM Treasury. Willie queried where that figure has come from and how was it able to be calculated when we don't yet know what the remedy is going to be.

6.2 Phil McEvoy commented that the NHS Pension Scheme England and Wales accounts for 2018/19 included a reference to an increase in past service costs of £7.2 bn in relation to the cost of the McCloud remedy.

6.3 George Russell advised that the Scottish scheme's 2018/19 resource accounts included an allowance of £0.7bn for the additional past service liability arising from the judgment. George explained how this estimate had been calculated. For completeness, relevant extracts from GAD's 2018/19 resource accounts report are set out below.

Implications of the McCloud/Sargeant judgment

2.7 GAD has been instructed by SPPA to include an allowance in the end of year liabilities shown in this report for the additional liability potentially arising from the McCloud/Sargeant judgment. This allowance is a past service cost of £0.7bn. The methodology used to calculate the potential costs arising from the McCloud/Sargeant judgment is set out in paragraphs 3.10 to 3.17.

2.8 The estimated additional liability is very sensitive to the difference between the assumed rate of salary growth and CPI inflation (which is used for revaluation in the 2015 scheme). The costs are based on an assumption that salaries increase by 1.5% p.a. in excess of CPI; if salaries increase by only 1% p.a. in excess of CPI then the additional liability is expected to be around half the amount in paragraph 2.7.

Calculation approach for the McCloud/Sargeant legal judgment

3.10 The approach we have taken to the additional liability calculation is to calculate the costs for an average member, grouped by age and section based on which scheme (pre or post 2015 scheme) provides the higher value of benefits over the 4 years to 31 March 2019. This covers all members i.e. unprotected, protected and tapered members as at 2016 [the effective date of the most recent actuarial valuation] and new entrants since this date.

3.11 This represents one possible form of compensation, namely putting members in the relevant pre-2015 scheme or the 2015 scheme that would be expected (under the assumptions used at the calculation date) to provide more generous benefits for that member over the relevant period. This is not the same as calculating which scheme provides better benefits at retirement for each member. If the remedy was a 'better of' approach for members at retirement then this would require the projection of various different scenarios of pay increases, retirements and withdrawals and the cost would likely be higher than estimated.

6.4 It was noted that there were a number of differences between the methodology used to estimate potential McCloud/Sargeant costs for resource accounts purposes for each public service pension scheme, as compared with that used to determine HM Treasury's (HMT) estimated cost of £4bn for UK public service pension schemes at a whole. In particular, the HMT-mandated market-related discount rate used for resource accounts is considerably lower than the SCAPE discount rate understood to underpin HMT's aggregate estimate of £4bn. Given the ongoing uncertainty as to the nature of the McCloud/Sargeant remedy, and the consequent implications for the nature/timing of the next round of actuarial valuations and the operation of the cost cap, it is not currently possible to gauge whether the scheme would continue to breach the cost cap following remedy implementation.

6.5 Derek Lindsay enquired about how cost of the McCloud remedy will impact the cost cap Lorimer Mackenzie replied that we remain unsure about how this will affect the cost cap and George Russell advised GAD will be asked to review the Cost Cap.

Scottish Government funding for 6% employer contribution increase

6.6 Phil McEvoy asked if funding for employers to cover the 6% increase in employer contribution had been finalised. Willie Duffy confirmed that the Cabinet Secretary for Health and Sport wrote to NHS Employers confirming full funding for the increase and highlighted that the Scottish Government was meeting the shortfall in funding from HMT of £48.4 million.

6.7 Jim Preston made the group aware of the outcome of the Langford case. Mrs Langford was the unmarried partner of Christopher Green a member of the RAF pension scheme. Mrs Langford won her appeal against being disallowed a partners pension because she was still legally married to someone else. The MOD is seeking to appeal.

7.0 Date of next meeting

9.1 There was discussion about the date of the meeting, following the next meeting on 30 September, which will be important for considering the outcome of the England and Wales consultation. It was agreed to fix a date at the 30 September meeting, when the timescales for the E&W consultation would be clearer.

9.2 Jim Preston asked SAB members to consider any analysis they might wish GAD to carry out in relation to flexibilities and send requests to SPPA ahead of the meeting on 30th September.

AP2019/06 - SAB members to consider any analysis they might wish GAD to carry out in relation to flexibilities and send requests to SPPA ahead of the meeting on 30th September.