

NHS Pension Scheme Scotland

Scheme Advisory Board

NHS SAB 31/01/20 – 2a

Minutes

Date: 30 September 2019

**Meeting
reference:**

Location: St Andrew's House Edinburgh

Chair: Derek Lindsay (NHS A&A)

Attendees: **Members**

Alan Robertson (BMA)
Margo McGurk (NHS 24) by telephone
Ros Shaw (RCN)
George Russell (GAD)
Lorraine Hunter (NHS Grampian)

Scottish Government

Jim Preston (SPPA)
Greg Walker (SPPA)

Secretariat

Lorraine Gallagher (SPPA)

Apologies: Dorothy Wright (NES)
Jackie Mitchell (RCM)
Graham Pirie (CoP)
Garry Swann (GAD)
Willie Duffy (Unison)
Jane Christie-Flight (UNITE)
Phil McEvoy (BDA)

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 5 September 2019

Paper 2a – Draft SAB minutes of 5 September 2019

2.2 The Chair discussed the minutes with the group and they were agreed as accurate subject to the following amendments:

- Paragraph 4.5 – Alan Robertson asked for the word ‘replied’ to be amended to ‘emphasised’.
- Paragraph 4.6 - Second line to be amended from “explore an”, to “explore and”

2.3 Alan Robertson noted, in response to a comment in paragraph 4.24 ‘pension tax relief is very expensive’, that contributions exceeding the annual allowance in 2017-18 were £812m but contributions as a result of the AA taper were a small percentage of that total.

2.4 Discussion followed around the cost to HMT of pension tax relief, Jim Preston reiterated that tax relief is expensive but also noted that 2/3 was paid by the private sector.

2.5 George Russell suggested that the figures on contributions on above the AA demonstrate HMT’s pension tax policy is working successfully.

- Paragraph 5.13 – Alan Robertson raised a point that had not been captured in the minute of the discussions around pensionable allowances and asked for the following point to be inserted after paragraph 5.13

“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.”

2.6 Alan Robertson asked in relation to the GAD extract of the 2018/19 resource accounts, why GAD had chosen 1.5% in excess of CPI as an assumption around salaries when this doesn’t accurately reflect wage increases in the NHS. George Russell confirmed that this based on longer term assumptions.

2.7 The chair commented that there were some small typing errors, SPPA will check and amend accordingly.

Paper 2b – Action Log

2.8 Action 2019/02 – SPPA to circulate GP and Dentist participation rates, this has been circulated and the action will be marked as closed

2.9 Action 2019/03 – SPPA to consult with customer services to establish improvements in the AA information available to scheme members, this action has been closed. Greg Walker provided the following update;

SPPA are working towards replacing the My Pension Online (MPO) portal with a new Member Self Service portal from February 2020. Member Self Service (MSS) will allow members to view elements of their data held on the pension administration system, it is hoped this will include the AA data view which provides the details included on the PSS

Customer services acknowledge there should be an AA ‘contact us’ option on MPO and are currently looking at making a change to the site to provide one.

MPO is not available for deferred members although this may change with the introduction of MSS.

MSS will provide members with access to their data but this wouldn't automatically include 'dynamising' information as this is created outside the pension admin system. SPPA will look at how this information could be made available but this looks difficult without system changes.

2.10 Action 2019/04 – SPPA to circulate copies of SPPA's pensionable allowance guidance to the SAB – carried forward

2.11 Action 2019/05 – SPPA to circulate pensionable allowances document to the Technical Working Group (TWG) for feedback on the current position and present the document to a future SAB – This has been circulated to payroll leads and will require further discussion

2.12 Action 2019/06 – 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 2019 – This action has been closed, no requests were received by SPPA.

3. Annual Allowance – Pension Flexibilities

Paper 3a – GAD summary of NHS pension flexibility consultation

3.1 George Russell talked through the paper noting that the driver behind this was not to allow people to avoid the AA tax implications but to acknowledge areas which could be assessed to support members, the key message of the report is proposing additional support and flexibilities for potentially affected members.

3.2 George Russell talked about the potential of flexible accrual, allowing affected members to make a choice at the start of the scheme year to propose a personal accrual level, with the potential to 'fine tune' this close to the end of the tax year.

3.3 It was also noted that the introduction of flexibilities would not interrupt the delivery of ancillary benefits, such as death in service and survivor eligibility, along with ill-health retirement cover.

3.4 It was noted that the employer contribution (required under flexible accrual) will include the cost of pension benefit accrual, ancillary benefits, and shortfall recovery.

3.5 Where the member has elected to increase their accrual level later in the year, both the member and employer would be required to pay the associated higher contribution rate, along with backdated payments to the start of the scheme year.

3.6 Alan Robertson raised the issue of how a member's NI contributions would be dealt with, where one annual adjustment is required to the accrual rate. Jim Preston commented that this level of detail is not currently available.

3.7 The SAB moved to discussions regarding the impact of large pay increases which can create a spike in a member's pension growth and a higher annual allowance tax charge, disproportionate to future years. It was discussed that the proportion of the pay increase that is pensionable could be gradually phased allowing the smoothing of pension growth. This could however have an adverse effect on members who leave the scheme mid-way through the phasing period as well as death in service and ill-health benefits during the phasing period.

3.8 Possible support mechanisms for members were discussed and it was agreed that a modeller should be commissioned to help individuals assess options for using flexibilities. The modeller would also support employers and members to monitor working activities with a clear understanding of their pension tax liability.

3.9 The targeting of flexibilities and member eligibility were discussed concluding that the interaction of pension tax with the NHS scheme is leading to senior employees refusing to undertake extra work, reducing their hours or retiring early.

3.11 The Improving scheme pays proposal was discussed, however it was concluded that this proposal was immaterial as the NHS Scotland Pension Scheme currently uses the proposed 'non-defined contribution pot' NDC method.

3.12 The SAB discussed the consultation questions and agreed that they wished to provide a consultation response to the DHSC consultation which could also be used as the basis for advice to Scottish Ministers and that it should be drafted around the following key points:

3.12.1 The flexibilities should be extended to all NHS staff who are able to demonstrate a reasonable expectation that their prospective NHS commitments will result in pension growth exceeding their annual allowance. Whilst the AA policy when conceived was targeted at high earners it is recognised that a combination of long service and moderate earnings in a defined benefit scheme can result in an AA tax charge for many more NHS staff.

3.12.2 To offer flexibilities to all scheme members regardless of any taxation impact would undermine the overriding policy aim to encourage pension saving and would impact disproportionately on lower value pensions not caught by the AA limit. The SAB did however note that UNISON and British Dental Association support the introduction of greater flexibilities across the whole membership in recognition of the fact that this will offer options to members who would otherwise opt out of pension saving altogether.

3.12.3 While the flexibilities focus on AA, issues with Lifetime Allowance (LTA) can also lead staff to seek early retirement, or to reduce NHS work. It should be recognised that flexibilities could be used as a means to control exposure to this, and thereby members would not be compelled to take steps later in their career that are detrimental to NHS service provision.

3.12.4 The SAB's view is that the proposals to maximise the flexibility within the pension scheme, but do not go far enough in addressing what is an issue created by taxation policy which requires taxation changes to resolve it. It is the tax policy that needs to be changed rather than attempting to temporarily fix this issue, which only has the effect of reducing the total reward package available to scheme members.

3.12.5 There is an understandable reluctance for affected members to engage with what is a highly complex issue; it was suggested that many view the easiest option to manage pensions growth is by reducing sessions. A survey in NHS Grampian had 149 responses and 95% have requested a review of the AA/LTA rules with 90% wanting to stay in the scheme but having the flexibility to adjust their contributions to the scheme. It is recognised that the whole AA/LTA tax regime is extremely complex and adding flexibility adds to that complexity.

3.12.6 The key to the success of the flexibilities will be communication and the use of a proposed calculator will hopefully help individuals understand the potential impact of AA charges and how they can be better managed by restricting pension growth via a flexible

accrual rate. The flexibilities provide greater security on death in service and ancillary benefits which are at present reduced where members choose to opt out and back into the scheme to manage their pension growth.

3.12.7 Overall these proposed mitigations are in some way welcome, however the system is far too complex and changes to the tax policy are what is required to avoid decisions by individuals which could be detrimental to NHS services provision.

3.12.8 It is imperative that Pensions Savings Statements are made available to all members and that information is combined across all NHS Pension Schemes. This should be made available electronically, in conjunction with the electronically produced Pension Benefit Statements/Total Reward Statements. Developing this system for improved access to Savings Statements will require additional resource for scheme administrators.

3.12.9 The group supported the proposal of phasing large pensionable pay increases. Flexible accrual is the most effective way of controlling pension growth for members building up CARE benefits and phased pensionable pay is a more effective way of controlling pension growth from final salary benefits, due to large pay rises. The two are therefore complimentary where the member wishes to avoid a tax charge.

3.12.10 The proposal to target the flexibility to clinicians who have a reasonable prospect of an annual allowance tax charge. Senior clinicians who have long service uninterrupted by unpaid maternity leave tend to be male therefore there could be a case for discrimination on the grounds of sex; accrued pension in 1995 scheme increases the prospect of an annual allowance tax charge. There could also be discrimination on the grounds of age as length of membership of pension scheme and accrued pension in 1995 scheme.

3.12.11 The consultation sets out a number of equality impact considerations of introducing a policy of effectively ring fencing flexibilities to support the aim of reducing the current impact AA tax charges are having on the delivery of NHS services. The policy aim for the proposed flexibilities is to preserve NHS capacity by attenuating the disincentive to perform the services that the NHS needs because of member's tax position.

3.12.12 The assessment was made on the section of the scheme membership earning over £90,000 who are likely to be affected by an AA charge. Although similar data for the scheme in Scotland is not currently held it was felt that similar patterns would expect to emerge. However the impact of Lifetime Allowance charges (as set out above) should be included as part of this assessment.

3.12.13 The assessment also considered widening the proposed flexibilities to all members of the scheme regardless of whether an AA charge was likely or not. This includes the low paid and the consultation states that whilst lower earners would be unable to pay reduced contributions for a reduced pension benefit and consequently benefit from increasing their take-home pay, this is not the aim of the policy. Instead, the ability to increase take-home pay is an effect of members utilising flexible accrual to manage their annual allowance tax exposure. The consultation concludes that any changes to make the scheme more affordable to low earners should be considered within the scheme architecture as a whole and it is established policy that lower earners receive a reduction in their contribution rate in order to make pension contributions more affordable.

3.12.14 The SAB discussed the impact of having a flexible policy aligned only to a group affected by an AA charge and how that could be managed in terms of being a proportionate aim when considering equality issues around low pay. Further consideration will be needed to settle its position on these points.

Paper 3b – GAD examples of flexible accrual

3.13 The tables were discussed and Alan Robertson highlighted that there was no significant difference after scheme pays, comparing the full benefits against the options of 50:50 and 20:20. For full benefits after scheme pays the pension benefit is £36,599, after 50:50 this would reduce to £35,972 and for the 20:20 option a further reduction to £35,595. Balanced against this reduction in pension was retained the employee contributions of £11,245 (50:50) or £17,993 (20:20).

3.14 It was also highlighted that members may not be fully aware of the cost of purchasing additional pension and how much value they could receive in their NHS retirement benefits package. Alan Robertson noted that members should be aware of the value of employer contributions, which with recycling would be in addition to the retained employee contributions noted above.

Paper 3c – Consultation responses

3.15 The consultation was issued to stakeholders on 18th September 2019. The SAB agreed that the group should submit a response which can be used to support any future submission to Ministers and this should be ready for circulation 2 weeks prior to 1st November 2019, the closing date for the consultation. Alan Robertson noted that the recent BMA survey included GPs and he would be able to provide some headline figures. Input from each union will be included.

Action Point 2019/07 – SPPA to draft the SAB's response to the consultation based on discussions and circulate amongst SAB members for comment and sign-off from SAB chairs. SPPA will submit to DHSC before the 1 November 2019 deadline.

3.16 The timing of the laying of the flexibility regulations was discussed, with Jim Preston confirming that they will need to be laid by mid-February 2020 to come into force from April 2020.

4. A.O.B.

McCloud Judgement

4.1 Jim Preston provided a brief update on scheduled meetings for McCloud as work continues. A brief discussion followed noting that not one remedy would not necessarily fit all scenarios as some members may be better off in the 2015 scheme. It was also noted that the valuation process remains on hold, however GAD remain proactive.

Recycling of Employer Contributions

4.2 There was a discussion about the potential introduction of a recycling of employer contributions (REC) policy being introduced in Scotland as was being adopted by NHS Trusts in

England and Wales. Derek Lindsay noted that this had been discussed by NHS Employers as part of the MSG and they felt it was not appropriate.

4.3 Jim Preston noted that discussions were ongoing with the Cabinet Secretary for Health and Sport about the introduction of any REC policy.

4.4 Lorraine Hunter noted that she had met with NHS payroll managers to discuss coding and other issue which will affect the operational running of payrolls. Lorraine noted that the introduction of a REC policy might have implications for payroll systems.

5. Date of next meeting

5.1 The group agreed to a provisional meeting in December with the date to be confirmed by SPPA, tying into the outcome of the England and Wales consultation. The meeting will also be scheduled to follow the NHS England and Wales SAB. It was also agreed to look at proposed dates for 2020 to allow SAB members adequate notice to attend meetings.