

NHS Pension Scheme Scotland

Scheme Advisory Board

Draft Minutes

Date: 18 August 2020

Meeting reference: NHS Pension Scheme Advisory Board

Location: Virtual via Webex

Chair: Willie Duffy (Unison) [part] & Derek Lindsay (NHS A&A) [part]

Attendees: **Members**

Alan Robertson (BMA)
Ros Shaw (RCN)
Lorraine Hunter (NHS Grampian)
Phil McEvoy (BDA)
Jane Christie-Flight (Unite)
Jackie Mitchell (RCM)
Graham Pirie (CoP)
Robin McNaught (State Hospital)
Anne-Marie Pettie (GAD)
George Russell (GAD)

Scottish Government

Greg Walker (SPPA)
Iain Coltman (SPPA)
Daniel MacDonald (SGHD)

Secretariat

Carole Bertram (SPPA)

Apologies: Dorothy Wright (NES)

1. Welcome and Apologies

1.1 The Chair welcomed everyone to the meeting and led introductions. The Chair explained Derek Lindsay would take over the chair at 10.45 as he would have to leave the meeting early.

1.2 All confirmed that they had no conflicts of interest.

2. Minutes of the meeting held on 31 January 2020

Paper 2a – Draft SAB minutes of 31 January 2020

2.1 The Chair discussed the minutes with the group and they were agreed without any required changes.

Paper 2b – Action Log

2.2 Greg Walker confirmed that existing SPPA guidance on pensionable allowances had been shared with the group via email, therefore completing action point 2019/04 which should now be closed.

2.3 Derek Lindsay raised the issue of progress with action point 2019/05 which was also related to pensionable allowances.

2.4 Greg Walker confirmed that at the last SAB meeting on 30th January he updated that he had met with Lorraine Hunter and other payroll leads to discuss the pensionable allowances paper and they had advised it would be best for this paper to be reviewed by the SPPA and Employer technical working group (TWG). That group hadn't met for over a year and at the start of this year SPPA were looking reconvene that group and Lorraine and others were looking to refresh the membership from an employer point of view. Progress was halted by the Covid outbreak but Greg will be picking that up again shortly and has been in contact with Lorraine about trying to move forward with the review of the membership.

2.5 Willie Duffy asked about the likely timescale for the pensionable allowances work and when there might be something further for the SAB to consider. Greg Walker replied that it would be dependent on the time taken to reconvene the TWG.

2.6 Greg Walker gave an update on action point 2020/01 previously raised by Alan Robertson, requesting an update on the roll out of SPPA's member self-service (MSS) platform. Greg advised that members of the Police and Fire Pension Schemes are now live on the new MSS platform and that SPPA are currently undertaking a new level of training for staff on MSS. This will allow SPPA to investigate and improve what we can be offered for our active and pensioner members. There is no current go live date for NHS members, however, it is hoped this will be during 2020.

2.7 Alan Robertson enquired about access for deferred members. Greg Walker replied that he thought the current My Pension Online system would remain as being for active members and pensioners only and the focus would be on adding deferred members access to MSS but will check. Action point carried forward.

Matters Arising

2.8 There were no matters arising noted.

3. McCloud Consultation

Paper 3a – Public service pension schemes: changes to the transitional arrangements to the 2015 schemes - Consultation.

3.1 George Russell introduced Anne Marie Pettie from GAD who presented the first half of a slide presentation covering the McCloud consultation which was launched by HM Treasury (HMT) on 19 July 2020. Anne Marie gave an overview of the presentation and discussed the choice being presented to members, highlighting that the immediate choice is not an easy decision for members as there are a number of variables.

3.2 Derek Lindsay commented on the examples in the GAD presentation which used members of the 2008 Scheme to illustrate the choice and highlighted that majority of members were members of the 1995 scheme and perhaps an example using a 1995 scheme member would be more relevant.

3.3 George Russell replied that GAD had simply used the examples from the HMT consultation documents but GAD would be happy to provide examples covering the specifics of the NHS Scheme, including member pension examples using members of the 1995 Scheme.

AP2020/02 – GAD to provide member pension examples from the 1995 Scheme.

3.4 George Russell presented the second half of the GAD presentation covering the timing of member of choice, highlighting that eligible members will have the choice of membership of the legacy scheme or the reformed scheme for the remedy period of (1 April 2015 to 31 March 2022). The consultation asks whether members should make an immediate choice (within a couple of years of 2022) or have a deferred choice underpin (DCU) where they would be automatically returned to their legacy final salary scheme and once they get to retirement or crystallise their benefits, they would be given the choice to choose reformed scheme benefits.

3.5 George Russell also covered the next steps with the consultation which closes on 11th October and noted that HMT planned to hold a number of stakeholder engagement sessions and GAD will be working with SPPA to support SAB's response to the consultation.

3.6 George gave an overview of the information contained within the appendices which covers the technical detail within the consultation documents. George highlighted issues which are most pertinent to the NHS Scheme including; revisiting old cases, complications around annual benefit statement calculations and contingent decisions.

3.7 George Russell talked in more detail about the information in Annex B which covered the tax implications. The consultation document has sought to clarify how HMRC plan to address the McCloud situation. If the member chooses to stay in the scheme they are currently in for the remedy period, through immediate choice, there will be no change in their tax position but if they choose the alternative scheme, each year of the remedy period will need to be recalculated. If after reassessing that position the member owes additional tax to HMRC, HMRC will only recover tax for the current tax year and the last 4 tax years. However, if the member has overpaid tax HMRC will compensate the member for all the years of the remedy period.

3.8 George Russell also highlighted that if DCU is the prevailing option all eligible members will be deemed have been members of the legacy scheme over the remedy period. For those members who were not in the legacy scheme over this period this represents a change in benefits and AA calculations will have to be recalculated. If the member then opts for the reformed scheme at retirement the tax position would be reassessed and any tax impact would occur in a single tax year. The tax charge could be significant because of the design of DCU, therefore the UK Government will compensate individuals for AA tax charges in this scenario.

Derek Lindsay took over the Chair

3.9 Alan Robertson commented on the timing of the choice, that there is one negative and one positive for both options, however, the negative for immediate choice and the positive for DCU are the most important. Most people would prefer to ensure they make the better choice and get the most money. Alan stated that it seems fairly clear cut that DCU would be best for all members.

3.10 Alan raised the point of contingent decisions and asked if it would be on a case by case basis or would the criteria of what constitutes a contingent decision be set which would stop individual members having to raise the same issue.

3.11 Alan Robertson also asked about how the AA calculations would work and highlighted why DCU would also be the better option from a tax perspective as members could make a choice on which scheme 'after tax'. Alan highlighted the importance of any choice statement taking into account the tax element of the decision.

3.12 George Russell explained that issues with the AA have still to be worked through. George highlighted that HMRC believe this can be delivered and it will involve HMRC to retaining data going back many years.

3.13 Alan Robertson asked George Russell to explain the compensation by the UK Government under DCU. George clarified that if the member chooses at retirement to change to the reformed scheme and their pension increases, this could give rise to a significant pension growth in one year which could lead to a large tax charge. In this situation the UKG could compensate the member for this large tax charge.

3.14 The Chair asked for clarification of the wording in the consultation document in paragraph 1.23 relating to the application of the remedy in Scotland and the specifics of the NHS Scheme, and whether there is scope to do things differently in Scotland

3.15 Iain Coltman replied the Public Service Pensions framework is entirely reserved to the UK Government and the remedy will require changes to primary legislation over which Scottish Ministers have no vires. There may be different issues for individual schemes in Scotland which Scottish Ministers have devolved competence for but ultimately any changes suggested need the agreement of HMT.

3.16 The Chair asked if employers are expected to respond separately to the consultation. Greg Walker confirmed SAB would be encouraged to provide a response and similarly employers may want to respond on the issues that affect them.

3.18 The Chair highlighted that for previous consultations the Scottish SAB had had sight of the England and Wales SAB response which informed their thinking. The Chair asked if that could potentially happen again.

3.19 Iain Coltman replied that HMT are seeking to engage with various stakeholder groups via UK workforce groups. Iain suggested, subject to the Board's view, the Scottish SAB would join up with the England and Wales SAB, and possibly Northern Ireland colleagues, for a joint session with HMT to go through points of the consultation.

3.20 Phil McEvoy highlighted that there hadn't been a huge amount of progress made with this issue by the England and Wales SAB. Phil commented that he has always been keen to share thinking between England and Wales and Scotland, and he would support the proposal on a joint meeting. Phil also commented that it would make sense to work jointly with the England and Wales SAB on this.

3.21 The Chair commented that Trade Union colleagues generally look for a consistent view on these issues across the UK and therefore he felt they would be in favour. The Chair asked if there were any objections to joining forces with the England and Wales SAB for the meeting with HMT. There were no objections and the Chair concluded there was general support for looking to do something together with the other home nations.

3.22 Iain Coltman confirmed he will feed back to the McCloud technical steering group that the SAB would welcome the opportunity to join up with other nations for a joint UK workforce stakeholder engagement meeting.

3.23 The Chair explained the administration challenges of previous Choice exercises and highlighted the burden those placed on SPPA. Phil McEvoy echoed that point and added that the change in tax positions will presumably mean SPPA will have to recalculate pension input period, increasing administration burden. Phil asked if SPPA had a view of whether immediate choice of DCU would be preferable from an administration perspective.

3.24 Iain Coltman explained that SPPA has set up an internal working group to manage this and SPPA will be responding to the consultation. Iain highlighted that this choice is more complicated than the previous 2008 choice and accepted that dealing with tax fallout would be a huge undertaking for SPPA. SPPA are considering how this will be resourced. While SPPA do not have an established position on immediate choice or DCU the initial leaning is towards DCU.

3.25 Phil McEvoy commented he had some members who had very strongly voiced their opinion in favour of immediate choice because for Practitioner who never had final salary benefits the difference is marginal and the advantage of immediate choice is that you get the choice now and it cannot be taken away by future Governments in 10-20 years. However, Phil did confirm that the majority view was in favour of DCU.

3.26 The Chair asked GAD why members who had been accruing benefits in the reformed scheme for the remedy period will be put back in the legacy scheme for that period under DCU. George Russell replied that from a legal point of view the discrimination had to be addressed and therefore putting members back in the legacy scheme addresses that discrimination.

3.27 The Chair asked how the SAB should proceed in terms of engaging with the other home nations and then drafting the SAB's response, and refining in time for submission by 11th October. Iain Coltman commented that once we get the joint UK workforce meeting arranged with

HMT things might become clearer in terms of a consistent approach across the UK. In terms of a Scottish SAB response, where there is consensus SPPA could help to orchestrate that following the meeting with HMT. In the meantime SPPA are happy to collate any initial views SAB members have on individual consultation questions.

3.28 Phil McEvoy gave an update on the planned meeting dates for the England and Wales SAB and reiterated that it would be worth the joining forces with them.

3.29 Lorraine Hunter asked about contingent decisions, in particular where members had opted out in 2015 and about putting them back in the scheme and paying the backdated employee/er contributions. Lorraine highlighted that this could be a significant amount of money for employees and employers and it is not entirely clear how this money should be repaid. Iain Coltman replied that if there was a decision to buy back service then there would be an agreement on repayment with the member and with the employers.

Cost Control Element

Paper 3b - Update on the Cost Control Element of the 2016 Valuations

3.30 George Russell gave an overview of the Cost Control Element paper. George highlighted that the government has announced that the pause of the cost control mechanism will be lifted and the cost control element of the 2016 valuations process will be completed and the costs of addressing the discrimination identified in the McCloud judgment will be included in this process.

3.31 The Chair commented of paragraph 2.58 of the consultation document which detailed the cost of the McCloud remedy to £2.5 billion per annum, over the 7 year remedy period which equated to £17 billion for all the public service pension schemes. How does that £17 billion relate to the pre McCloud situation? George Russell replied that in aggregate terms the McCloud costs are on a par with the extent to which the 2016 valuations indicated a cost cap floor breach.

3.39 The Chair asked about the timing of SAB having discussions about the outcome of the revised 2016 scheme valuation. George Russell replied well into next year before we see the outcome of the revised 2016 calculations, taking into account McCloud, and before the SAB will see impacts for the NHS Scheme in Scotland.

Scheme Participation 2019/20

Paper 4 – Scheme participation report 2019/20

4.1 Greg Walker gave an overview of the paper picking out the highlights in the data trends. For Agenda for Change (AfC) participation by pay band shows that for most bands, with exception of bands 1 & 2, participation is marginally declining across the year. However, if Q1 is considered as a bit of an outlier because of re-enrolment, then participation has been broadly stable across AfC bands, with participation only dropping from 91.8% in Q2 to 91.3% at the end of Q4. Also, if compared to participation in Q4 of 2018/19, it shows that participation rates are up slightly as compared to the end of last year. Looking at AfC staff by age the only groups with an increase in participation are 15-19 and 65-69 year olds. All other groups have seen a decline across the year.

4.2 Greg then highlighted the key statistics for the Medical and Dental grades, where participation has seen a decline across the year in all grades. And on the whole participation amongst medical and dental staff has decreased from 94% in Q1 to 91.8% in Q4. Participation in the Medical and Dental grades is also down against Q4 of 2018/19. Most notably for Medical and Dental staff, male participation rates have seen a big drop towards the end of the year, from 89.6% in Q3 to 87.9% in Q4 - this is an actual drop of around 100 people and appears to be largely due to those at consultant grade withdrawing from the scheme.

4.3 The Chair replied that we can assume this is due to the impact of Annual Allowance.

4.4 Alan Robertson commented the impact of REC scheme where members opted out from November 2019 onwards would contribute to the reduction in consultant's participation towards the end of the financial year.

4.5 Alan Robertson asked about the participation rates for GPs which were not included in the report. Greg Walker replied that he was unable to the GP and GDP figures in time for this meeting but will request those, add them to the paper and recirculate to the SAB.

AP2020/02 – Greg Walker to circulate 2019/20 participation report with GP and GDP date included

4.6 Daniel MacDonald commented on the uptake of REC and noted that there were no figures collected nationally but as Greg notes the reduction in participation amongst consultants went down by around 100 in the last quarter and that would agree with feedback of uptake from NHS Boards.

AOB

5.1 Date of next meeting - Greg Walker suggested possible next meeting for late September/early October to agree consultation response from the SAB which was agreed by the group. SPPA will canvas for available dates.

5.2 The Chair asked about when the stakeholder engagement meeting might be with HMT. Iain Coltman confirmed he would discuss with the HMT steering group and confirm plans with the SAB.

AP2020/03 – SPPA to arrange stakeholder engagement meeting with HMT alongside England and Wales SAB and notify SAB members of the date.

5.3 The Chair agreed to schedule normal SAB meeting for late September/early October. Group agreed.