

NHS Pension Scheme Scotland

Scheme Advisory Board

Minutes

Date: 18 February 2021

Meeting reference: NHS Pension Scheme Advisory Board

Location: Virtual via MS Teams

Chair: Willie Duffy (Unison)

Attendees: **Members**

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

Scottish Government

Greg Walker (SPPA)
Iain Coltman (SPPA)
Stuart MacArthur (SPPA)

Secretariat

Victoria Antcliff ((SPPA)
Carole Bertram (SPPA)

Apologies: Daniel MacDonald (SG)

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 October 2020

Paper 2a – Draft SAB minutes of 5 October 2020

2.1 The Chair discussed the minutes. Willie Duffy asked for the drafting notes to be amended on page 3, 4.2 to be amended to 2021 not 2022. The minutes were agreed.

Paper 2b – Action Log

2.2 Greg Walker updated on action point 2019/05 and highlighted that a paper on Pensionable Allowances was on the agenda.

2.3 Greg Walker highlighted that the GP and GDP participation rate figures were included in the participation rate paper on the meeting agenda which completed action point 2020/03.

2.4 Greg Walker confirmed that the SAB's McCloud consultation response had been circulated prior to submission to HMT and action 2020/05 is therefore complete.

2.5 Greg Walker gave an update on action point 2020/06 with regard to any NHS pay increase from December 2020 and impact on employee contribution rates. Greg highlighted that a December 2020 pay increase would impact on contribution rates for the 2021/22 scheme year which are the contribution tiers which have recently been subject to consultation and will be introduced by regulation from 1 April 2021. When setting the new contribution tiers SPPA were conscious of the impact of any December pay increase, however, concluded that an increase for 4 months from 1 December 2020 to 31 March 2021 would not increase member's pay enough to push them into a higher contribution tier. This is because the pay points below where the thresholds are set are on average £3,000 below the threshold and 4/12ths of even a 10% pay increase would not result in a pay increase large enough to push the member into a higher tier.

Matters Arising

2.6 There were no matters arising noted.

3. Pensionable Allowances

Paper 3 – Pensionable Allowances and Pay Enhancements

3.1 Greg Walker gave an overview of the paper which sought to update the SAB on the current position on the issue of pensionable allowances and pay enhancement and to seek SAB's agreement on a way forward. The paper set out the outstanding issues for employers in determining whether or not an allowance is pensionable and if it should be updated for part-time members which were as follows:

- Should overtime be pensionable or non-pensionable
- When an allowance/enhancement is considered a 'regular payment'

- When an allowance should be updated for part-time members

3.2 The paper also considered the issue of what flexibility employers should have in determining certain elements of pay as being non-pensionable in order to help staff to limit the value and rate of their pension growth.

3.3 Alan Robertson commented that the impact of AA & LTA on these issues is complex and needs more detailed thought.

3.4 Lorraine Hunter said that guidance regarding regular payments was clear but there was concern around how to apply the guidance and whether it would be applied retrospectively.

3.5 Phil McEvoy stated the AA and LTA need more discussion and we need to define what constitutes a regular payment for pensionable purposes

3.6 Willie Duffy said he was concerned that contractual overtime was not being deemed as pensionable which should be treated differently to non-contractual overtime and this needs further clarification.

3.7 Greg Walker said that on Willie's point regarding overtime, general overtime is not pensionable. However SAB and SPPA need further discussions to clarify whether or not contractual overtime is treated as a pensionable allowance.

3.8 Alan Robertson stated that as members accrue less benefit in the CARE scheme this issue needs further exploration for Junior Doctors in particular (due to only base salary currently counting toward pensionable pay).

3.9 The SAB agreed that the issue of uprating pensionable allowances and the implementation of that policy is passed to the Pension Board with support from the SPPA/employer Technical Working Group (TWG). The Board also agreed that SPPA website guidance around pensionable allowances and pay enhancements is updated and a list of allowances which have been agreed are added as a live document to the website. This list should be kept under continual review and will be updated by the TWG once it is reconvened.

3.10 The SAB also agreed to take away the definition of regular payments and to provide feedback on any views on the definition and difficulties that potentially might create.

3.11 The SAB agreed to close action point 2019/05 relating to pensionable allowances but to keep on the SAB's agenda unresolved issues around the definition of 'regular' payments, to consider contractual overtime and to continue to look at flexibility and the approach E&W are taking in their 'managing pensionable pay' guidance.

AP2021/01 – SAB members to feedback to SPPA on the definition of regular payments as provided in the pensionable allowances paper.

AP2021/02 – SPPA to investigate issues with pensionable allowances around the definition of regular payments, contractual overtime and flexibility to manage pensionable pay.

4. McCloud Consultation – HMT’s consultation response

Paper 4 – McCloud Consultation response

4.1 George Russell gave a presentation on the UK government’s response to the McCloud public consultation. George provided a reminder of the issue, that the ‘transitional protections’ included in the 2015 public service pension schemes reforms we deemed to be unlawful. George also recapped the main consultation proposals which were to offer an immediate or deferred choice underpin (DCU) as part of the remedy and to move all members to the reformed schemes from 1 April 2022. The presentation also covered details on how the preferred deferred choice underpin remedy will work, the challenges that lie ahead and a summary of the outstanding tax issues and technical details.

4.2 Alan Robertson commented on the need for clear information in order to allow members to make an informed choice. Alan also highlighted that tax issues resulting from the remedy were complex and would be administratively difficult.

4.3 George Russell commented that there were a number of outstanding tax issues which would require a lot of work to progress.

4.4 Iain Coltman explained that tax issues were a priority for HMRC and there would be more clarity on this within the next few months. Iain commented that work on contingent decisions was ongoing in cross-whitehall technical groups and primary legislation would contain guidance on this issue. This would give a clearer direction for members and we would be continuing engagement with the Treasury and developing policy for SAB consideration.

4.5 Willie Duffy asked a question regarding the SPPA circular whereby it was not clear on the Q&As until Q14 regarding the date when all members would enter the new scheme. And Q4 deferred choice underpin was raising questions from members who had been told they had lifetime protection and they wanted to know why they were now being placed in the reformed CARE scheme in 2022. More information was needed here for members to address their concerns.

4.6 Willie Duffy asked if there was the possibility of SPPA putting in some examples in the FAQs for members so they could understand how it would affect them.

4.7 Greg Walker said that SPPA would need to add to the FAQs to alleviate member concerns with more details so members could make an informed choice.

4.8 Phil McEvoy asked about ERBO contracts that had been taken out in the CARE scheme, and also some members who opted out of CARE may come forward with issues regarding the remedy changes.

4.9 Greg Walker advised that the outstanding issues with ERBO were under discussion with HM Treasury. Greg Walker also commented that issues regarding opted out members needs further consideration.

4.10 Lorraine Hunter agreed that there needs to be guidance around contingent decisions for members who chose to opt out of the scheme.

4.11 Willie Duffy asked if the GAD slides could be circulated by SAB members within their respective groups.

4.12 George Russell commented that there was nothing confidential within the slides and committed to provide an updated version which could be shared with SAB members.

AP2021/03 – Greg Walker to provide SAB members with updated slides for sharing within their organisations

5 Participation Rates

Paper 5 – Q1 & Q2 2020/2021 Participation Report

5.1 Greg Walker gave a brief overview of the key analysis from the participation report. Greg highlighted that overall participation amongst AfC staff had been broadly static over the first three quarters of 2020/21 and consistent with quarter 4 of 2019/20. In general, participation in the scheme has varied very little, however due in part to the large increase in staffing during the pandemic, the absolute number of staff participating in the pension scheme is up by over 6,500 since Q4 2019/20.

5.2 Greg Walker noted that participation amongst medical and dental hospital staff has increased as compared to Q4 2019/20, increasing from 91.8% to 93.1%. Also, participation by male consultants is up by 4.4% since Q4 19/20, which equates to around 200 individuals and can likely be attributed to issues with pension tax and the introduction of the Recycling Employer Contributions (REC) scheme in Q4 2019/20.

5.3 Greg Walker highlighted that notwithstanding apparent issues with collecting accurate GP participation data, participation amongst GPs is lower than medical AfC staff at 79.8%. Similarly GDP participation remains lower than AfC participation at 75.3%.

5.4 Derek Lindsay highlighted that for High Earners, the longer they remained in the scheme, many opt out eventually due to AA issues and once they reach the tax threshold for LTA. This is particularly prevalent for Senior Managers, and Medical and Dental Practitioners.

5.5 Derek Lindsay also highlighted that member participation for Band 1's was reducing, possibly because this was a small group. However Band 2's had a larger uptake and general member participation across range of bands was high.

6 Employee Contributions Structure from 1 April 2022

Paper 6 – Employee Contributions from 1 April 2022

6.1 Anne-Marie Pettie gave a comprehensive presentation about member contributions from April 2022. The presentation provided a background on the setting of the contribution tiers as part of 2015 scheme reforms and the subsequent review of the structure in 2018 and considerations around contribution structure as part of cost-cap rectification discussions.

6.2 Anne-Marie highlighted the priorities for the SAB with regards to contributions as agreed in previous discussions. These included; protections for the lower paid, minimising opt outs across the membership and ensuring the scheme remained a sustainable and valued part of the reward package for NHS staff.

6.3 Anne-Marie then set out the key questions SAB should consider: should contribution rates be structured in tiers or bands, the number and range of tiers, uprating boundaries and avoiding 'cliff edges', using actual of WTE pay to for determining member's contribution tiers, should the tiers allow for income tax relief and should they allow for the impact of AA and LTA.

6.4 Finally, Anne-Marie highlighted the timing for the SAB's advice which will be required by the summer (end-June 2021) in order to allow for consultation on the new structure between September and December 2021 and allow for the new regulations to be implemented from 1 April 2022.

6.5 Willie Duffy thanked Ann-Marie for the presentation and noted that this will require wide ranging discussion, however Willie was keen to focus on page 11 and to examine priorities previously agreed; including protection for lower paid, minimising risk of opt outs and ensure sustainability of the scheme as a valuable part of the member reward package.

6.6 Alan Robertson suggested that rather than providing protection for the lower paid via the contribution structure this was something that should instead be addressed by the government, either by them covering the costs or by ensuring NHS staff were sufficiently well-paid that the pension scheme was affordable.

6.7 Phil McEvoy commented on the issue of cross-subsidy for low earners within the contribution structure and highlighted that the extent of the subsidy and at the rates for high earners would be important considerations.

6.8 Willie Duffy suggested that it would be important for the staff side to have separate meeting on this issue, which will likely take place in April, ahead of further discussion at the SAB.

6.9 Greg Walker asked if there was agreement on a move to actuals from WTE as previously agreed which would help GAD to target any analysis on contribution structures based on actual pay.

6.10 Derek Lindsay said there should be a support towards move to using actuals. Derek also highlighted the banding approach used in LGPS and would be interested to see some modelling on banding instead of tiers.

6.11 Iain Coltman raised a question for GAD colleagues that in 2022 there would be a huge tranche of membership with a final salary link and how could this be factored into costs if there was a move to actuals. Anne-Marie Pettie said that GAD would consider.

6.12 Phil McEvoy commented that the cost of providing the final salary link had already been factored into costs and members should not have to pay for it going forwards.

6.13 Derek Lindsay advised that the new contribution structure would be challenging to communicate to members and to avoid opt outs as a result of percentage increases in contributions comprehensive communications to staff would be required.

6.14 Willie Duffy highlighted that members paid 0.2% more on contribution rates as compared to colleagues in England and Wales in order for the tiers to be updated each year in line AfC pay increases.

6.15 Willie Duffy confirmed with the SAB that as no one is stating we should not move from WTE to actuals, then we should ask GAD for some example contribution structures on that basis.

6.16 Iain Coltman highlighted that there are potentially some complex issues to overcome with the move to actuals, particularly around members with more than one contract at different pay rates.

6.17 Phil McEvoy agreed that guidance would be needed for administration team on how to tackle this.

6.18 Willie Duffy said SAB should take away the presentation come back with considerations and any example contribution structures they would like GAD to model.

6.19 George Russell agreed he was happy to assist for suggesting options and would proceed on examples using actual pay.

6.20 Alan Robertson said this was helpful and asked that future modelling included more information on tax issues to show this net of tax relief as this has a major impact on what members pay for the same pension.

6.21 Willie Duffy requested that any questions and any requests for GAD modelling should be directed to Greg Walker in the first instance.

6.22 Greg Walker commented that final advice from SAB to Minsters would be required by the end of June, then there would be a 12 week consultation period from September to December 2021 to sort out the instrument for laying April 2020 Regulations. He said he would canvass SAB members for meeting dates for discussion.

6.23 Willie Duffy asked about limitations on Page 31 of Anne-Marie Pettie's presentation and asked if he could share the information in the presentation to members and were there any examples for internal discussions he could use.

6.24 George Russell explained there was no issue with any of the material shared today in the GAD presentation however there would be a need to take out the England & Wales SAB discussion and the rest was ok to share.

6.25 George Russell asked Willie Duffy to liaise with Greg Walker after the meeting to advise what exactly could be shared internally.

6.26 Willie Duffy asked if there were any other questions for GAD and there were none.

AP2021/04 – All SAB members to contact Greg Walker with any questions on contribution structure and to feedback on the modelling of contribution structures they would like to see from GAD.

AP2021/05 - GAD to provide a paper modelling different contribution structures at the end of April meeting. These examples should be based on actual pay. There should be example of a banded structure and should include examples showing the impact of pension tax. Greg Walker will advise GAD colleagues of any further feedback or requests from SAB members.

AP2021/06 - Greg Walker to provide SAB members with copy of contribution structure slides suitable for sharing within their organisations

AOB

7.1 Discussion in March meeting to focus on 2016 valuation re-run cost cap results

7.2 Greg Walker to request availability for a late April meeting. SPPA will also try to fix provisional future SAB meeting dates for the rest of 2021.