

NHS Pension Scheme Scotland

Scheme Advisory Board

Draft Minutes

Date: 31 January 2020

**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) by telephone
Phil McEvoy (BDA) by telephone
Jane Christie-Flight (Unite) by telephone
Jackie Mitchell (RCM)

Scottish Government

Jim Preston (SPPA)
Greg Walker (SPPA)
Tom Nash (SPPA) by telephone
Daniel MacDonald (SGHD)

Secretariat

Carole Bertram (SPPA)

Apologies: Dorothy Wright (NES)
Graham Pirie (CoP)
Garry Swann (GAD)
Willie Duffy (Unison)
Laura Zeballos (SGHD)
Stuart MacArthur (SPPA)

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 30 September 2019

2.1 The Chair welcomed everyone to the Scheme Advisory Board (SAB) meeting. The Chair asked members to advise if there any conflicts of interest to raise. No conflicts of interest were raised.

Paper 2a – Draft SAB minutes of 30 September 2019

2.2 The minutes were agreed to be an accurate record of the meeting, subject to accepting the amendments proposed by Alan Robertson in his email of 30 January 2020 which was circulated to the SAB.

Paper 2b – Action Log

2.3 Alan Robertson enquired if there was an update from SPPA on progress with Member Self Service which was covered in the update to action point 2019/03 about improvements in the Annual Allowance information available to members. Alan queried whether should still be an open action.

Action Point 2020/01 – SPPA to provide the SAB with an update on progress with Member Self Service.

2.4 All open actions were carried forward to the next meeting of the SAB.

Matters Arising

DHSC Consultation on NHS Pension Scheme flexibilities

2.3 Jim Preston gave an update on the DHSC consultation on Scheme flexibilities which DHSC intend to publish immediately after HMT have reported on the outcome of the Annual Allowance taper review at the Budget. The implementation of flexible accrual is dependent on what is announced about the AA taper. DHSC have however been planning on the basis that the flexibilities will be required and would aim to introduce Regulations by the end of June 2020. Scheme members would make the flexible accrual election in the first quarter which would be effective for the remaining three quarters of the year. Once the outcome of the Budget is known on 11 March and when the outcome of the DHSC consultation is published, SPPA will engage the SAB in discussion around plans for the introduction of any scheme flexibilities in Scotland.

2.4 Jim Preston noted that The Times had published an article which appeared to trail an increase in the threshold income from £110,000 to £150,000 but HM Treasury had not confirmed this. Jim sought to clarify that the HM Treasury review was only a review of the AA taper and not a review of the AA in general.

2.5 Alan Robertson commented that raising the threshold would not solve the problem for high earning members of the scheme. There followed a discussion on the merits of increasing the AA taper.

2.6 Phil McEvoy commented on the challenging timescales for DHSC to introduce flexibilities following the budget in order to have them in place for 1 April 2020. They would be required to bring forward legislation and have a modeller in place to allow members to elect for the correct amount of flexible accrual.

2.7 Greg Walker replied that DHSC are planning for flexibility elections to be made in June 2020 and are checking if the election could be backdated to the start of the tax year. They are speaking to HMRC to ensure that this backdating would not be regarded as an unauthorised payment.

2.8 Phil McEvoy asked if Scotland could simply follow the flexibilities that have been agreed for the Scheme in England and Wales and what would be the timescales for any Regulations and implementation of flexibilities in Scotland.

2.9 Jim Preston replied that the SAB would be expected to provide advice to the Minister on the introduction of flexibilities in the Scottish scheme based on what was being proposed for the scheme in England and Wales. Jim also highlighted that the timescales for agreeing on changes to the Scheme and introducing Regulations by the summer was very tight.

2.10 Phil McEvoy raised the issue of the REC scheme and an email he had sent to the Scottish Government with a number of enquiries about the operation of the scheme. Daniel McDonald agreed to address the issues raised in Phil's email and provide him with a response.

2.11 Phil also asked about take up of the REC Scheme and Tom Nash confirmed that SPPA had provided 202 Statements in 10 days and there still a small number of requests outstanding.

3. McLeod remedy

Paper 3 – Addressing unjustified age discrimination in transitional arrangements to the 2015 pension schemes – working proposals.

3.1 George Russell gave an overview of the working proposals paper in which HM Treasury are seeking initial views from stakeholders on the deliverability and feasibility of the two lead proposals to address the discrimination identified by the Court of Appeal - 1. Deferred Choice underpin and 2. Immediate Choice. The paper is intended to facilitate technical discussions helping to inform HMT's early stage policy development and the formal public consultation which is due in spring 2020.

3.2 George Russell summarised the Deferred Choice proposal which would give members the choice when benefits are crystallised whether they wished their benefits for the remedy period (2015 – 2022) to be calculated on the basis of their old (final salary) or new (CARE) scheme benefits. Individuals would be treated as members of the appropriate old scheme during the remedy period (as per the non-discrimination rule in the Equality Act 2010) but would also have a statutory entitlement to an underpin enabling them to choose to receive benefits as if they had been members of new scheme to avoid being placed in a worse position.

3.3 George also explained the Immediate Choice which would see members given the choice upfront as to whether they wished their benefits for the remedy period to be on the basis of new or old scheme service. Where schemes have a clear majority of members who would be better off in the old scheme it may be appropriate to treat all members as members of the old scheme by default and provide a time limited opportunity for individuals to elect to be members of the new scheme for the remedy period.

3.4 There followed a discussion by the SAB around the working proposals paper.

3.5 Alan Robertson mentioned the previous choice exercises which had taken place in the NHS Pension Schemes which had low take up by members. Alan also highlighted the implications for members' pension tax of moving scheme and that this would have a bearing on decisions. Alan posed the question of how HMRC are going to deal with recalculating tax bills.

3.6 Alan Robertson also highlighted that there were pros and cons of both proposals for members and sought clarification of how much information could be shared with BMA members at this point.

3.7 Ros Shaw echoed Alan's point that were clear pros and cons of the two proposals and intimated that the Royal College of Nursing did not yet have a position on this and that they would need to get member input.

3.8 Phil McEvoy commented that DHSC were suggesting a different approach when they discussed the paper at the England and Wales SAB recently. DHSC had highlighted legal advice taken by other schemes that Section 61 of the Equality Act 2010 sets the presumption of a 'non-discrimination' clause in pension schemes. One view of this position would be to treat members as though they have always been in their old scheme (as the transitional arrangements were discriminatory) and nobody was ever moved to the new scheme. If this view was taken, the remedy would not be to offer members a choice, but to put them back into their old scheme until a specific date where everyone would move into a single scheme. If this legal situation is correct, there would be no detriment to not giving members a choice as they were never moved to the new scheme.

3.9 Jim Preston commented that he was aware of the suggestion by DHSC and accepted that the vast majority of members would be better off being put back in the 1995 Scheme. However with regard to other public service pension schemes, there are some reformed schemes which have better accrual rates and this approach could create the potential for a future legal challenge.

3.10 Lorraine Hunter commented that retirement age is the most important consideration for most members and that she felt the immediate choice was preferable as it resolves the issue rather letting it drag on to retirement.

3.11 Phil McEvoy replied that if retirement age is the main consideration, the 2015 Scheme allows members to retire at age 55.

3.12 Alan Robertson commented that Deferred Choice may be confusing for members as they will have been moved back to the old scheme which is understood to be more beneficial but they still have a choice to make at retirement.

3.12 Derek Lindsay highlighted that the remedy is for all members, including members with full protection who never moved to the 2015 scheme.

3.13 Alan Robertson reiterated the point about pensions tax, highlighting that pension input amounts for Annual Allowance purposes could vary drastically depending on which scheme members choose to be part of for the remedy period.

3.14 Jim Preston replied that the McCloud Technical Working Group led by HM Treasury are looking at the potential tax issues and considering legal advice. HM Treasury proposals will be consulted on in the Spring and will include detail on tax implications. Feedback from the SAB will be required.

3.15 Phil McEvoy asked about the impact on administration for SPPA and how difficult an immediate choice exercise would be and highlighted that comms and engagement with members around their choice would be important.

3.16 Jim Preston replied that the comms strategy would be important and that an immediate choice would be a significant administration exercise for SPPA and SPPA are currently considering the admin costs involved. In addition to any potential choice exercise, SPPA will have to deal with immediate detriment cases including ill health and death cases processed since 2015.

3.17 Derek Lindsay enquired whether the administration would be easier with the deferred option as it would spread the workload.

3.18 Alan Robertson replied that the deferred option is still a lot of work and raised the issue of whether HMRC would have access to the required data to retrospectively amend the tax position at retirement when the deferred choice was made.

3.19 George Russell commented for the deferred choice HMRC would need to retain data for a longer period. Alan Robertson suggested we should seek clarity from HMRC around the pension tax issues.

3.20 Greg Walker commented that while the deferred choice would spread the workload there is potentially more work involved in carrying out dual calculations for the remedy period for every member when they crystallise their benefits.

3.21 Derek Lindsay raised the issue of financial advice, how do we support members to make a choice on which scheme would be most beneficial.

3.22 Phil McEvoy confirmed the England and Wales SAB's Technical Advisory Group (TAG) had been asked to consider the position of individuals being moved back into their old schemes and the extent to which some members would be worse off.

3.23 Derek Lindsay suggested sharing what comes out of the England and Wales TAG and discuss further at the next meeting on 2 April 2020 with a view to feeding back to HM Treasury on the working proposals paper by mid-April.

3.24 Derek Lindsay raised the issue of financial advice, how do we support members to make a choice on which scheme would be most beneficial.

3.25 Jim Preston agreed that this was difficult as there a lots of unknowns which potentially make the choice difficult, including the member's health and future earnings. There was potential for members to make the wrong choice and for SPPA to have to deal with appeals in the future from members who made the wrong choice and who claim they weren't provided with sufficient information. Member communication is so important.

3.26 There was discussion about whether SAB members could share the paper with their constituent groups and that members would expect some communication. It was agreed there should limited circulation of the paper and it should not be published on organisation's website.

3.27 Derek Lindsay confirmed that the HMT paper was only concerned with the remedy and not what is to happen after the remedy period with regards to a new scheme.

3.28 Lorraine Hunter enquired if these changes would create any system issues for employers or if additional data would be required from employers. Jim Preston replied that it shouldn't generate any extra demands on employers or require system changes.

4. Pensionable Allowances – Verbal Update

4.1 Greg Walker led a discussion on the latest position with the work on pensionable allowances which aims to identify all allowances paid to staff across NHS Scotland and to establish whether or not they should be pensionable in line with the scheme regulations, and also whether or not they should be uprated for pension purposes when paid to part-time members.

4.2 Greg provided an update from his meeting with Lorraine Hunter and other payroll leads on 25 November 2019 where it was concluded that it would be useful to refer this issue back to the SPPA/Employer Technical Working Group (TWG). The TWG had not met for nearly a year and required to be reconvened and to have the membership refreshed. The payroll leads will suggest new employer representatives to sit on the TWG and a meeting will be set up as soon as possible.

4.3 Alan Robertson raised the issue of Doctors working in Hospices who have had issues with periods of ad hoc on-call where they are being paid an availability allowance and establishing whether or not that should be pensionable. SPPA are aware of this issue which is related to the ongoing work on pensionable allowances and the issue of whether the allowance is considered to be 'regular'.

4.4 Greg Walker highlighted the issue of the uprating of unsocial hours allowance for part-time members. This is a substantive issue needs to be considered independently alongside ongoing work on pensionable allowances.

4.5 Lorraine Hunter replied that the issue of unsocial hours paid to part-time members is a significant one for employers as their payroll systems are unable to identify these members and therefore this is a massive issue to fix.

4.6 Derek Lindsay commented that we should be working towards a definitive list of allowances with a decision on whether they are pension or non-pensionable. Greg Walker replied that often the issue is whether or not these allowances are defined as 'regular'.

5. Participation Report

Paper 4a – Participation Rates for the first half of 2019/20

5.1 Greg Walker talked through this paper and highlighted analysis on page 5 which showed that participation amongst Agenda for Change staff between 2017/18 and 2019/20 had stayed broadly stable but the gentle decrease in total participation from Q1 of 2017/18 (90.6%) to the end of 2018/19 (90.3%) appeared to have been reversed in the first half of 2019/20, increasing to 93.4%

5.2 Alan Robertson commented this recent increase could be as a result of auto enrolment.

5.3 Derek Lindsay commented that the increase in participation in the first half of 2019/20 could cause a funding challenge for employers as the additional 6% funding which employers received to cover the increase in employer contributions from 1 April 2019 did not allow for future increases in scheme membership.

5.5 Greg Walker highlighted some other notable trends in the data; that participation is lower in the younger age bands as compared to older members, participation amongst Consultants is decreasing steadily across the period 2017/18 – 2019/20 from 93.7% to 90% and participation amongst senior managers is also in decline, particularly amongst male managers whose participation has dropped below 90%.

6. AOB

6.1 The group agreed to a future meeting on 2 April 2020. The meeting will follow the NHS England and Wales SAB scheduled for 16 March. It was also agreed to look at proposed dates for 2020 to allow SAB members adequate notice to attend meetings.

6.2 Jim Preston informed the group that this was his last SAB meeting as he was retiring at the end of February. Jim thanked everyone for all their assistance with some challenging issues over his period of involvement with the SAB and said it had been a pleasure working with everybody.