

NHS Pension Scheme Scotland Scheme Advisory Board

Draft Minutes

Date	3 November 2022
May	Virtual meeting via Microsoft Teams
Chair	Derek Lindsay (NHS Ayrshire & Arran)
Attendees	Alan Robertson (BMA) Andrew Carter (NHS Borders) Brian Nisbet Graham Pirie (RCPOD) Greg Donaldson (GAD) Jackie Mitchell (RCM) Jane Christie-Flight (Unite) Lorraine Hunter (NHS Grampian) Philip McEvoy (BDA) Ros Shaw (RCN) Ruth Kelly (NHS Lothian)
SG / SPPA Officials	Daniel MacDonald (SG) Greg Walker (SPPA) Ian Coltman (SPPA) Paul Gibson (SPPA) Finn Mackenzie (SPPA) Lorraine Spalding (SPPA)
Secretariat	Carole Bertram (SPPA)
Apologies	Robin McNaught (State Hospital) Matt McLaughlin (Unison) Stuart MacArthur (SPPA)

1. Welcome and Apologies

1.1 The Chair welcomed attendees and asked if there were any conflicts of interest.

2. Minutes of previous meeting and action log

Paper 2a – Draft SAB minutes of 11 August 2022

2.1. Derek Lindsay highlighted an error for correction in the minutes. The previous minutes had been noted as 1 September 2021 and should have been 16 May 2022. He also highlighted an error with the number of paragraphs as 2.6 which should be 2.8 and paragraph 2.24 should read 'if salary sacrifice' rather than 'it salary sacrifice'.

2.2 With the corrections noted above, the minutes of the previous meeting were held as accurate.

Paper 2b – Action Log

2.3 Greg Walker talked through the Action Log starting at **action point 2021/02**. Greg suggested part of this action point could be closed as employers had agreed, via the Management Steering Group (MSG), not to proceed with introducing guidance around flexibility to manage pensionable pay. Greg noted that the Cabinet Secretary for Health and Social Care had recently devolved powers to NHS Boards to implement pension flexibilities, including 'pension recycling'.

2.4. In relation to the second part of the action point about pensionable allowances, Greg informed the group that the SPPA/Employer Technical Working Group (TWG) had recently been reconstituted and the consideration of pensionable allowances is on their work plan. Once the TWG have completed this work it will come back to SAB for consideration.

2.5 Lorraine Hunter confirmed that MSG had discussed the flexibility to manage pensionable pay by splitting whole time contracts into multiple part-time contracts and introducing Toil instead of payment etc. However, MSG decided not to proceed with these proposals.

2.6 Greg Walker proposed to update the action point to include only the issue of pensionable allowances and to carry forward, awaiting outcome of TWG considerations. The SAB agreed.

2.7 Greg Walker confirmed that the action point **2021/25** about salary sacrifice for electric vehicles would be considered under agenda item 6 and was carried forward

2.8 Action point **2022/06** - Greg Walker advised a meeting on members contributions had been scheduled for 1 December 2022. Carried forward

2.9 In relation to action point **2022/08**, Greg Walker confirmed the draft flexible accrual business case had been shared with SAB as one of the papers for this meeting and is on the agenda. Action closed.

2.10 Action point **2022/10** and **2022/11** around the provision of data by SPPA are carried forward.

2.11 In relation to action point **2022/12**, SPPA had sent letter from SAB to HMT about fixing the CPI disconnect on 25 August 2022. A final version was shared with the Board. Action closed.

2.12 Action point **2022/13** was closed following HMT's agreement to extend the suspension of abatement rules until March 2025, with consideration of the permanent removal of some of the rules as part of the proposed introduction of retirement flexibilities.

3. NHS Valuation – NHS Mortality Assumptions Summary Note (Scotland)

Paper 3 - NHS mortality assumption – Summary note

3.1 Greg Donaldson introduced the paper and explained the purpose was to highlight an issue with the data supplied to Government Actuary's Department's ("GAD") for previous valuations of the NHS (England and Wales) Pension Scheme which was identified as part of the GAD's work on the 2020 valuations. The issue relates to the data which was used to set the mortality assumptions for the 2012 and 2016 valuations of the England and Wales Scheme and as the NHS Pension Scheme (Scotland) (NHSPS[S]) valuations were based on the England and Wales mortality assumption, the identified issue also has implications for the Scottish Scheme.

3.2. Greg Donaldson explained the background to the error, highlighting that GAD had found an inconsistency in the analysis of mortality for pensioners in the period 2016-2020, as compared to the analysis in the previous eight years. This inconsistency means higher rates of mortality have been observed based on the most recent data than were expected based on the analysis of prior periods' data. GAD have concluded that the inconsistency arises from an error in some of the data supplied for the 2012 and 2016 valuations.

3.3. GAD estimated that correcting this error will reduce the assumed life expectancies for the 2020 valuation by around 0.5 years for a man aged 65 and 0.9 years for a woman aged 65, compared to the 2016 valuation assumption. GAD have estimated that the potential impact on the NHS (England and Wales) Pension Scheme 2020 valuation results could be a reduction in the employer contribution rate of around 2% of pay and a reduction in the cost cap cost of up to 1% of pay. GAD are reviewing the data available to support analysis for the NHSPS(S) mortality for the 2020 valuation, however, if it is considered appropriate to adopt a similar approach GAD would expect a similar impact for the NHSPS(S)

3.4. Greg Donaldson noted that UK government is still considering how these effects should be allowed for in the 2020 valuations.

3.5. Phil McEvoy sought clarification that over the last eight years the cost of the scheme has been overstated. Greg Donaldson confirmed that this was correct.

3.6 Alan Robertson asked what impact would this have on the Cost Cap. Greg Donaldson replied that the analysis hasn't been done and the impact on measurement of the cost cap is currently unclear.

3.7 Anne-Marie Pettie replied that GAD are awaiting further information from HMT on the approach to the cost cap.

3.8 Phil McEvoy highlighted that this means the assessment of the Cost Cap has been carried out using incorrect data.

3.9 Derek Lindsay commented any deficit would affect employer contributions, with new rates being implemented from April 2024. Greg Donaldson replied new employer rates would be confirmed following the conclusion of the 2020 valuation.

4. Changes to the NHSPS(E&W) announced 22/09/2022, including retirement flexibilities

Paper 4 - Changes to NHSPS (E&W) including retirement flexibilities

4.1 Greg Walker talked through the paper which provided SAB with an update on the changes to the NHS Pension Scheme in England and Wales as announced on 22 September 2022 by the Secretary of State for Health and Social Care. Greg talked through the proposed changes in turn, which included the introduction of retirement flexibilities, help for senior clinicians facing tax charges and proposals to fix issues with CPI revaluation ("the CPI disconnect") which look set to increase pension tax charges for higher earners in this financial year. The SAB were asked to consider the implications for the NHS Pension Scheme (Scotland) (NHSPS[S]) and if the same changes should be introduced in Scotland.

4.2 Alan Robertson commented that the proposed solution for the CPI disconnect doesn't fix many of the issues caused by the pension tax system and that amendments to the Finance Act 2004 would be more appropriate. For example, this does not fix the issue of aggregating pension growth across legacy and reformed pension schemes. Alan also highlighted that while the McCloud remedy will help reduce tax charges for most members, the impact of pension tax on high earners remains a significant issue.

4.3. Phil McEvoy welcomed the fact that action was being taken around the CPI issue but agreed with Alan that amendments to the Finance Act would be a better way to

do this. Phil raised the issue of unintended consequences of moving the revaluation date for those retiring between 1st and 6th April.

4.4 Greg Walker replied that SPPA had explored this point with the Department of Health and Social Care (DHSC) and were confident that this wouldn't have any unintended consequences.

4.5 Ros Shaw raised concerns about the impact of pension recycling for higher earners which could encourage opt outs, which could affect the scheme yield and ultimately lead to higher contribution rates for lower and middle earning NHS staff.

4.6 Phil McEvoy raised concerns that Dental practitioners would not be included within the scope of any pension recycling scheme, as had previously happened when scheme ran in 2019/20.

4.7 Alan Robertson agreed with Phil's point about Dental practitioners being included. Alan responded to Ros's point, commenting that the steep tiering of contribution rates in the scheme is more likely to encourage higher earners to opt out.

4.8 Daniel McDonald confirmed that no decision on a pension recycling scheme had been made and it was still under consideration by Scottish Government.

4.9 Alan Robertson commented that there had generally been a positive response from colleagues to the prospect of the introduction of retirement flexibilities.

4.10 Phil McEvoy agreed welcomed this change.

4.11 Ruth Kelly also agreed and welcome this change which will potentially help with current workforce challenges.

4.12 Derek Lindsay confirmed with the SAB that all were content to support the introduction of these proposals for the scheme in Scotland.

4.13 Greg Walker confirmed that the next step would be to formally consult on these proposals for the NHSPS(S)

5. Flexible Accrual Business Case

Paper 5 – Flexible Accrual draft Business Case

5.1 Greg Walker talked through the business case which had been developed by the SAB sub-group. The business case recommends the introduction of flexible accrual as set out in DHSC's consultation in 2019. However, the sub-group advised that this option should be made available to all members, rather than being restricted to high earners.

5.2 Derek Lindsay commented that in his view flexible accrual was welcome and he noted that England and Wales are also keen to progress with its introduction. Derek

commented, however, that he didn't feel paragraph 4.8 was appropriate coming from SAB and something employers could support.

5.3 Phil McEvoy confirmed he was in favour of this proposal as it provides members with an element of control on how much they pay into their NHS Pension. Phil confirmed he would advocate its introduction for all members.

5.4 Alan Robertson commented paragraph 4.8 is core component of this proposal if it is to be appealing for members.

5.5 Ruth Kelly highlighted there are senior managers in the NHS affected by pension tax, therefore, flexible accrual needs to be available to more than just senior clinicians.

5.6 Derek Lindsay asked, if Treasury approves this I presume it would be applicable to all scheme members?

5.7 Greg Walker replied it would depend on what Treasury agrees to.

5.8 Derek Lindsay asked if the SAB were happy to support this proposal.

5.9. SAB agreed to support in principle but will come to Greg with final comments within a week.

5.10 Iain Coltman highlighted the need to consider impact on SPPA and employer administration if this proposal was approved by HM Treasury.

5.11 Greg Walker suggested asking TWG to consider the administration impacts of implementing this proposal.

Action Point 2022/14: SPPA to ask TWG to consider administration implications of flexible accrual proposal.

6. – Salary Sacrifice for Electric Vehicles

Paper 6 – Salary Sacrifice Electric Car Leasing

6.1 Derek Lindsay presented a paper which asked SAB are asked to consider whether salary sacrifice for electric vehicle lease should have the deduction of pension contributions before or after applying the reduction of salary for the salary sacrifice.

6.2 Alan Robertson advised that having the option for this to be pensionable or not would be preferable for those who are likely to be affected by pension tax.

6.3 Lorraine Hunter commented that from a payroll perspective a decision has to be made whether this would be pensionable or not to retain fairness and consistency on all salary sacrifice schemes. Members would have to be notified if it affects accrual of their pension.

6.4 Derek Lindsay replied there are only currently two salary sacrifice schemes which are pensionable and those are Cycles and Child Care.

6.5 Greg Walker highlighted that an SPPA Circular from 2005 confirmed that all salary sacrifice should be pensionable, however, SPPA were of the understanding that if subsequent salary sacrifice schemes were to be deemed pensionable this would require the approval of HMT. SPPA are looking for employers to confirm whether or not salary sacrifice for the purchase of electric vehicles were to be considered pensionable or non-pensionable. Greg confirmed we wouldn't want to change the position for any member with an existing a salary sacrifice arrangement.

6.6 Lorraine Hunter commented we need to capture for the future.

6.7 Derek Lindsay summarised the current position that salary sacrifice for electric cars is not currently pensionable and acknowledged that for this to be pensionable would require HMT approval. Derek confirmed that employers should consider this away from the meeting and come back with a collective position.

Action Point 2022/15: Employer representatives to consider agreeing a collective position on the pensionability of salary sacrifice for the purchase of electric cars.

7. McCloud Remedy Update

Paper 7a- 2015 Remedy Update

7.1 Finn Mackenzie gave a summary of his paper which updated SAB on work of the SAB Remedy sub-group, noting that the sub-group had met for the first time on 26 September 2022 and had considered the following aspects of remedy; eligibility, deferred choice underpin and immediate choice, remediable service statements, added pension, ill health retirement, and early/late retirement. Finn also provided an update on progress with the 2015 Remedy Calculator (Modeller) which was in the process of being deployed to the SPPA website.

7.2 Phil McEvoy commented that having a modeller which Practitioners could use was so important.

7.3 Finn Mackenzie explained that although salary scales could perhaps be loaded into the calculator to make results more accurate, it was difficult to give timescale for this.

7b -Remedy Communications

7.4 Lorraine Spalding talked through her presentation which focussed on development of the communications plan to support the 2015 Remedy project and implementation. Lorraine set out a broad timeline of communications activity and highlighted communication priorities.

7.5 Alan Robertson thanked Lorraine for her presentation. Alan highlighted the complexity of remedy, even for pension experts and acknowledged how difficult it will be for members. Alan suggested in particular that jargon busters and Frequently Asked Questions (FAQ) would very useful. Alan commented that the annual allowance adds further complexity and suggested a short video or flow charts would be helpful.

7.6 Ros Shaw agreed with Alan regarding the complexity and highlighted the challenge of communicating with members, particularly reaching those who have left the scheme.

8 – Definition of a Practitioner

8.1 Greg Walker explained that as part of analysis around SPPA's Practitioner Contributions Remediation Project it has become clear that there is some inconsistency with how NHS Boards are treating GPs who do work outside their normal GMS/Section 17c contract obligations, usually out of hours (OOH) work, on a formally employed basis. Some employers class this type of employment as Officer and some as Practitioner.

8.2. Greg noted that SPPA are keen to provide clarity and guidance for employers in this area and wished to engage with SAB members on this issue, although, given that it only affects Practitioner members, Greg suggested discussions would be best with BMA, BDA and employer representatives.

8.3 Alan Robertson commented that this issue could impact on remedy and needs to be resolved. Alan agreed to be part of the discussion.

8.4 Phil McEvoy agreed this could raise a problem going back to 2017. Phil agreed to be part of the group looking at this and noted he would involve colleagues from BDA.

AOB

9.1 Alan Robertson raised the issue of the visibility of the amount of scheme pays loan and has requested that this is shown on ABS so members can track it, advising that this would be particularly important as Remedy is implemented and the amount of the scheme pays loan is potentially amended.

Action Point 2022/16: SPPA to check if there is any potential for the amount of scheme pays loan to begin to be shown on the ABS

9.2 With no further business, Derek Lindsay thanked everyone for attending and confirmed the next meeting as 1 December 2022.

