



HCSA Submission - DoHSC Consultation on NHS Pension Scheme: increased flexibility

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Introduction

HCSA actively opposed the previous Government consultation into 50:50 flexibility as being far too narrowly focused to address the complex issues being experienced by doctors.

We therefore welcome the fact that HCSA's call for a wider range of flexibilities has been reflected in this new consultation and believe that some of the policy measures proposed have the potential to offer modest improvements to the status quo.

However, the changes outlined should not be seen as a panacea – no amount of flexibility within the scheme will succeed in conclusively resolving the current crisis for two key reasons.

Firstly, although much of the narrative has understandably centred on the impact of the pensions crisis on staffing, policy-makers should reflect on precisely why the NHS has been so vulnerable to consultants reducing the amount of overtime and extra shifts that they are willing to work and why the impact of this has been so severe.

During the recent past, the NHS has consistently operated with a significant underlying shortage of hospital consultants but was shielded from much of the consequence due to a willingness by the workforce to routinely work extra shifts. The impact of the current situation, where doctors are essentially being charged to work such shifts, has exposed an issue which predates the pensions crisis, but which is now clearly highlighted because of it.

This fact is supported by the testimony of HCSA members. In order to ascertain the views of our consultant cohort, we undertook a short survey in October 2019, to which we received 803 responses. We will refer to the results of this survey throughout our response.

When asked: "How is the work/role that you have opted out of currently being covered?", almost half of those who responded (47.9%) told us that the work is now simply not being covered.

Secondly, we remain of the view that just as this situation arose following changes to pension tax relief made by the Treasury, the only way to comprehensively address this issue is to revisit those changes. While flexibilities will ease some of the issues we are seeing for some individuals, the unintended consequences of pension tax rules will continue to impact hospital doctors' behaviour and choices. Those who utilise flexibilities will effectively reduce their future pension entitlement, and this does little to prevent the tapering issues caused by overtime or additional work. We therefore continue to call for the Treasury to scrap the Annual Allowance Taper and to reform the Annual Allowance and Lifetime Allowance.

Before we respond in detail to the consultation questions, we first wish to address a number of other issues referred to in the consultation.

Treasury review into Tapered Annual Allowance

We share the view of the Office of Tax Simplification¹, which stated in its recent report that the way in which pension tax relief works “*is complex and, in certain situations, can lead to disproportionate outcomes.*”

We therefore welcome confirmation that this issue is under active consideration by the Government and believe that the proposals outlined in this consultation should be considered in this context – as a sticking plaster until meaningful and lasting changes are made to the tax system.

We have contributed to the Treasury review and await its findings with keen interest. While the raft of measures proposed in this consultation may assist some doctors, they must not be viewed as ‘solving’ the systemic issues responsible for the current crisis, as some recent media reports have suggested.

What remains unclear is how this consultation will interact with the Treasury review. We would strongly caution the Government against silo working, given the unintended consequences when such an approach was taken with respect to the reform of tax relief.

Recycling unused employer contribution into salary

As NHS Employers have made clear², the NHS Pension is “*a key element of the overall reward package for staff and can be a valuable tool for recruitment and retention.*” It is therefore completely justifiable that employees should be able to receive the part of total remuneration represented by the employer contribution as salary when the inadequacies of the current taxation system mean that they are unable to do so through their pension.

While clarification that Trusts can continue to use employer contribution recycling schemes is a positive step, we are dismayed that this will be on a discretionary basis. We would strongly argue that such a scheme should be applied to all Trusts, with nationally set terms, in consultation with Trade Unions.

Allowing the policy to be used on a discretionary basis could have significant negative consequences for a number of reasons:

- It could further undermine already low levels of morale for those doctors who utilise the flexibilities on offer, but are unable to access the employer contribution.
- It could have the effect of creating a ‘postcode lottery,’ which distorts the local labour market, with significant variations in take-home pay available on a purely arbitrary basis.
- If applications for retention of employer contributions are considered on a ‘case by case’ basis, rather than being available to all staff who meet a specified criteria, there is a potential for instances of perceived discrimination or favouritism to arise.

¹ <https://www.gov.uk/government/publications/ots-life-events-review-simplifying-tax-for-individuals>

² <https://www.nhsemployers.org/pay-pensions-and-reward/pensions>

- It is likely to impact on whether or not the flexibilities on offer are used - 56.6% of HCSA members surveyed said that they would only make use of the flexibilities if they could retain the employer contribution. Just 9.4% said this would not influence their decision, while 30.5% said that they did not know.

In order to determine how many Trusts and other NHS bodies currently offer employer contribution recycling schemes, HCSA submitted a Freedom of Information request. Of the 153 acute Trusts and Foundation Trusts to whom the request was sent, responses have to date been received from 108, a response rate of 70.6%.

Of the Trusts who responded, 10 (9.3%) said that they currently have a scheme, 7 (6.5%) are either developing or considering whether to develop a scheme and one other Trust has suspended its policy “pending a national solution.” The remaining 83.3% of Trusts said that they have no scheme in place.

There is already clearly a ‘postcode lottery’ in place and it appears very likely that this will continue unless a nationally mandated system is instituted.

Pension Modeller

We welcome the news that the Department is planning to commission a modeller “*from the end of this calendar year in good time*” to help individuals assess options for using the flexibilities proposed.

We would ask the Department to be cognisant of the fact that such a modeller must be accompanied by a significant amount more guidance and information if it is to be effective, particularly given the complexity that would be added by the raft of measures proposed.

We asked our members “on a scale of 1 to 5, how would you rate your level of understanding of the issues around pensions taxation for Hospital Doctors?”, to which 27.1% of consultants rated their understanding as “low” or “very low.”

We also asked our members whether they have received guidance from their Trust on pensions taxation, to which 76.7% replied that they had not.

As part of our Freedom of Information requests, we asked Trusts and Foundation Trusts whether “an internal briefing or assessment on the impact of changes to pension taxation has been provided?” More than half - 55.6% of employers - had not yet provided hospital doctors with guidance. We would argue that this dearth of information has exacerbated the current crisis and we would urge the Department to significantly improve the level of guidance, both written and verbal, that is being offered.

Response to consultation questions

The case for pension flexibility

1. Who do you think pension flexibility should be available to?

- NHS GPs and consultants who may be affected by the annual allowance tax charge
- Other NHS clinicians who may be affected by the annual allowance tax charge

- Non-clinicians in the NHS who may be affected by the annual allowance tax charge
- All members of the NHS workforce, regardless of their tax position
- Other group
- None of the above

Please provide evidence to support your views

We believe that pension flexibility should be available to all members of the NHS workforce regardless of their tax position. We also believe that similar flexibilities should be considered for other public sector Defined Benefit Schemes.

As well as assisting high earners in dealing with the consequences of changes to pension tax relief, enabling all employees to access flexibilities could have the impact of encouraging lower-paid workers to contribute to their pension when they may otherwise withdraw due to financial pressures.

By way of comparison, all members of the Local Government Pension Scheme are able to access the 50/50 flexibility offered, a facility *“designed to help members stay in the scheme, building up valuable pensions benefits, during times of financial hardship.”*³

However, we would submit that employer contribution recycling should only be available to those who are impacted, or likely to be impacted, by the tapered annual allowance and the lifetime allowance. Offering employer contributions to all employees irrespective of their circumstances would create a disincentive to remaining within the pension scheme, which in many cases would be detrimental in the longer term.

Proposed pension flexibility

2. Do you think the proposal for a more tailored approach to pension accrual is flexible enough for senior clinicians to balance their income, pension growth and tax liability? Please set out the reasons for your answer.

3. If not, in what ways could the proposals be developed further?

No. The changes proposed are likely to benefit a small number of doctors; however, we would caution against viewing increased flexibility as a panacea. When asked whether the raft of measures proposed will ease the impact of pension taxation on NHS care, just 12.6% of our consultant members selected Yes, while 55.9% selected No and the remaining 31.5% selected Don't Know.

There is a widespread concern that the proposals could increase complexity rather than reducing it and as we have set out above, the recycling of employer contributions by all Trusts is absolutely critical to encourage the take-up of flexibilities. A majority (56.3%) of HCSA members surveyed said that they would only make use of the flexibilities if they could retain the employer contribution. If doctors are forced to reduce the level of pension contributions that they receive in order to avoid collision with the fiendishly complicated tax system, this effectively punishes them for a crisis not of their making.

One of the outcomes of this crisis has been significant savings by Trusts in employer contributions for employees who have opted out of the scheme. In many cases these savings have been used to bring in locum or agency staff to cover gaps in rotas caused by the pensions crisis. If the impact of this issue is

³ <https://www.lgpsmember.org/more/cont-flex.php>

to be mitigated, then these funds would be much better used in supporting permanent staff by mandating the recycling of employer contributions in all Trusts.

A number of our members have also contacted us to express concerns about the delay in providing statements, particularly the Pension Input Amount. This can make it incredibly difficult to ascertain the more favourable course of action and this would remain the case irrespective of the flexibilities that are offered. These delays exacerbate an already unnecessarily complex system, which involves scheme members having to manually request statements every year. We would therefore call for statements to be provided automatically, in a timely way to all NHS Pension Scheme members.

In light of the above, we would argue that the question should not be whether the approach is flexible enough, but rather what additional steps are required if the flexibilities are to have an effect. We would argue that employer contribution recycling in all Trusts, a significant improvement in the level of guidance available and more timely and automatic provision of statements should all be implemented.

4. We're proposing that large pay increases for high-earning staff should only be included in their pensionable income gradually. Do you agree or disagree with this proposal? Please set out the reasons for your answer.

We agree with this proposal in principle, as one-off increases in pensionable pay can create a spike in pension growth and a higher annual allowance tax charge, despite in many cases there being little, or no additional pension benefit accrued.

However, there is again a risk that this issue could further complicate what is already a fiendishly difficult system for clinicians to navigate. Without the recycling of employer pension contributions, this could also again represent a pay cut. If this flexibility is to be offered, this should only be on an optional basis, as there may be cases where this is less beneficial for the member.

Improving Scheme Pays

5. Currently, the NHS Pension Scheme has a notional defined contribution pot (NDC) approach to Scheme Pays deductions. We're proposing to replace this with the debit method. Do you agree or disagree with this? Please set out the reasons for your answer.

The current Scheme Pays system does not allow a clear insight as to how it affects member pensions and is charged at extremely high rates, which can have profound long-term impacts on the pensions of some members. However, we do not have access to the levels of data required to make a detailed analysis of the overall impact of replacing the notional defined pension pot approach with the debit method and we have no evidence at this stage to suggest any benefits. We would object to the Department proceeding with this option before a thorough impact assessment is undertaken, which demonstrates clearly the impact of this change, followed by further consultation.

Equality Impact Assessment

6. What impact, if any, do you think the following will have on people with one or more protected characteristics:

- a) *The proposal to target the flexibility to clinicians who have a reasonable prospect of an annual allowance tax charge*
- b) *The proposal to provide flexible accrual to clinicians who have a reasonable prospect of an annual allowance tax charge*
- c) *Other proposals in the consultation document e.g. phasing pensionable pay increases and/or commissioning a modeller to help individuals understand their tax liability and flexibility options*
- d) *Adopting the debit method for scheme pays*

7. Are there any further equality considerations that the Department should be aware of from groups outside the data set?

We have nothing further to add to the detailed impact assessment included in the consultation document.