HCSA Evidence to the Review Body on Doctors' and Dentists' Remuneration for 2023-24

January 2023

NOTE: HCSA will not be making a full submission in the 2023-24 pay review round. Instead, we will use this opportunity to highlight our position on the pay review process.

Reform the DDRB: For a Truly Independent Pay Review Process

Introduction

"Doctors and dentists must have some confidence that their remuneration will be settled on a just basis", The Royal Commission on Doctors and Dentists Remuneration, 1960.[1]

The medical profession has indeed lost confidence in the pay review process. HCSA writes in the context of an unresolved 2022 pay round that has ignited outrage across our membership.

Meanwhile, the NHS is at breaking point. Senior doctors are leaving in growing numbers, pushed out of the NHS by inaction on pensions tax.

Our junior doctors in England have voted to join hundreds of thousands of nurses and ambulance workers in withdrawing their labour. This all amid a workforce crisis.

No NHS doctor wants to strike. It is the last resort when all options are exhausted. To reach this point, junior doctors have made an assessment that there is nothing left to lose. This represents a catastrophic failure of the pay review process.

It would be wrong of HCSA to make a 'business as usual' submission this year. We cannot have a re-run of last year's round.

Instead, we will use this opportunity to urge pay review reform. The DDRB is broken. It's time for a truly independent pay review system.

Reflections on last year

Last year, we detailed the disappointment with which the 2021 award was received. We relayed that a member consultation had returned a resounding 'reject' vote. We cautioned that pensions impacts were destabilising the workforce.

[1] Royal Commission on Doctors' and Dentists' Remuneration 1957-1960. Cmnd. 939. 1960. Her Majesty's Stationery Office, London.

The uncertain economic outlook informed our submission and we presented a formula to the DDRB for what an acceptable pay award would look like for the 2022 round. Our formula took Retail Price Index as a starting point and added to this a meaningful additional component to address pay erosion. For junior doctors in England, it would also account for rising pensions contributions and the gap created by previous exclusion from multi-year deals. We asked the DDRB to "*exert its independence from governments with a recommended pay award that bucks the trend of pay deflation."*[2]

Instead, the DDRB recommended 4.5 per cent for those not in multiyear awards, a figure representing significant real-terms pay deflation even against the CPI measure. Affordability was a key limiting factor for the DDRB, who had been instructed by government that a headline 2 per cent pay award was all that had been budgeted for. The DDRB explained: "*We view the affordability and budgetary information provided by the governments as critical context for our considerations of pay uplifts, but we do not view government pay policies or affordability figures as an absolute limit on what our recommendations should be."*[3] This goes some way to explaining the 4.5 per cent outcome: a figure that went beyond the 2 per cent instruction but was nonetheless tempered with government budgets in mind.

Of note in the DDRB 50th report was the inclusion for the first time of locally employed doctors in pay recommendations. We welcome this decision and the spotlight it shines on the growing group of doctors working outside of national terms and conditions. We look forward to seeing progress made in achieving fair and equitable treatment of locally employed doctors.

In terms of groups covered by multiyear awards, the DDRB followed the government's remit and did not recommend for these groups. This left junior doctors in England with only a 2 per cent award, in line with what was negotiated as part of 2016 contract reform (opposed by HCSA at the time). The DDRB emphasised that their terms of reference allow them to make recommendations beyond government instructions, and so they were at liberty to recommend for junior doctors. However, they decided not to, because "*it is crucial that we operate with the consensual agreement of all of the parties."* We noted the DDRB accompanied this with a compelling plea to the government to act for groups in multiyear deals regardless, "*We would also wish to stress the harm that may be caused to recruitment, retention and motivation by not acting."*

This demonstrates the extent to which the DDRB is restricted in its capacity to act. While in principle it could have made a recommendation for those in multiyear deals, it felt it could not operate this way in practice without the endorsement of government. Although the DDRB referenced the importance of 'consensual agreement of all of the parties', it is worth nothing that HCSA and other parties called for a recommendation to be made for junior doctors thus there was not consensual agreement on the failure to recommend for junior doctors. It is also apparent the DDRB was not comfortable with this decision itself, in light of its comments about the risks attached to not awarding for these groups.

This also goes some way to rebut claims by government ministers that they have simply enacted the wishes of an independent pay review process. Following the publishing of the DDRB report, the economic climate worsened. RPI reached 14.3 per cent in October and interest rates spiralled upwards following the disastrous Autumn mini-budget, piling pressure on hospital doctors with

[2] HCSA, Evidence to the DDRB for 2022-2023

[3] Review Body on Doctors' and Dentists' Remuneration 50th Report (2022)

mortgages, student loans and other borrowing. Meanwhile, other health unions moved into industrial action.

In January 2023, HCSA received the news that our junior doctors had voted overwhelmingly to strike, with a powerful 97.48 per cent Yes vote on a turnout of 74.76 per cent. This represents a historic first for HCSA.

Meanwhile, senior doctors are voting with their feet as pensions impacts force increasing numbers into early retirement. Some measures are proposed to ease this situation which in HCSA's view will be wholly insufficient to alter the trend to reduce hours, seniority or to retire early. We have written to Chancellor of the Exchequer but are dismayed to see inaction thus far on pensions tax, which is critical in this regard.

Amidst this climate, we have been disappointed to see the government use the DDRB to justify this year's paltry pay awards. We must therefore challenge the myth of DDRB 'independence' in this submission.

Origins of the DDRB

By returning to the original foundations on which the pay review process was built, we can glean an understanding of where it has diverged from principles.

The Royal Commission on Doctors and Dentists Remuneration in 1960 set the basis for the DDRB. The primary aim at conception was "*the avoidance of the recurrent disputes about remuneration which have bedevilled relations between the medical and dental professions and the Government".*[4] That we find ourselves at present in dispute with the government over pay is an indicator of a politically controlled process that has strayed from its original purpose.

The second aim was to give "*some assurance that their standards of living will not be depressed by arbitrary Government action"* nor *"considerations of political convenience".* This is expanded upon in chapter two, where the Royal Commission notes *"Doctors and dentists in the public service should not be used as a regulator of the national economy. Their earnings should not be prevented from rising because of a fear that others might follow*".[5] Stringent government-led remits have prevented the DDRB from fulfilling this aim in recent years. HCSA would argue that political convenience has become a primary consideration for DDRB.

The final aim was *"the provision of some safeguard for the community as a whole against medical or dental earnings rising higher than they should."*[6] This demonstrates the ambition to strike a balance; ensuring pay is neither inflated beyond the market, nor experiencing real-terms erosion.

Together, the three primary aims represent fairness and a balancing of interests - principles which HCSA supports. Therefore, we do not seek to oppose the concept of pay review boards, nor do we seek to criticise the members of the current pay review board, but instead identify the limitations

[4] Royal Commission on Doctors' and Dentists' Remuneration 1957-1960. Cmnd. 939. 1960. Her Majesty's Stationery Office, London.
[5] Ibid.
[6] Ibid.

of the system they are working under. It is time for reform to bring the process back in line with its original values.

Reform the DDRB: For a Truly Independent Pay Review Process

HCSA has consistently called for DDRB reform. In the 2019-20 pay round, HCSA conveyed that our members feel a *"high level of alienation"* towards the pay review process, and that less than 1 percent of our membership agreed the DDRB should *"stay as it is*".[7]

Last year, in the 2021-2022 round, we highlighted the high degree of political control over the DDRB, resulting in a tendency for the DDRB to *"'play safe' with recommendations that go little beyond what would be considered acceptable by the Treasury".* We laid out our position for reform, which we will reiterate and expand upon below in relation to the Royal Commission's original principles.[8]

HCSA's position on reform remains as follows:

> **Remit:** Governments should not be allowed to set the DDRB remit. All parties should be invited to make comment at the beginning of the process on what they feel the remit should be. The DDRB should have greater independence to make recommendations beyond the government remit.

It is important to HCSA that the process is truly run by the DDRB, and not instigated and controlled by government. This view was shared by the Royal Commission, who envisaged that *"normally the Review Body itself would initiate consideration of possible changes in remuneration and then make its recommendations to the Government".*[9]

> **Terms of reference:** The DDRB should not be required to assess the funds available to the health department and consider the government inflation target. The DDRB should be allowed to consider historic pay decline in its own right, and not merely limited to make recommendations within the context of recruitment, retention and motivation.

The Royal Commission also saw value in avoiding restrictions on the DDRB's terms of reference, reasoning: "*We do not think it desirable to define exactly the factors of which the Review Body should take account in making its recommendations."* Instead it recommended that the DDRB have broad terms of reference as follows: *"To advise the Prime Minister on the remuneration of doctors and dentists taking any part in the National Health Service."* They followed this up by noting "*we expect that three factors which would always be relevant would be changes in the cost of living, the movement of earnings in other professions, and the quality and quantity of recruitment in all professions."*[10]

HCSA is of the opinion that political priorities, such as the finances available to the Treasury and the national economic context, have overshadowed key factors that impact the medical

[7] HCSA, Evidence to the DDRB for 2019-2020
[8] HCSA, Evidence to the DDRB for 2022-2023
[9] Royal Commission on Doctors' and Dentists' Remuneration 1957-1960. Cmnd. 939. 1960. Her Majesty's Stationery Office, London.
[10] Ibid.

profession. The economy should not, and cannot, be regulated primarily through public sector wage suppression.

To deflate doctors' wages at a time of workforce crisis is counter-productive, counter-intuitive and a danger to the health and wellbeing of the country. We therefore call for a reset to the original terms of reference.

> **Appointments:** DDRB members should be appointed through an entirely independent process without political involvement.
>
> **Accountability:** Members should not be accountable to government ministers, to ensure independence.
>
> **Composition:** There must be at least one member with clinical experience and another with trade union experience on the DDRB. Membership should also be reflective of the medical profession from an equalities perspective, particularly as we have concerns related to gender and ethnicity pay gaps, although we acknowledge some progress has been made in recruiting women to the body.

In these areas, HCSA's view diverges from that of the Royal Commission of 1960, who advocated for DDRB appointments being made by government to *"persons of eminence and authority"* and specifically noted *"no members of the medical and dental professions should be included".*[11] However, this view was not unanimously shared at the time, and in the 'Memorandum of Dissent' Jewkes makes the case for representation from the medical profession on the DDRB.

It is clear that the current composition favours members with backgrounds in Human Resources, Accountancy and Finance. Such individuals may have experience representing the employer's side in negotiations, and it is therefore appropriate that the employee side has equal participation in this board through those with trade union and medical experience. It is worth noting that the Royal Commission argued that appointments should be made in consultation with trade unions and medical representatives, intended to give such balance. This is not enacted at present.

> **Timeline:** the timeline and process should be instigated by DDRB independently. Governments should not have control of the timeline.
>
> **Conclusion of process:** The final report should be published in the public domain for transparency at the point it is handed to governments. Governments should be required to implement its recommendations.

HCSA has made these recommendations in light of our experience of government control over the DDRB timetable, which often slows down the process. Submissions have repeatedly been made late, and government has ultimate control over when it chooses to publish the DDRB report and make a pay award. Typically, this has come on the last week of Parliament, stifling scrutiny and many months after an award should have been paid to staff.

The government also has final say on whether to implement the recommendations. Our research shows the DDRB outcome has been implemented in full on the due date by the UK government in less than half of the pay rounds.

[11] Ibid.

This is at odds with the original vision of the Royal Commission, who stated *"in the interests of preserving confidence and goodwill it is moreover essential that the Government should give its decision on the Body's recommendations very quickly".*[12]

Whilst the Royal Commission did not feel it appropriate to make the DDRB's recommendations binding, it commented that *"we believe that seven people such as we have in mind will make recommendations of such weight and authority that the Government will be able, and indeed feel bound, to accept them."* Disappointingly, this sense of duty by government to implement recommendations has not always materialised. Instead, it appears to be the DDRB who carry a sense of duty, as increasingly recommendations are shrunk in order appease government and achieve implementation.

Conclusion

This is a crucial point in the history of the pay review process. In the immediate, HCSA will be guided by its members' wishes in disputing the 2022 pay award for junior doctors through industrial action and negotiation. Further, we will continue to make the case to decision-makers for pensions reform so that senior doctors are no longer punished for working in the NHS.

Yet these actions must go hand-in-hand with a wider review of the pay review system. We have laid out the changes that need to be made to restore the balance that the system was originally envisioned to promote. Without reform, the system will continue to produce pay outcomes that fall far short of what is required to retain and recruit NHS doctors. Funding the workforce is a crucial component of patient safety, and pay is a tool political leaders have at their disposal. For too long, the process has been weighted in favour of short-sighted government budgetary concerns. It is only through transparency, representation and true political independence that faith in the system will be restored.

[12] Ibid.