BMA

Northern Ireland

Department of Health pension policy team
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Consultation on proposed changes to member contributions to the HSC pension scheme
Response from BMA Northern Ireland

Introduction

BMA Northern Ireland welcomes the opportunity to respond to this consultation on proposed changes to member contributions to the HSC pension scheme from 1 April 2022.

The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

The BMA is clear that across all NHS pension schemes in the UK, including the HSC pensions scheme, tiered contribution rates, especially those at the current levels, are inappropriate and inherently unfair. We remain unclear as to the policy intention behind preserving tiered rates when they are detrimental to a significant proportion of the workforce and would welcome additional explanation as to why they are being maintained.

Whilst we welcome the flattening of the contribution tiers proposed by this consultation, the BMA believes that a completely flat contribution rate for all members is the fairest and most straightforward way of meeting the 9.8% target yield and we will continue to advocate for such a change. The consultation document itself recognises that 'the simplest method [to ensure that 9.8% is collected] is to ask each member to contribute a flat rate of 9.8%'.

The BMA is also of the view that the target yield itself is inappropriately high when compared with comparable public sector schemes, which exacerbates the existing unfairness across the scheme.

The current situation is intolerable for many doctors, who are simply opting out of the scheme, or choosing to leave the health service altogether. These proposals do very little to address the unacceptable unfairness faced by doctors in Northern Ireland, which will have long term and

significant consequences on the ability of the health service to deal with increasing demand for care amid mounting workforce pressures.

Wider pension taxation issues

While we recognise that this consultation focuses on the specific issue of contribution rates and the associated regulations, we would like to make clear that this is only one part of wider pension-related issues adversely impacting doctors in Northern Ireland. As such, these proposals need to be considered in the round and take account of the broader context and associated implications. This is crucial when developing effective, long-term workforce planning, which is central to the operation of a successful health service.

One issue is that scheme members who are expected to pay employee pension contributions at the highest tiers will inevitably be impacted by both the annual allowance (AA) and lifetime allowance (LTA). These taxes are both designed to limit income tax relief on pension contributions, however, the higher contribution tiers already have the effect of removing income tax relief in its entirety.

The BMA has been clear in our representations to the UK government, to which matters of pension taxation are reserved, that it is not fair or logical to have two separate mechanisms, the AA and LTA, to limit tax relief. As such, we favour changing the pension scheme to align with that proposed for the judiciary- a tax-unregistered scheme with a contribution rate of 4.26% (with no tax relief). Yet, the tiered contribution rates, set by the Department of Health in Northern Ireland, further compound this existing unfairness. The impact is such that affected doctors are left with little option but to reduce their hours or retire earlier than they otherwise would.

Further, the system actively encourages affected members to opt out, running entirely contrary to the shared principle of minimising opt-outs across the scheme.

It's also the case that following a consultation in 2019, HSC pension employer contributions in Northern Ireland were increased from 16.3% to 22.5%. This has impacted significantly on pension input amount (PIA) calculations, artificially increasing the estimated pension growth and, as a result, leading to arbitrary additional tax charges.

BMA Northern Ireland has met with the Minister of Health and Department officials in recent months to highlight this issue, and the compounding impact of the McCloud judgment which further exacerbates retention concerns.

We have made it clear that there are available means through which the Department can support the retention of doctors at a time when they are needed more than ever. Measures such as employer pension contribution recycling and AA compensation schemes have been utilised in other UK nations, but Northern Ireland is the only part of the UK not to implement any such measures. This not only impacts the amount of work senior doctors are able to undertake without having huge tax charges levied on them, but also significantly affects their well-being and morale when service pressures are already extremely high.

We are concerned that the Department doesn't fully appreciate the impact of pension-related taxation on the workforce. For example, the consultation document states that if a tax charge is

levied on the value of pension benefits that exceed the tax-free allowance, this 'should not affect affordability' and 'the charge can be deducted from the pension pot at retirement rather than requiring the individual to pay cash up front'. This grossly underplays the scale of this issue and fails to take into account the interest that accrues when scheme pays is used.

The consultation document also states that tiering has helped deliver shared priorities, including 'minimising the risk of opt-outs from the scheme across the whole membership'. However, we would contest that while it may have prevented those at lower contribution tiers from opting-out, it has the opposite effect on those paying higher contribution rates, who may already be seeking to opt-out of the scheme or retire early to avoid punitive pension taxation.

Given responsibility for recruitment and retention of the healthcare workforce is the responsibility of the Department of Health, it is important that all available measures are taken to protect senior and experienced doctors from this unfair system. Therefore, in reforming the contribution structure within the HSC pension scheme, we would urge the Department also to review the interaction with wider pension taxation issues and take appropriate mitigating action where available.

Consultation response

Q1. Do you agree or disagree that the maintenance of pension parity (in terms of contribution tiers and rates) with England and Wales is an important principle which should be maintained? Recognising that maintaining parity might not be possible if the 9.8% yield is to be delivered, of the alternatives presented, which do you feel represents the best approach given the principles endorsed by SAB regarding protecting the low paid and minimising drop-outs across all members?

We maintain that tiered contribution rates are inappropriate within a CARE scheme, and complexities and inconsistencies such as this reinforce the need for a flatter, and therefore simpler, approach. If all members paid the same fixed rate, then the full yield would be met without the need for additional measures.

The consultation should be clear as to why the rates as proposed would not meet the 9.8% yield in Northern Ireland, by providing a clear analysis of the workforce breakdown. There may be different reasons as to why this is the case and it's important for full transparency so as to ensure that the solutions proposed are appropriately targeted.

If, for example, Northern Ireland has proportionately fewer higher banded Agenda for Change or senior medical staff compared to other UK nations, impacting on the return provided by the proposed rates, then further investigation would be required as to why this is the case. Remedy would likely be better sought through more effective workforce planning, rather than asking the healthcare staff in Northern Ireland to pay higher pension contributions on top of already proportionately lower pay.

Similarly, the Government Actuary's Department's 2016 valuation[1] of the HSC scheme also suggests a higher ill health retirement rate. It may be that this impacts on the ability to meet the target yield with the proposed contribution rates. There could be a range of reasons as to why this is the case and we would require further information before making a determination on what corrective action, if any, is required.

The principle of parity should be maintained, alongside the overarching strategy of moving to a flatter structure. It's clear that in no circumstance should the workforce in Northern Ireland have higher contribution rates than those in the England and Wales scheme, and neither should the rates proposed be steepened, at the expense of those already paying the highest contributions, to cover any shortfall. These measures would be fundamentally unfair and act as a disincentive for staff to work in Northern Ireland at a time when we already face significant workforce challenges.

In our view, these measures would also be counterproductive to the aim of minimising drop-outs across the whole scheme. Increasing contribution rates will inevitably impact affordability for those lower paid and, when considered alongside punitive pension taxation, will have a similar impact among the higher rate payers, too, with increasing numbers choosing to leave the scheme altogether.

Finally, we also note the existing, built-in valuation mechanisms to limit and remedy breaches of the cost floor or cost cap as set out in the 2015 regulations.

Q2. Do you agree or disagree that the member contribution rate should be based on actual annual rates of pay instead of members' notional whole-time equivalent pay? If you disagree or don't know how to answer please explain why.

All members of the HSC pension scheme will be in a CARE scheme from 1 April 2022, and BMA Northern Ireland believes that it is inappropriate to have a system of tiered contributions within such a model.

Across all UK NHS pension schemes, the BMA is clear that a move to a flat contribution rate should be implemented, and we are disappointed that this hasn't been considered. Such a structure would address the objective which this proposal is seeking to achieve, in a manner that is fairer and significantly simpler to administer. Currently, those scheme members working less than full-time pay proportionally more per £1 of pension benefit. In a flat contribution structure, this issue would not arise because every member would be required to pay the same percentage contribution.

However, given the stated intention to continue with a tiered structure of member contributions, we agree that the member contribution rate should be based on actual rates of pay.

Continuing any longer with an iniquitous system of basing pension contributions on notional whole-time equivalent pay will result in ongoing detriment to part time workers, the majority of whom are female and/or those with caring responsibilities and underlying health issues.

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1 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/899577/HSCPS_Valuation_2016_Assumptions_Report.pdf

We are concerned as to the treatment of sessional GPs under the proposed system. It is unclear whether the change to calculate basing employee contribution tiers on actual pay will extend to this group of scheme members. Currently, sessional GPs have their employee pension contribution tier based on annualised pay rather than their actual pay.

This can result in sessional GPs paying employee pension contributions based on the highest tier (currently 14.5%) even if their contribution based on their actual pay would place them in one of the lowest tiers. If the proposal is for contributions to be based on actual pay then this should apply to all members, including sessional GPs.

Q3. Do you agree or disagree with the proposed member contribution structure set out in this consultation document? If you disagree or don't know how to answer please explain why.

Firstly, BMA Northern Ireland is of the view that, the current and proposed contribution rates are unduly excessive due to the unnecessarily high target yield of 9.8%. This yield is substantially above member contributions in similar public sector pension schemes. The employee contribution rates in the Northern Ireland Civil Service pension scheme range from 4.6% to 8.5% and from 5.5% to 10.5% in the Northern Ireland Local Government scheme. These produce much smaller yields than the 5.2% to 12.5% rates proposed, so it's unclear why those in the HSC workforce are expected to pay such comparably high rates.

We also note that the proposed rates are far higher than the planned contribution rate for the tax unregistered pension scheme for the judiciary of 4.26% (with no tax relief) which, in our view, represents a more appropriate scheme model for our members.

As well as the yield itself being unnecessarily high, BMA Northern Ireland maintains that a tiered contribution structure is inappropriate given that this will be a CARE scheme for all members from 1 April 2022. This eradicates any purported justification for tiered employee pension contributions and maintenance of the tiered rates further compounds the unfairness for doctors, who are, by the nature of their roles, in the higher tiers of the scheme. As such, we consider that the appropriate way forward would be to implement a flat contribution rate for all.

In lieu of an agreement on a flat contribution rate, further flattening of the proposed contribution structure would be the only way to start addressing this unfairness.

Furthermore, one of the stated objectives of the proposals is to ensure affordability, particularly for lower earners in the scheme. We broadly support this aim and would suggest that more could be done to reinforce the fact that, for an overwhelming majority of members, paying into the scheme represents better value for money in the longer term than opting out, and has valuable associated benefits. Where members still consider the need to opt out of the scheme despite this, then clearly wider issues of pay and conditions need to be addressed beyond the scope simply of pension contribution rates.

Q4. Do you agree or disagree that the thresholds for the member contribution tiers should be increased in line with Agenda for Change pay awards? If you disagree or don't know how to answer please explain why.

We are clear that our preferred approach is one of a flat contribution rate - such a scheme would not require pay thresholds as all members would pay the same rate.

However, within a tiered scheme, we acknowledge the need for contribution thresholds to rise incrementally in line with pay. While our members' pay scales aren't governed by Agenda for Change, we acknowledge that this is the case for the majority of the HSC workforce, and therefore accept that this mechanism would be appropriate should a tiered scheme be maintained.

Q5. Do you agree or disagree that the proposed member contribution structure should be phased over 2 years? If you disagree or don't know how to answer please explain why.

Whilst the proposals maintain an inappropriate element of tiering which is inherently unfair to our members, we do acknowledge that there is an effort to flatten out the contribution model to some extent. This is a welcome move to a more equitable scheme where all members pay a contribution closer to the target yield.

Despite this, the proposals unfairly delay implementation of the flattened rates. This grossly prolongs the detriment that many doctors are facing. The scheme remains unjust for those members paying contributions at the higher rates and as such, the partial remedy proposed must be implemented as soon as possible.

Q6. Do you agree or disagree that the proposed draft amending regulations deliver the policy objectives of implementing the first phase of changes to the tiered contribution rate structure and the assessment of a tiered rate using actual annual rate of pensionable pay for part-time members rather than notional whole-time equivalent? If you disagree or don't know how to answer, please explain why.

The draft regulations appear to support delivery of the proposed policy objectives. We note the overall complexity of the regulations required to maintain and administer a tiered contribution scheme, and that this would be significantly reduced with the introduction of a fairer, flat contribution rate.

Q7. Are there any considerations and evidence that you think the Department should take into account when assessing any equality issues arising as a result of the proposed changes?

BMA Northern Ireland has set out its view that a flat contribution scheme is the most fair and equitable way of meeting the target yield. We continue to call for the implementation of a flat contribution rate, and lower target yield, across all NHS pension schemes within the UK, including the HSC scheme in Northern Ireland. We will also continue to press for the introduction of a tax unregistered pension scheme, akin to that proposed for the judiciary, for our members.

We are nonetheless pleased to note the acknowledgement that these proposals are a 'staging post to a flatter structure in the longer term'. The introduction of slightly flatter contribution rates, and the move to basing contributions for those working part-time on actual pay are welcome measures that make the scheme fairer than is currently the case. We reiterate our call to ensure that sessional GPs have their pension contribution tier based on actual rather than annualised pay. This group are predominantly female practitioners and addressing this issue may help to avoid indirect gender discrimination.

Beyond this consultation, we would urge that a plan is developed and articulated setting out how the Department of Health will seek to address existing unfairness within the system and continue to make progress toward a flat contribution rate. Further proposals to enhance the scheme and make it fairer for all members, along with deliverable timeframes would be a positive next step. We would be happy to support the work of the Department in this crucial area.

Once again, we would like to thank the department for the opportunity to respond to this important consultation. Should you have any questions in relation to it, please contact Samuel Stone, senior policy officer, in the first instance via sstone@bma.org.uk.

Yours sincerely

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Chair
BMA NI Council