BMA

Northern Ireland

Response from BMA Northern Ireland to HSC Pension Scheme consultation on proposed amendments to scheme regulations regarding member contributions phase 2 and miscellaneous amendments

JANUARY 2024

INTRODUCTION

BMA Northern Ireland welcomes the opportunity to respond to this consultation on proposed changes to member contributions and other amendments to the HSC pension scheme.

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.

GENERAL COMMENTS

BMA Northern Ireland acknowledges and welcomes the initial removal of the 14.5% tier and the proposal here to remove the 13.5% tier. However, we would reiterate that a tiered contribution structure remains both inappropriate and unnecessary and introduces complexity when members move between tiers. Given that all scheme members moved to a career average revalued earnings (CARE) scheme from 1 April 2022, there isn't any justification for tiered employee pension contributions, let alone the steep tiering that remains in place.

We are particularly concerned by the proposal of freezing the earnings threshold for the top tier. This will inevitably lead to a greater number of HSC scheme members paying the highest contribution rate and exacerbate the current inequity where higher earners are paying far more per £1 of pension than other scheme members. Whilst we note the interaction with the point at which higher rate income tax becomes payable, this does not provide justification for freezing the earnings threshold for the top tier, particularly given that income tax thresholds are subject to change. This could result in significant cliff edges and may increase the rate of members opting out of the scheme. Rather than addressing some of the inequities that currently exist by moving to a flatter structure, this proposal will potentially exacerbate the unfairness even further.

BMA Northern Ireland would also reiterate its position 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 8.05% and from 5.5% to 10.5% in the Northern Ireland Local Government scheme, producing smaller yields than that of the HSC scheme.

We therefore do not believe that the 9.8% average yield needs to be maintained. The choice to retain this average yield has a significant impact on scheme affordability, particularly for lower paid members. Such affordability issues can be dealt with by reducing the target yield in line with other public sector pay schemes, rather than maintaining the steep and unfair contribution structure.

Furthermore, BMA Northern Ireland would again highlight its position that sessional General Practitioners (GPs) must have their contribution tier based on their actual pensionable pay, as opposed to annualised pay. This is now the case for all other groups of doctors. Sessional GPs, many of whom are women working less than full time, are paying employee contributions at the highest rate (currently 13.5%, 12.5% from April 2024) despite being lower earners than their colleagues working full-time. We would highlight the unfairness of this issue and its potential unlawfulness on equalities grounds. The proposal of real-time re-banding will not address this issue as it's not likely to be possible for this group of doctors.

BMA Northern Ireland would note that, more broadly, issues relating to the HSC scheme should be seen in the wider pensions context, accounting for its day to day operation and the impact on members. These proposals, along with the McCloud implementation and other recent changes introduce further complexity to an already complicated system. We would like to place on record our ongoing concerns that the scheme is simply not accessible and navigable for most members, often necessitating expensive, external advice to be sought.

This complexity is further enhanced when changes occur that create discrepancies between how the scheme is delivered in different parts of the UK. We are pleased that the Department is now developing policies on pension flexibilities, such as partial retirement, in line with other parts of the UK. However, our members are disappointed that this has taken far longer in Northern Ireland.

Finally, we note that the equivalent England and Wales consultation additionally proposes to make amendments to NHS pension scheme regulations to insert a deeming provision for members who take unpaid carer's leave. The provision will ensure that members who take carer's leave will continue to accrue pension membership during the time that they are absent from work. It's important that such provision isn't denied to members in Northern Ireland, and so we would urge the Department to consider how to maintain parity with colleagues across the UK.

RESPONSE TO THE CONSULTATION

1. **Do you agree or disagree with the principle to remove the first tier of the HSC Pension Scheme member contribution structure at a future point? This tier provides a subsidised contribution rate to members who do not qualify for tax relief. We are seeking views on the principle to remove it at the point that HMRC begins to make top-up payments directly to eligible members to provide the benefit of tax relief directly.**

Whilst our members will be generally unaffected by this change, we would wish to highlight that this proposal will potentially put some of the lowest paid HSC workers at risk of a reduction in their take home pay if they remain a member of the HSC pension scheme. Many of those impacted by this will be part-time workers and they are already one of the groups most likely to consider opting out of the HSC pension scheme for affordability reasons.

Whilst we understand that the HMRC top-up payment is intended to offset the reduction in take home pay, we have a number of concerns about how this would operate in practice.

Firstly, it would be placing a heavy reliance upon the top-up payment system functioning effectively from the outset. Given the issues stakeholders have experienced in terms of the implementation of such government systems, and the disproportional impact any errors could have in terms of reducing take home pay for this vulnerable group, we would urge caution and ask that this measure should at least not be implemented from the outset.

Secondly, it is made clear in this consultation that, where top-up payments are made, these payments will reflect the net pay contributions made in the previous tax year and will be based on an individual's total taxable income in that previous tax year. This will lead to a delay between the date at which members are required to pay contributions and the date at which they receive a top-up payment. Such a delay could result in significant detriment in instances where individuals in this tier, typically lower earners, find themselves financially stretched and without sufficient resources to support themselves during this period.

Furthermore, new joiners to the scheme or those whose pensionable salary is reduced would, under the current rules, need to wait until the next tax year for a top-up payment, with the support reduced as a result of the removal of this tier.

We are also concerned about the potential complexity of this and whether some members may not receive the top up payments because they haven't done what was required. If such a scheme was introduced it is essential that it is robust, the payments are 'automatic' - i.e. processed at payroll level and made without delay so that there are no temporary periods where take-home pay may fall. This proposal greatly undermines the principle that the pension scheme should be to ensure accessibility and affordability for all of its members. This measure would restrict that, particularly given that even with the top up payments, significant issues will remain for this group of low paid workers.

Although we continue to have concerns, this may be something that could be revisited once the HMRC top up scheme is implemented and is functioning well. We feel strongly that this tier should not be removed at the point when HMRC first introduces such a scheme but could perhaps be considered in the future when processes are in place to address the concerns outlined above.

2. **Do you agree or disagree that uplifting thresholds in line with CPI and automating the process is a suitable approach which complies with the principles outlined in this section?**

BMA Northern Ireland understands the challenges that result from the interaction between pay awards and the earnings threshold for assessing contribution tiers. We would highlight that this problem disappears with a flat (or near flat) contribution structure. However, within the current tiered structure it is essential that any annual pay award increases do not inadvertently result in members being financially disadvantaged by being pushed into a higher contribution tier.

There are recognised challenges with using Agenda for Change pay awards as a basis for uplifting thresholds, not least that these awards do not apply to BMA Northern Ireland members. Additionally, any specific pay award might generate further complexity, for example, in instances where it is not applied evenly across pay bands.

However, fundamentally, the key issue in Northern Ireland is that the pay review process has been consistently delayed, with the pay award not confirmed or implemented until the end of the financial year, or even the following year. Obviously, there has yet to be a pay award for 2023/24. The pay review process must be reset such that pay awards are known and implemented from April in any given financial year.

There is some logic in using CPI to index the earnings thresholds, although this would still result in some challenges. Given that across the health service, there has been severe pay restraint over many years, there is a pressing need for pay awards to exceed inflation over the coming years. It would be inappropriate and counterproductive to any pay settlement for such an award to be partially clawed back via being lifted into higher pension contribution tiers. We would therefore propose a review mechanism so thresholds can be uplifted further should pay awards exceed CPI.

Moreover, it is essential that pay awards are implemented at the start of the financial year under these proposals as otherwise a potential significant anomaly could occur between the interaction of this and real-time re-banding.

For example, if a member was earning £44,000 p.a. from 1st April 2024, they would fall in the 10.7% contribution tier. However, if the thresholds were uplifted by CPI from 1st April 2024, earnings of

£44,000 p.a. could now place them in the 9.8% contribution tier. They would therefore pay contributions at the lower rate of 9.8% for each monthly pay period - thereby potentially underpaying contributions compared to if the pay award was correctly implemented in April 2024. However, if they then receive a pay award in October 2024, the increased earnings (based on an annual salary) may then result in them moving back to the 10.7% tier again.

It is unclear from the proposal what would happen in this situation, which is likely to be an annual occurrence unless pay awards are routinely implemented at the start of a financial year. For example, would the employee face having to pay both the excess contributions back to April 2024 on any back payment (assuming the pay award was backdated to April) and also be responsible for paying the difference between the 9.8% and 10.7% thresholds if they had "underpaid" as a result of real-time re-banding applying the lower tier.

Alternatively, would they simply pay the lower tier for the monthly pay periods prior to the back payment and then with real-time re-banding pay the 10.7% tier (or potentially even the 12.5% tier) for the single month in which any back payment was made? In either scenario this could result in a significant, temporary reduction in take home pay.

Overall, BMA Northern Ireland would note that moving to a flatter contribution structure will negate most of the concerns raised and remains our preferred solution. In the current context, however, linking to CPI is reasonable provided there are robust mechanisms to address the issues identified above, so that HSC scheme members aren't disadvantaged. In particular, given current processes for implementing pay awards in Northern Ireland, we would need to be assured that it's the intention of the Departments of Health and Finance to implement pay awards at the beginning of the financial year moving forward. BMA Northern Ireland, along with the Review Body on Doctors' and Dentists' Remuneration, has consistently noted that the delayed pay awards in Northern Ireland are unacceptable. If this trend continues, it would further exacerbate the complexities of a CPI-based solution to uplifting thresholds.

3. **Do you agree or disagree with the proposal to set the contribution threshold for the next 4-year valuation period (2024 to 2028 scheme years)?**

We agree that having a confirmed structure for a 4-year valuation cycle brings greater stability for pension planning. However, we would reiterate that it would be extremely damaging to freeze the upper tier. This risk would be exacerbated if this was frozen for prolonged periods. Similarly, given the challenges around pay award timings and the level of pay awards, we would suggest that review mechanisms are agreed within a valuation period to ensure appropriate changes can be made to avoid financial detriment to any cohort of members.

4. **Do you agree or disagree with the suggestion to freeze the entry point to the top tier of the member contribution structure? This tier is occupied by members who receive the benefit of higher rate tax relief on their pension contributions. We are seeking views on the principle of removing this tier as the default lever to ensure the scheme continues to collect the 9.8% contribution yield.**

BMA Northern Ireland strongly disagrees not only with the proposal, but the basis upon which the proposal is justified. We would firstly emphasise, yet again, that the principle of a tiered structure under a CARE scheme is illogical and unfair. Using a CARE scheme eradicates any purported justification for tiered employee pension contributions. We consider that the appropriate way forward would be to implement a flat contribution rate for all.

Moreover, even if a flat contribution rate were to be implemented, we do not consider it to be appropriate for members to be required to contribute a 9.8% yield, as the target yield in the HSC pension scheme is unnecessarily high. The employee contribution rates in the Northern Ireland Civil Service pension scheme range from 4.6% to 8.05% and from 5.5% to 10.5% in the Northern Ireland Local Government scheme, producing smaller yields than that of the HSC scheme. The planned contribution rate for the tax unregistered pension scheme for the judiciary is 4.26% (with no tax relief).

For a higher rate taxpayer, even if higher earners in the HSC service were paying an employee contribution rate of 9.8% in line with the average yield, this is equivalent to a net rate of 5.9%, significantly more than the equivalent net rate (4.26%) for judges. It is not clear why there is a need to maintain this overly high average yield, particularly given that, when these increased rates were introduced, they would have triggered a cost floor breach at the last scheme valuation had the McCloud Remedy costs not been included as member benefits. BMA Northern Ireland continues to believe that was unjust and this remains subject to legal challenge.

Within our membership, the groups most impacted by this proposal to freeze the threshold for the top contribution tier will be our younger members who are junior doctors and senior doctors working less than full time who are predominantly female. This will exacerbate the already high costs of pension membership for this cohort compared to other public sector workers with similar earnings. It will increase the risk of opt-outs, with recent data suggesting that opt-out rates are now higher among medical staff than non-medical staff and that the rate of opt outs has increased the most among junior doctors. This proposal therefore runs counter to the stated aim of maximising participation across all staff groups.

We also disagree with the proposal on the basis that it this being linked to the threshold for higher rate tax relief. Tax relief is already limited by the annual allowance and despite the increase in annual allowance to £60,000, there are a number of doctors still subject to annual allowance (AA) charges.

Furthermore, the recent abolition of the lifetime allowance could be reversed under a future UK Government. The suggestion that tiering should remain and potentially be linked to when higher tax relief applies is not justified when doctors are then subjected to a second (AA) and potentially a third (LTA) mechanism to correct for tax relief. This is not the case with pension savings in other sectors, including the private sector, where members can fully utilise their higher rate tax relief on their pension contributions.

Finally, whilst the threshold at which higher rate income tax is currently frozen, this is unlikely to remain the case indefinitely, with income tax thresholds potentially subject to change at any time. Freezing the entry point to the top tier, particularly if this is for a full valuation cycle, could result in a band where there is a very high net contribution rate if thresholds for income tax are raised but the entry point for the top tier remains frozen.

5. **Do you agree or disagree that the introduction of real-time re-banding would produce a more accurate outcome for the calculation of member contribution rates? Real-time re-banding will assign an updated pension contribution rate in the pay period where pay changes for members with pensionable pay which fluctuates between pay periods**

BMA Northern Ireland agrees that real-time re-banding will help to address some of the challenges caused by fluctuations in pensionable pay. However, a move to a flatter structure with fewer bands would better address this issue and other inequities in the scheme.

As outlined above, we are uncertain as to how payments of backdated pay would be managed with a system of real time re-banding, and it would be important to ensure there are safeguards to ensure that members do not suffer financial disadvantage.

We note, yet again, that this consultation does not to address the use of annualised pay for sessional GPs and would urge the Department to ensure that all doctors, including sessional GPs, are paying contributions based on what they actually earn. The situation is unfair, potentially unlawful and requires action beyond the proposal of real-time re-banding as, even if implemented, it would likely not be available to these doctors.

6. **Are you responding as or on behalf of a non- HR, Pay & Travel Portal (HRPTS) payroll provider? If yes, do you have the capacity to implement real-time re-banding?**

Not applicable.

7. **Do you agree or disagree with the proposal to amend the definition of overtime? This will allow staff who work part time to pension additional income up to whole time, with limitations where members have partially retired in the previous 12 months?**

BMA Northern Ireland agrees that the 2015 regulations should be amended to enable pensionability of overtime. It appears to be an entirely reasonable measure that addresses a significant historical issue with the 2015 scheme, when compared to earlier schemes.

However, we do not agree that pensionability of overtime should be limited to whole-time equivalent hours. Across the health service, many groups of workers do regular overtime that is paid consistently in monthly pay periods. For example, consultants and SAS doctors may undertake regular additional programmed activities (PAs) as part of an additional contract, often requiring significant notice before such activity can be ceased. It is unclear why such regular payments are not considered to be pensionable. We note that in other schemes, regular overtime payments are considered as such and that there have been legal judgements supporting that principle. We also note that in the practitioner section of the HSC pension scheme, all work is considered pensionable, creating an anomaly between how this is considered in the officer scheme.

We would therefore support an option for members to choose whether regular overtime beyond whole time equivalent, such as additional PAs, can be pensionable.

We note that this consultation makes further proposals around partial retirement, in addition to those outlined in a previous consultation. We await the full response of that consultation but would like to reemphasise our support for this provision.

However, as stated in response to the Department's consultation on pension flexibilities last year, BMA Northern Ireland believes that the requirement to reduce pensionable pay by 10% is unnecessary and risks reducing HSC capacity at a time of intense pressure. Furthermore, we are aware that in England and Wales, where partial retirement is already in place, the requirement has caused significant challenges in implementation. As a result, many people have been unable to access partial retirement since it was made available in October 2023, and with the policy due to be implemented in Northern Ireland from April 2024, the Department should seek to pre-empt such concerns from arising here.

If the Department opts to ignore the challenges identified elsewhere and insists on the 10% reduction in pensionable pay to avail of partial retirement, it's appropriate to develop regulations that prevent automatically making overtime payments pensionable for the first 12 months post

partial retirement. In this instance, however, we would urge the Department to ensure the option of recycling of the full value of the employer's pension contribution is made available to those forced to drop their pensionable pay by 10% to satisfy this unhelpful requirement, in line with its previous commitment to develop a pension recycling policy.

8. **If you have any further comments on the proposed increase to the employer contribution rate from 1 April 2024, please outline them.**

We would note that the previous increase in employers' pension contributions led to a net surplus (once pensions in payment were deducted). It is likely that the net surplus will increase further as a result of this change.

9. **Do you agree or disagree that the proposal to amend HSC Pension Scheme regulations has the intended effect of permanently removing abatement for SCS members?**

BMA Northern Ireland has consistently called for the permanent removal of abatement, and so supports this proposal fully. We would hope that the Department will make efforts to identify and notify those affected by this.

10. **Do you agree or disagree with the proposal to amend HSC Pension Scheme regulations with the intended effect of removing reference to the lifetime allowance?**

BMA Northern Ireland agrees that this is appropriate given the abolition of the lifetime allowance.

11. **Do you agree or disagree with the proposal to clarify the partial retirement regulations to expressly exclude access to this option via entering into a salary sacrifice arrangement?**

BMA Northern Ireland has made clear its position in regards to the requirement for members to reduce their pensionable pay by at least 10% for the 12 months following partial retirement. For GPs, a 10% reduction in commitment would be required. This is fundamentally unfair and counterproductive to the policy aim.

We also note that unless there is recycling of the full value of the employers' pension contribution this results in a cut to their overall remuneration that the employee would receive from their employment if they were working full time but forced to have 10% of their pay non-pensionable. It would leave this group of older part-time workers being treated differently to other workers.

By removing the 10% reduction requirement, these regulation changes would not be necessary.

12. **Do you agree with the proposals to make minor amendments to the to the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995, the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008 and the Health and Social Care Pension Scheme Regulations (Northern Ireland) 2015?**

BMA Northern Ireland agrees with this in principle, providing any these are consequential amendments and not substantive changes to regulations. The consultation document, however, doesn't appear to provide the wording of any specific amendments.

13. 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?

Our proposal for a flat contribution rate, to be applied equally to all, is both fair and equitable. It involves everyone paying the same contribution rate, regardless of any protected characteristic. The current proposal to continue with a tiered contribution system represents a clear missed opportunity to create a fair scheme that encourages all members to participate and be treated fairly. A move to a flat contribution structure would be fundamentally fair across all protected characteristics and simpler to administer. Bringing the average yield in line with that of other public sector pension schemes will also ensure that a move to a flatter structure doesn't introduce affordability issues for lower paid members.

Furthermore, it is essential that sessional GPs also have their pension contribution tier based on actual rather than annualised pay. This group are also predominantly female practitioners, and not addressing this issue may result in indirect gender discrimination.

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 adviser, via sstone@bma.org.uk.