

Consultant pension flexibilities

NHS Employers have recently [released guidance](#) outlining what options are available locally that employers could consider in order to alleviate some of the problems that doctors and other senior NHS workers are facing with respect to [pensions taxation](#). Whilst it is encouraging that the government is starting to take the problem seriously, the BMA firmly believe that the only long-term solution lies in pension taxation reform and we will continue to lobby for this on your behalf.

Given the current political uncertainty, tax reform may take some time and consequently it is useful to explore some of the mitigations outlined in this document in more detail.

Employer contribution recycling

The most beneficial option outlined in the NHS Employers guidance is the recycling of employer's pension contributions as additional salary. Indeed, we are pleased that NHS Employers have referenced the BMA model policy on recycling and commented that employers have found this policy 'helpful' locally. It is crucial that local schemes are implemented as soon as possible in order for there to be any mitigation to the current workforce crisis. The recycling of employer's pension contributions should be accessible to those who have left the pension scheme completely (e.g. those that have reached the lifetime allowance) and those who have reduced their pensionable pay (e.g. utilised 'hokey-cokey' or the multiple contract option) due to issues with the Annual Allowance.

How much can and should be recycled?

One potential issue that has risen for the 2019-20 financial year only, is that employers are only paying 14.3% of the employer's contributions to the NHS Pension Scheme with the remaining 6.3% being paid by NHS England. NHS Employers have suggested that this additional 6.3% is inaccessible for this financial year. The BMA see no justification for this and will continue to argue for recycling of the full amount. Indeed, our modelling suggests that the perverse incentive to reduce hours does not go away if only 14.3% of the employer's pension contributions are recycled. However, NHS Employers have given reassurances that the full 20.6% employers contributions will be held locally from April 2020 and should therefore be accessible for recycling.



Non-pensionable local payments

The guidance suggests making some local payments non-pensionable such as responsibility payments which can be either pensionable or non-pensionable. When these payments are treated as pensionable, the increase in pensionable pay can trigger a large increase in the pension input amount (PIA), which in turn can result in a large Annual Allowance tax bill. This increase in PIA is primarily driven by the calculated increase in the legacy final salary scheme.

Compounding matters, these roles are often relinquished many years before retirement. In such circumstances the doctor does not gain the majority of the calculated pension benefit, despite having paid a significant tax bill on this pension 'growth'. Making these payments non-pensionable is something that could help to avoid this problem, but the value of these payments should be increased to reflect that they are no longer pensionable. Individuals taking on these roles would still need to consider the effect that these non-pensionable payments may have on their 'adjusted income' and the potential reduction that this may have on their available Annual Allowance.

Non-pensionable CEAs

Making existing pensionable CEAs non-pensionable is not something that the BMA considers to be a sensible option and doctors should think very carefully before considering this. For those with existing pensionable CEAs, these are likely to form a significant part of your pensionable pay. In order to ensure that you maintain this benefit to your pension you must retire within two calendar years (for those on the 1995 scheme) of making this non-pensionable. There is no mechanism to change this back to pensionable pay if you decide not to retire within the two years. As a result, you will lose this part of your pension if you change your mind about retiring.

Whilst it is true that at the point you receive a CEA there can be a significant increase in PIA and therefore a significant AA tax bill, this issue has largely been addressed by making new CEAs non-pensionable. Subject to satisfactory review, existing CEAs are held until retirement whereas new CEAs are time limited. As a result, the BMA do not feel this is a good option for doctors to consider.

TOIL instead of additional pay

Time off in lieu rather than payment for additional activity is another option that is available and developing local policies to facilitate this would be helpful. Taking time off in lieu will allow doctors to work flexibly with their employers in order to cover peak pressure demands or to cover vacancies without being financially penalised for doing so. However, this may end up resulting in workforce pressures later down the line and there should be protections in place to ensure that doctors can actually take this time off and that it is not 'lost'. You may also want to include a consideration, in any TOIL policy, of the time that work is being covered. It is likely that extra work would be undertaken during antisocial hours or holiday periods and any attempt to implement a policy on this should explore reflecting this by offering TOIL at an appropriate ratio (i.e. greater than 1).

Setting up a company or chambers

The guidance also mentions the use of setting up new organisations in order to allow doctors to undertake additional work for the NHS. In theory this could be a way of reducing your 'adjusted income' provided no payments or dividends were taken out of the new organisational structure in a given financial year. However this is an extremely complicated method and is unlikely to be applicable to significant numbers of doctors, particularly those working in small specialities who may well encounter problems with IR35 legislation.

Multiple contracts

A small number of Trusts currently offer their employees the opportunity to work under two separate contracts, one that is opted in to the pension scheme and one which is not. For example, if a consultant is doing 12 PAs they could instead take up 2 separate contracts with their employer, for example one with 4 pensionable PAs and one with 8 non-pensionable PAs. The exact proportion of pensionable to non-pensionable PAs on each contract would be determined by the estimated available Annual Allowance. In order for this to be effective, the doctor must be able to calculate in advance of the next financial year, what their likely earnings and available Annual Allowance will be.

This is a complicated calculation and it is essential that if you are exploring this that you take independent financial advice and use the [BMA Goldstone Pension Modeller](#) to help with these calculations. It is also **crucial** that, if opting for this, that any employer's pension contributions on the non-pensionable PAs are recycled and paid as addition salary otherwise such an option is a significant pay cut.

This approach has a similar net result to 'hokey-cokey' (explored below) but allows you to retain your death in service benefits and ill-health retirement benefits. Although the NHS Employers' guidance suggests that if undertaking this method these benefits are reduced, there is no reason why this should be the case as in effect you remain an active pension scheme member, albeit a part-time one with reduced future pension accrual.

This proposal may be administratively burdensome and there is a risk that delays in changing contracts which could result in doctors not being on the optimal number of PAs.

Hokey-cokey

Hokey-cokey is similar to the multiple contract option outlined above and it is essential that your income and available Annual Allowance are calculated in advance for the next financial year. In this case, instead of adjusting the number of pensionable PAs, you adjust the number of months you are within the scheme throughout the year. As with the multiple contract solution, it is crucial that employer pension contributions be paid as part of a consultant's salary in the months that they are not in the pension scheme.

A serious limitation of this option is that you have significantly reduced death in service benefits and ill-health retirement if you unfortunately need to access these benefits whilst you are out of the scheme.

In summary this guidance does outline some options that are worth exploring with your employers, but these options need to be coupled with the recycling of employer's contributions on any part of pay that is no longer pensionable in order to avoid this being an effective pay cut. However, the long-term solution lies in fundamental tax reform and the BMA will continue to lobby HM Treasury to secure this.