

Rt Hon Philip Hammond MP
Chancellor of the Exchequer
HM Treasury
1 Horse Guards Road
London, SW1A 2HQ

20 March 2019

Dear Chancellor,

We have no doubt that you are aware of the increasing number of doctors and other NHS workers across the UK that are encountering serious difficulties with the current Annual and Lifetime Allowance taxation rules. We have alerted you to this in writing several times since August 2018 and are concerned that, within the Treasury, the risks posed by these current rules to the sustainability of the NHS are not fully appreciated.

The BMA consultants committee has been working extensively to model the impact of the current tax regime and its impact on consultants in the NHS pensions schemes. The results of this modelling are truly shocking; it transpires that separate changes made to the Annual Allowance and the NHS pension scheme have converged, creating a 'perfect storm' that is essentially forcing the most experienced doctors to retire, reduce their workload, abandon leadership positions and stop covering vacancies.

We firmly believe that the effects of these seemingly separate changes, were not appreciated when they were introduced and the resultant effects on the NHS workforce were unintended. It is clear, however, that the solution to this impending problem lies entirely with Government agencies – Treasury, HMRC, Department of Health and Social Care, the Devolved Nations' Governments and with NHS Employers. We recognise that this issue is partly a UK-level reserved matter (pensions tax policy) but is also partly devolved to the Devolved Nations in terms of consultant pay and conditions'.

We strongly urge you to take urgent action and work with us to correct these iniquities. Unless such action is taken, doctors will be left with no option but to reduce their working hours even further thereby exacerbating an already acute workforce crisis and seriously jeopardising the sustainability of the NHS.

The BMA has been working with the developer of an NHS pension modelling tool that enables consultants in England to ascertain their tax liabilities in relation to the Annual Allowance and Lifetime Allowance, and to estimate the future value of their pension from their own unique



circumstances. The BMA has little choice but to publish information to its members warning them of the serious impact of the Annual Allowance and Tapered Annual Allowance and to make the pension modelling tool available following the start of the next financial year. Similar modelling tools for use in the devolved nations and for doctors in other branches of practice are in development. As outlined below and in the more detailed appendix, unless there are urgent mitigations, we are convinced this will result in consultants reducing their NHS activity on an unprecedented scale. Not only will this seriously impact patient care, it will drive up costs to the NHS as employers would require to re-provision services from the vastly more expensive locum, agency and independent sectors.

The causes of this problem are complex and are explained more fully in the appendix to this letter. However, in essence the nature of the calculation of pension growth in defined benefit schemes such as the NHS pension scheme, the introduction of tapering to Annual Allowance coupled with the way pension growth is calculated for members who are members of two NHS pension schemes, means that significant – four, five and six figure charges in addition to PAYE and other tax charges - and regular Annual Allowance charges have now become a problem that will affect all full time consultants. In order to avoid these Annual Allowance charges, consultants must limit their income, and in most cases, this means stopping doing regular overtime in the form of additional programmed activities. The majority of NHS services rely, at least in part, on these additional programmed activities to deliver routine patient care.

Astonishingly, as a result of these Annual Allowance tax charges, it may also make financial sense for consultants to consider working part-time. This is because the majority of consultants cannot afford to pay these bills from their 'net' take-home pay, since they are such substantial sums, and have no choice but to pay these tax bills from their pension using the 'scheme pays' option. Consequently, as a result of paying this tax and the interest rate charged on this loan, they may paradoxically receive a significantly *higher* pension by working *part-time* once the 'scheme pays' loan is deducted.

A further problem is that large numbers of doctors have incomes close to the 'threshold income'. Again, because of the way that pension growth is calculated and then included in the calculation of 'adjusted income', very small increases in taxable income can push doctors over a 'tax cliff' resulting in tax rates in excess of several hundred percent where this coincides with a pensionable pay rise. At a time when the NHS is reliant on its staff doing additional sessions and waiting list initiatives to prop up front line clinical services, this provides a powerful disincentive as doctors may find that they not only derive no financial benefit from the extra work but are in effect themselves paying significant sums in order to take on this extra work. Alternatively, and equally unattractive than paying to go to work, consultants using 'scheme pays' may find this work significantly reduces their pension, for work that is non-pensionable and would have given them no gain to their pension.

The BMA has recently presented these findings to representatives from the Department of Health and Social Care, NHS Employers and NHS Providers. They were equally shocked by the findings and now understand the scale of the problem. The awareness of these issues is also increasing in devolved administrations. We believe that a solution to this problem is in the shared interests of all parties, including the taxpayer. Whilst we believe that there needs to be a fundamental review of the current legislation around the annual and lifetime allowances, we understand that this is unlikely to happen quickly and are deeply concerned that the once this information is widely available there will be a massive loss of capacity within the NHS. We therefore suggest some immediate and medium-term mitigations. These are:

- The production of joint guidance (between the BMA and NHS Employers/Devolved Nations' employers) on recycling all the employer pension contribution (net of employers NI) for all NHS staff groups needing to leave the scheme temporarily or

permanently. This would be limited to cases where this was required to avoid punitive AA or LTA tax charges and would be cost neutral to the taxpayer.

- That there is a commitment to develop with some urgency a UK-wide scheme for NHS staff to retain or purchase death-in-service benefits and ill-health retirement reduction, to protect those that have been forced to opt out of the scheme.
- That discussions will take place in the short-term about looking at the 2003 consultant contracts in England and Wales and the 2004 consultant contracts in Scotland and Northern Ireland with a view to allow optional pay-smoothing of increments to reduce the pension growth peaks that trigger unusual tax bills. This will be cost neutral to the taxpayer, and pay neutral to the employee.
- That the BMA meets with the Treasury as a matter of urgency to address longer term issues including the annual allowance, tapering and the unique and unfair tax treatment of the two pension schemes.

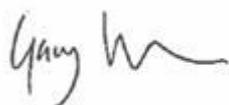
We note that NHS Employers and DHSC have suggested a fixed '50:50' option with recycling of the employers contribution to the employee, may alleviate the problem. We have modelled this extensively and are of the firm belief that this will *not* solve the problem and the perverse incentive to reduce NHS work will remain, albeit to a lesser degree. It is therefore not a long-term solution to this problem.

You will appreciate that doctors will be the very first to consider the potential impact on health services across the UK and thus on the patients we serve. It is in order to minimise that potential impact that we now write; the tools to mitigate or remove this issue rest entirely, as noted, with governmental agencies. Moreover, it is important to appreciate that time is short if effective action is to be taken. You will understand that the BMA, as a members Association, recognises that these taxes impose huge and unanticipated financial burdens on our members and that those burdens are set to become regular, enduring and will have financial impacts across a lifetime. We feel that we must act to warn our members and offer advice, so significant will be the potential effects for them.

We have heard it said by a number of stakeholders that the Government do not feel there is a problem with the current issues around taxation and pay for consultants as the overall number of consultants employed within the NHS has not been falling. We strongly disagree with that position, not least because it takes around 15 years to train a consultant. If a workforce problem is allowed to develop, particularly one of the magnitude that we predict will result unless there is significant action on pension taxation, it may be impossible to rectify.

We cannot stress how big a problem this is for the future of the NHS and request that rather than delay progress through an exchange of letters, we would suggest that we meet as soon as possible to discuss this matter. We look forward to meeting you in the very near future.

Yours sincerely,



Dr Gary Wannan
Acting chair, BMA consultants committee

**Dr Phil de Warren-Penny**

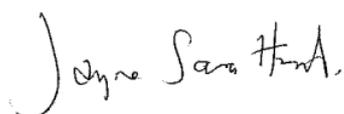
Deputy co-chair for negotiations, BMA consultants committee

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Cc

Rt Hon Matt Hancock, Secretary of State for Health and Social Care

Simon Stevens, Chief Executive, NHS England

Ian Dalton, Chief Executive, NHS Improvement

Danny Mortimer, Chief Executive, NHS Employers

Jeane Freeman MSP, Cabinet Secretary for Health & Sport

Mr Vaughan Gething AM, Minister for Health and Social Services

Richard Pengelly, Permanent Secretary, Department of Health Northern Ireland