Triennial Review of the NHS Pay Review Body (NHSPRB) & the Review Body on Doctors’ and Dentists’ Remuneration (DDRB) (Pay Review Bodies)

Call for Evidence
<table>
<thead>
<tr>
<th><strong>Title:</strong></th>
<th>Triennial Review of NHSPRB &amp; DDRB (Pay Review Bodies)– Call for Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Author:</strong></td>
<td>Will Karani, Assurance &amp; Public Appointments Branch</td>
</tr>
<tr>
<td><strong>Document Purpose:</strong></td>
<td>Consultation</td>
</tr>
<tr>
<td><strong>Publication date:</strong></td>
<td>17 July 2015</td>
</tr>
<tr>
<td><strong>Target audience:</strong></td>
<td>Individuals, Treasury Officials, NHS Staff, Doctors, Dentists, Medical Professional Bodies, Trade Unions and other institutions with an interest in NHSPRB and/or DDRB.</td>
</tr>
</tbody>
</table>

**Contact details:**

PRB Triennial Review Team,
Room 220,
Department of Health,
Richmond House,
79 Whitehall,
London.
SW1A 2NS

e-mail: PAYREVIEWBODIES-TR@dh.gsi.gov.uk

You may re-use the text of this document (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/

© Crown copyright
Published to gov.uk.

www.gov.uk/dh
Overview

The Health and Social Care Act 2012 and the Care Act 2014 devolved functions and powers away from the Department of Health (DH) to local and Arm’s Length Bodies.

The Department has a stewardship and assurance function to ensure that the new system and its numerous reformed bodies are performing appropriate functions to a high standard.

To perform this stewardship function the Department is undertaking Triennial Reviews of all of its Arm’s Length Bodies. This includes all Executive Non-Departmental Public Bodies (ENDPBs), Advisory Non-Departmental Public Bodies (ANDPBs), Executive Agencies and Special Health Authorities. Both NHS Pay Review Body (NHSPRB) and the Review Body on Doctors’ and Dentists’ Remuneration (DDRB) (the Pay Review Bodies (PRBs)) are ANDPBs and are subject to review in 2015-16. As NHSPRB and DDRB each have a limited range of similar functions DH will be undertaking a clustered review of both.

The programme of reviews uses the approach developed by the Cabinet Office as part of their work on public bodies reform.

Purpose of the review

The review will have two main stages:

- The first stage provides a robust challenge of the continuing need for the PRBs both in terms of the functions they perform and the way in which these are delivered.
- If it is agreed that both PRBs should retain their current functions and delivery models, the second stage of the review will then consider their respective performance, governance arrangements and opportunities for efficiencies.

This Call for Evidence seeks views from respondents to assist the review’s consideration of both of the above stages. The evidence is being gathered simultaneously for stage one and stage two in the interests of timeliness and value for money only, and is not an expression of pre-judgement as to the outcome of stage one of the review.

There are a number of areas that are out of scope for this review:

- The TR will not consider the specific recommendations of the pay review bodies.
- The TR will not specifically consider commercial models as alternative delivery mechanisms.
- The TR will not make recommendations relating to the underlying government and Departmental policy on pay for NHS staff.

Both NHSPRB and DDRB provide advice to Ministers in each of the three devolved administrations as well as the Prime Minister and the Secretary of State for Health. Consequently the review team will work closely with the Scottish Government, Welsh Assembly and Northern Ireland Executive throughout the review process.
About the Pay Review Bodies

The NHS Pay Review Body (NHSPRB) and the Review Body of Doctors’ and Dentists’ Remuneration (DDRB) (‘the pay review bodies’ (PRBs)) are Advisory Non-Departmental Public Bodies (ANDPBs).

The PRBs provide independent advice on the pay of NHS staff to the Prime Minister, the Secretary of State for Health and Ministers in each of the three devolved administrations. The NHSPRB makes recommendations on the pay of all NHS staff paid under Agenda for Change with the exception of doctors, dentists, and very senior managers. The DDRB focuses on the remuneration of doctors and dentists taking any part in the NHS. Both Pay Review Bodies may also be asked to fulfil special remits and conduct research on pay and related matters.

When providing advice both Pay Review Bodies are expected to consider:

- the need to recruit, retain and motivate their respective remit groups;
- regional/local variations in labour markets and their effects on the recruitment and retention of their respective remit groups;
- the funds available to the health departments as set out in the government’s departmental expenditure limits;
- the government’s inflation target;
- the overall strategy that the NHS should place patients at the heart of all it does and the mechanisms by which that is to be achieved;
- the economic and other evidence submitted by the government, staff and professional representatives and others;
- the legal obligations on the NHS, including anti-discrimination legislation regarding age, gender, race, sexual orientation, religion and belief and disability.¹

Useful links

NHSPRB Website
DDRB Website
Cabinet Office Triennial Review guidance

¹ This section is based on NHSPRB’s and DDRB’s Terms of Reference documents, which can be found on their websites.
Responding to the Call for Evidence

In order to conduct the review in a transparent manner and ensure findings are rigorous and evidence-based, the review team is seeking the views of a wide range of stakeholders. We are interested in the views of individuals and organisations that engage with the PRBs or have a wider interest in its operations.

The call for evidence is running from 17th July 2015 to 7th August. Responses can be provided by:

i. Completing the online questionnaire at http://consultations.dh.gov.uk/triennial-reviews/nhs-pay-review-bodies-nhs-prb-and-review-body-on-t;

ii. Completing Annex A of this document and emailing to PAYREVIEWBODIES-TR@dh.gsi.gov.uk; (This can also be posted to: PRB Triennial Review Team, Room 220, Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS).

Where option ii is used, the review team will accept responses or material in different forms provided it is relevant to the purpose of the review (detailed above) and/or the questions detailed below. The review team is unable to respond to individual cases or consider complaints other than as part of the evidence for the review where it falls within the terms of reference.

Workshop

Interested stakeholders are also invited to attend a workshop 14:00 – 16:00 on 29 July 2015 to share their views on NHSPRB and/or DDRB. The workshop will be held at Richmond House, London, SW1A 2NS. You can book a place (places are limited and allocated on a first-come first-served basis) through this link: https://www.eventbrite.co.uk/e/17304298623
Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FoIA) and the Data Protection Act 1998 (DPA)).

If you want the information that you provide to be treated as confidential please be aware that under the FoIA there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain why you regard the information you are providing as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

About You

Name: Raj Jethwa

Organisation: British Medical Association (BMA)

Email/postal address: rjethwa@bma.org.uk

Would you categorise your response as from:

- Individual
- Public sector organisation
- Trade Union
- Professional Body
- Charitable/voluntary sector healthcare organisation
- Private sector
- None of the above

Please state: Trade union and professional body
If your response is from an umbrella organisation representing a wider membership, please indicate the approximate number of members consulted and the number of responses received:

N/A

Please indicate what relationship you have with the PRBs, if applicable:

The BMA is the main representative body for the DDRB’s remit group

Questions

There is no need to answer all nine questions unless you wish to do so. For those which you do answer, please provide evidence to support your answers wherever possible. If you wish to send us supporting documentation please email as an attachment to PAYREVIEWBODIES-TR@dh.gsi.gov.uk.

Information where relevance is not demonstrable will not be accepted as evidence. The review team is unable to respond to individual cases or consider complaints other than as part of the evidence for the review where it falls within the terms of reference.

Function

The Pay Review Bodies (PRBs) perform a number of functions:

- The NHSPRB makes recommendations to the Prime Minister, the Secretary of State for Health, and Ministers in each of the three devolved administrations on the pay of all NHS staff paid under Agenda for Change with the exception of doctors, dentists, and very senior managers.
- The DDRB makes recommendations to the Prime Minister, the Secretary of State for Health, and Ministers in each of the three devolved administrations on the remuneration of doctors and dentists taking any part in the NHS.
- Both PRBs can undertake special remits to provide advice and research on pay and related matters.

**Question 1**: Is there a continuing need for the NHSPRB and/or DDRB to provide independent advice and recommendations to ministers on NHS non-clinical and clinical staff pay?

**DDRB**: Yes

Please give reasons for your answer:

The DDRB was originally created following the recommendation of the Royal Commission on Doctors’ and Dentists’ Remuneration in 1960 that such a body was necessary in order to give the medical profession “some assurance that their standards of living will not be depressed by arbitrary Government action”, as well as achieving the settlement of remuneration without public dispute. (Report of the Royal Commission on Doctors’ and...
Dentists’ Remuneration, 1957-1960. Cmd 939, February 1960). We believe those reasons are as relevant today as they were in 1960 and that an independent pay review body is, therefore, necessary to recommend the level of remuneration for doctors.

The alternative to the DDRB process would be potentially lengthy direct negotiations with the Department of Health or NHS Employers or a complex set of local negotiations. These options, we believe, would be more time-consuming and wasteful of NHS resources than the current process. They would also be less transparent and potentially less able to reflect on the wider workforce implications of pay proposals than the current process.

Form

**Question 2:** Do you have any comment on the separation of responsibilities between NHSPRB and DDRB, and on the level of interaction you deem appropriate between the two PRBs?

The BMA believes that the determination of pay should be conducted separately for doctors and dentists and those members of NHS staff subject to the Agenda for Change agreement. The market for medical and dental staff is different in being more significantly international, the qualifications and skills expected of them more demanding and the range of work undertaken, including academic as well as clinical activities, significantly more extensive and at a greater level of responsibility. Consequently, the pay comparators used by the DDRB differ from those for other NHS staff. Merging the two bodies would also significantly undermine the confidence of doctors in the process. We would, therefore, strongly argue for the retention of separate Pay Review Bodies for doctors and dentists and for other NHS Staff.

**Question 3:** Both NHSPRB and DDRB are currently Advisory Non-Departmental Public Bodies of the Department of Health. Do you think an alternative organisational structure would improve or be detrimental to delivery of the functions you feel are necessary? Which of the following organisational forms would you support:

- **Continued delivery as an ANDPB**

Please give reasons for your answer:

The relative autonomy that the Review Body’s status as an Advisory Non-Departmental Public Body has helped to provide some assurance to doctors that their concerns regarding pay will be listened to and, occasionally at least, acted upon. We fear that the ongoing engagement by the DDRB in the state of the profession, including regular visits to NHS organisations and discussions with individual members of the profession would be lost if the ad hoc task-force model were adopted. As set out in our answer to Question Two, merging the NHSPRB and DDRB would significantly affect the way in which doctors perceive its efficacy in determining pay for the medical workforce.

Performance

**Question 4:** How well are NHSPRB and/or DDRB currently delivering their functions?

Possibly as best as it can within the constraints of Government policy, but the BMA would prefer a more assertive stance from the DDRB in challenging that policy in order to meet the other aspects of its terms of reference.
Please give reasons for your answer:

It is important to consider the view expressed by the Royal Commission that this “procedure will in fact, therefore, give the professions a valuable safeguard. Their remuneration will be determined, in practice, by a group of independent persons of standing and authority not committed to the Government’s point of view.” The BMA would argue that this role was effectively carried out by the DDRB in its initial incarnation. Following the Royal Commission’s recommendation, the DDRB was constituted in 1962 to advise the Prime Minister on the remuneration of doctors and dentists taking part in the National Health Service. The DDRB’s first report was submitted to the Prime Minister on 27 February 1963 and published with his answer to a question in the House of Commons on 25 March 1963. (Review Body on Doctors’ and Dentists’ Remuneration. Third, Fourth and Fifth Reports, Cmnd. 2585, February 1965)

Between 1963 and 1970 the Review Body produced 12 reports, of which the recommendations of the first 11 reports were accepted in full by the Government. The Review Body’s twelfth report was completed on 31 March 1970 and recommended a general increase of 30 percent to apply over a two-year period between April 1970 and March 1972. The Review Body recognised this was a substantial uplift, but argued that evidence had recently become available to show that for several years doctors’ and dentists’ pay had fallen behind that of the comparator professions set out in the Royal Commission’s report. (Report of the Review Body on Doctors’ and Dentists’ Remuneration. Cmnd 4825, December 1971)

The Government published the Review Body’s report on 4 June 1970 but declined to implement this recommendation in full; career grade doctors were only to receive half of the recommended increase. As a result, all members of the Review Body resigned on that day. (Report of the Review Body on Doctors’ and Dentists’ Remuneration. Cmnd 4825, December 1971). The failure of the Government to implement the recommendation of the DDRB was perceived to fundamentally undermine the operation of the Review Body process.

In reconstituting the DDRB, the Government of the day accepted this criticism. In November 1970 the Government announced the creation of a new Review Body to advise on the pay of doctors and dentists in the NHS. Before appointing the members of the DDRB, the Government gave an undertaking that it “would be an independent body whose recommendations would not be subject to reference to any other body and would not be rejected or modified by the Government unless there were obviously compelling reasons for doing so” and that it “would have the freedom to determine its own method of working”. (Report of the Review Body on Doctors’ and Dentists’ Remuneration. Cmnd 4825, December 1971)

This approach stands in contrast to the DDRB’s reluctance to challenge the Government’s failure to implement its recommendations, particularly the decision of the Department of Health in 2014 not to implement the recommendation of DDRB for a one percent uplift in basic pay for doctors in England. Even though that one percent uplift would still have represented a cut in real pay, given that inflation as measured by the Consumer Prices Index (CPI) was in the region of two percent and Retail Price Index (RPI) inflation was closer to three percent, the failure to implement even the one percent uplift resulted in a deep sense of injustice among many doctors.

Question 5: Does the current composition of NHSPRB and/or DDRB membership best support their functions?

DDRB:
- No
Please give reasons for your answer:

The BMA would prefer that at least one member of the DDRB had previous experience representing and negotiating on behalf of employees as opposed to employers. As with the other members of the DDRB, this experience need not be specific to the medical or wider NHS workforce. However, it would also be helpful for the DDRB to have wider knowledge and experience of medical careers and academic medical careers.

**Question 6:** How well do you think that NHSPRB and/or DDRB manages its relationships with organisations both within the health and care system and wider government (including the devolved administrations)?

**DDRB:**
- Average

Please give reasons for your answer:

There is no doubt that the DDRB has to manage a very difficult set of relationships, particularly with each of the relevant health departments in Westminster and the devolved administrations. However, while the Pay Review Body approach was meant to remove the state from its direct negotiating role as the main employer, the reality has been very different as “successive governments have been unable to resist the temptation to intervene in the process, frequently going beyond their normal involvement of providing evidence as one of the parties” (*Incomes Data Services. Pay in the public services, 2008*). This has meant that the DDRB gives the appearance of placing a much greater emphasis on the views of the relevant government rather than balancing that against the legitimate concerns and evidence of all parties, including that submitted by the BMA on behalf of the medical profession.

It is an increasing challenge for the DDRB to make meaningful recommendations on a UK basis, given the significant differences amongst the health services and governments of the four nations of the UK. It was particularly disappointing, for example, that the recent report on the contracts for consultants in England, Wales and Northern Ireland showed a lack of understanding of the separate consultant contract in Scotland.

**Question 7:** Do you think the NHSPRB and/or DDRB take account of all appropriate factors and issues when preparing their reports and recommendations?

**DDRB:**
- No

Please give reasons for your answer:

In recent years the DDRB’s recommendations have consistently placed greater weight on affordability arguments over other considerations such as placing patients at the heart of the NHS and the recruitment, retention and motivation of doctors.

The BMA feels that this is disappointing. Following the announcement in the July 2015 Budget that there would be a further four years of public sector pay restraint in England from 2016-17, it is worth noting that this will have led to the longest period of imposed incomes policy in modern history. Pay in the public sector will have been frozen or limited to an increase of only one percent a year for a whole decade. Over this period inflation as measured by the Consumer Price Index (CPI) has ranged between -0.1 percent and 4.6 percent since 2010.
while the Retail Price Index (RPI) has ranged between 0.7 percent and 5.3 percent. Both measures of inflation are anticipated to be above one percent for all but one year until the end of the decade.

Against this backdrop, such a pay cap calls into question the very ability of an independent Pay Review Body to determine pay for doctors and dentists. However, we note that the last time such an incomes policy was in place, the DDRB was forthright in its views about the inequity caused by the imposition of pay restraint:

“We have taken full account of the general measures designed to deal with the economic problems of the country as important factors in our deliberations and we have concluded hitherto that, so long as the general measures are applied consistently throughout the community, they should apply to doctors and dentists....But continued acceptance cannot be taken for granted if restraint measures that involve injustice continue indefinitely.” (Review Body on Doctors’ and Dentists’ Remuneration. Seventh Report, Cmnd. 6800, 1977)

We would further echo the comments of the DDRB in that same report about the consequences for the review body process of continued limits to pay uplift:

“We also see very real difficulties in the way of continuing to function as an independent Review Body unless it again becomes possible for us to have full regard to the principles behind the aims so clearly expressed by the Royal Commission on Doctors’ and Dentists’ Remuneration in the exercise of our collective judgement.” (DDRB, 1977)

A very real precondition for the successful exercise of an independent pay review body is the absence of continued restriction on its ability to make recommendations in respect of the uplift to the pay of doctors and dentists. The effect of these constraints on the independence of the DDRB has implications which go significantly beyond the annual pay round. For example, the perception that the DDRB simply acquiesces with externally imposed pay limits undermines the confidence with which its recommendations in other areas are seen. This is particularly important with regard to the DDRB’s recent report on the reform of the contracts for consultants and junior doctors.

The DDRB should also give greater consideration to the academic activities of the NHS, their impact on the health and care of patients and their contribution to the UK economy and reflect on the statement in the Heads of Terms for the consultant contract negotiations that “the parties will seek to create an environment where education, training, innovation and research by both NHS and academic consultants can flourish.”

Question 8: Do you think the NHSPRB and/or DDRB have ready access to the necessary data to discharge their current responsibilities effectively and could the processes be improved by which they gather information from key stakeholders?

DDRB:

• No

Please give reasons for your answer:

Despite the DDRB’s best efforts, there is a continuing lack of data around vacancies and recruitment and retention in England and Wales, other than anecdotal. The BMA has also supported the DDRB in its desire to be able to better define and measure what is meant by motivation. In addition, there have been problems with the formula used to determine the uplift for independent contractor GPs, particularly in 2014 when a 0.28 percent contract uplift was deemed sufficient to deliver a one percent increase in GP contractors’ income.
Governance

**Question 9:** Do you think NHSPRB and/or DDRB operate in an open, transparent, accountable and responsive way and publish sufficient documentation to ensure an appropriate level of trust in the process?

**DDRB:**
- Yes

Please give reasons for your answer:

As will be clear from the rest of this submission, the BMA has significant concerns about the ability of the DDRB to discharge its functions given the constraints imposed by Government policy. The DDRB is unable to perform its functions to a high standard precisely because of those restrictions. However, within the limits imposed by those constraints, the BMA is generally satisfied with the degree of openness and transparency with which the DDRB operates. There are, though, three areas in which the BMA would like to see improvements:

- DDRB reports should contain details of its Equality Assessments of the impact of its recommendations
- Parties submitting evidence should have sight of and be able to comment on the meeting notes from the oral evidence sessions, particularly to correct errors of fact
- DDRB reports should contain greater clarity on its reasons for not accepting the proposals contained in the staff side evidence.

If you have any other comments on the PRBs' functions, organisational structure, performance, efficiency or governance that you would like to submit as part of this Call for Evidence, please do so here (stating what aspects it relates to).

Thank you for taking the time to respond to this Call for Evidence.