ARM2023

Pensions Committee
Written report to the ARM 2023

The Chancellor's Spring Budget announcements on pension taxation

For many years, the BMA has worked incredibly hard to lobby the Government to fix punitive pension taxation for doctors. We have run numerous campaigns such as "scrap annual allowance in defined benefit schemes" and it "doesn't pay to stay" to highlight that senior doctors were unfairly being forced to reduce their hours or retire early, to avoid large unexpected pension tax bills. We also developed a series of modelling tools for members to help them better understand the impact of pension taxation and soaring rates of inflation for them personally. We carried out a significant level of stakeholder engagement, and held meetings with several Conservative and Labour MPs, NHS England and NHS Employers, as well as providing detailed evidence on the impact of pension taxation to the all-party Health and Social Care Select Committee and the Doctors and Dentists Review Body.

Earlier this year, pension committee officers held a series of intensive engagement meetings with DHSC and Treasury to urge them to address pension taxation issues. The result of these discussions was that the Chancellor announced in his Spring Budget that annual allowance would increase from £40,000 to £60,000, and lifetime allowance would be abolished. These changes came into effect at the start of the 2023/24 tax year. Although these were not the specific solutions we had been calling for, they are very significant, and we believe that the vast majority of doctors will no longer face large punitive tax bills. In particular, doctors will no longer be pushed towards retirement by exceeding the lifetime allowance, and when coupled with retirement flexibilities, those who have already retired are able to return and build up further pension benefits.

As well as the changes to annual allowance and lifetime allowance, it was also announced that any negative growth in the 1995/2008 scheme can now be used to offset any positive growth in the 2015 scheme, across all public sector schemes across the nations. This is particularly important given the current high levels of inflation and the fact that pay awards have been lagging behind inflation.

Whilst these were major changes, we do recognise that these solutions do not fully address the problem for all doctors. The tapered annual allowance was not meaningfully reformed, as although the adjusted income level (threshold income plus deemed pension growth) was increased from £240,000 to £260,000, the threshold income that applies for the taper has not changed and remains at £200,000. This means that some doctors who are impacted by the tapered annual allowance will still need to be cautious about taking on extra shifts or overtime as they may be financially penalised as a result. We will continue to lobby on behalf of these doctors, so they are not forced to reduce work because of pension taxation. We shall also be lobbying for the new £60,000 annual allowance limit to be indexed in line with inflation, as it is important that it is kept under review to ensure its value is not eroded in real terms.

We are aware that Labour have said they will "reverse" the annual allowance and lifetime allowance changes announced in the Spring Budget if they get into power, and although they have said that they will implement a fix just for doctors, we do not yet know the details of what that would look like. This is a risk, and we will continue to actively engage with Labour to ensure that whatever happens, we don't end up in a situation whereby pension taxation is pushing doctors to reduce hours or retire early again in the future.

Fixing Inflation issues - "CPI disconnect"

The BMA also lobbied extensively to address the issues caused by an anomaly in the Finance Act when applied to the NHS Pensions Scheme. The issue arose as the annual allowance is only supposed to apply to pension growth that is above inflation. However, when calculating pension growth, 2 different measures of inflation were used. The value of pension benefits at the start of the year or "opening value" was based on the value of accrued pension uplifted by inflation (CPI) as measured from September of the year before. However, when revaluing pension in Career Averaged Revalued Earnings (CARE) scheme, the value of inflation from September of the current tax year was used. When inflation is rapidly rising this causes a significant problem and for example in the 2022-23 tax year this would have resulted in pension being revalued by 10.1% (CPI September 2023) + an additional 1.5%, whereas the "allowable growth" before testing against the annual allowance was only 3.1% (CPI September 2022). This would have resulted in tens of thousands of doctors receiving very large annual allowance tax bills based on pension "growth" that was simply inflationary increases. For GPs this was even worse as their entire accrued pension was revalued and could have seen GPs incurring tax bills greater than their entire take home pay for the year.

As a result of BMA lobbying the way this revaluation was applied has now changed to avoid this problem. Whilst the same measures of inflation are used, the effective date of this revaluation has changed such that it is applied in the next tax year. This effectively "aligns" the 2 measures of inflation such that doctors will no longer face annual allowance tax charges on pension increases that are simply the result of inflation.

NHS Scheme Regulations and retirement flexibilities consultation

In January, we submitted a response to DHSC's consultation on changes to the NHS Pension Scheme regulations in England and Wales. This was prior to the Spring Budget announcements outlined above, and we used this as another opportunity to further lobby the Government. We produced an online template to encourage BMA members to submit their own personal consultation responses highlighting how pension taxation was affecting them personally and underlining that the proposals fell well short of the long-term solution that the NHS desperately needed. This was a success, as over 2200 BMA members in England and Wales submitted a response to the consultation.

This consultation did include positive changes to retirement flexibilities. The BMA has been calling for the introduction of 'partial retirement' in the 1995 scheme for some time, and we welcomed its introduction as it will be of benefit to some of our members. However, one of the requirements of partial retirement is a 10% reduction in pensionable pay. We lobbied against this requirement, as it may result in a reduction in capacity from members seeking to flexibly access their pension. As a mitigation, we believe employers should support employees by enabling them to flex their pensionable pay, with a corresponding increase in non-pensionable pay where this is possible within the pension regulations. This is more complex for practitioner members of the scheme and we are working with DHSC to see how this could work in practice.

We were also disappointed that the implementation of partial retirement has been delayed until October 2023, and we have lobbied for NHS England to produce guidance supporting employees until it has been fully introduced. In particular, we noted that the guidance should clearly emphasise that those retiring and returning before October 2023 are to be re-employed on the same terms and conditions, and on permanent contracts. This ensures that they are treated equitably compared to those partially retiring after October 2023. As part of this consultants retiring and returning between April 2023 and October 2023, can now retain their clinical excellence awards. This is to ensure they are treated equitably compared to those taking partial retirement from October 2023.

In Scotland, we responded to SPPA's equivalent consultation and also developed a template for members, with 345 Scottish members submitting their own consultation responses. SPPA have also confirmed they will be proceeding with the proposals as outlined in their consultation. Our Scotland representative on the pensions committee also attends monthly Scheme Advisory Boards and remedy subgroups to influence SPPA policy and communications.

The Northern Ireland consultation was quite different and unfortunately did not include any proposals on partial retirement or pensionable reemployment. We fed back our disappointment in our consultation response and this was acknowledged in the Department of Health response, however they said these cannot be addressed at this time due to a lack of Government of Northern Ireland.

Recycling of employer pension contributions

The BMA has long campaigned that doctors adversely affected by pension tax, who are left with little choice but to opt out of the pension scheme, should have the option to recycle their employer's pension contributions and receive them as pay.

In Wales, we successfully pressured every health board to agree to offer recycling of employer contributions, but this is limited to the employer held 14.3%. The BMA have been lobbying to request that the additional 6.3% be added back in so it equates to the full contribution.

In Scotland, after much lobbying by the BMA, a temporary Scotland-wide recycling scheme was implemented for six months, however they also did not offer the full employer contribution and 6% was deducted. Unfortunately, this recycling scheme has now come to an end but it did help a significant number of our members, and would have been implemented for an even shorter time period, was it not for our lobbying.

In Northern Ireland, last year we were pleased to hear the Department of Heath announce that they would implement a recycling policy, however disappointingly this has never come to fruition, and so far no policy has been proposed.

In England, we have lobbied the Government to make pension recycling schemes mandatory, and whilst a policy document published by a previous secretary of state said that Government would 'encourage' pension recycling, we do not feel that this went far enough, and continue to argue that recycling should be made available in every employing organisation at the full employer contribution rate. A national policy for recycling in England was promised but this has not yet been published and we continue to lobby for this.

Member contribution tiers

We have been calling for member contribution tiers within the NHS Pension Scheme to be flattened, and we do not feel there is any justification for such steep tiering in a career average scheme.

In England and Wales, following a public consultation, DHSC implemented changes to the member contribution structure in October 2022. The top contribution rate tier fell from 14.5% to 13.5%. However, as the average contribution rate or yield has remained the same, this did unfortunately mean that some of the lower contribution tiers increased. For our members, this will mean some junior doctors, particularly in the first 3 years of training, are now paying slightly more towards their pension. Nevertheless, it is really important that this doesn't result in junior doctors opting out of the scheme, as the scheme remains extremely good value for money.

These contribution rate changes are a step in the right direction to flattening the contribution rates and making it fairer for all. However, we are disappointed by the delays in phase two being implemented, which is now expected to now happen in 2024. We will continue to argue that a tiered contribution structure is inappropriate, and the best way forward would be for the Government to consider a model in which all members pay a flat contribution rate.

In Northern Ireland, following a public consultation, the Department of Health implemented the same changes to the member contribution structure in November 2022.

Scotland is unfortunately behind in making such changes to member contribution rates and we lobbied for action to stop a gap forming between contribution rates in Scotland, and England, Wales and Northern Ireland. SPPA have now launched a public consultation which is due to close in August.

McCloud

McCloud cost cap judicial review

We believe that it is unfair that doctors and other public sector workers have been made to pay the price for the Government's unlawful age discrimination. The BMA issued a judicial review against the Government's decision to place the cost of the McCloud Remedy onto pension scheme members. This was heard in the High Court in February. Unfortunately, the outcome was unfavourable for the BMA and the High Court ruled to uphold the Government's decision. We have formally appealed this decision and await the outcome.

McCloud remedy part 2 consultation

We have continued to engage with the Government on the implementation of the McCloud remedy measures, although progress has been slow. The closure of the 1995 and 2008 Pension Schemes to further accrual of benefits was the first stage which took place in April 2022. In March this year, DHSC launched a consultation on the McCloud remedy part two for England and Wales which closed in June. The second and retrospective part of the remedy will remove the effect of the transitional protections. For NHS Pension Scheme members impacted by the discrimination, the retrospective remedy primarily:

- returns members who moved to the 2015 scheme back into the legacy scheme for their pensionable service effected by the discrimination during the remedy period, from 1 April 2015 to 31 March 2022
- offers a choice of whether to receive, legacy scheme benefits or 2015 scheme benefits for their remediable service benefits, both of which are payable from the legacy scheme.

We submitted a detailed response to the England and Wales consultation highlighting where we believe more can be done by the Government to ensure that no member suffers detriment due to the age discrimination that occurred. Our full response to the consultation can be viewed here.

We also submitted responses to the HSC consultation for Northern Ireland (closed 30th June) and the SPPA consultation for Scotland (closed 23rd July), as well as a technical HMRC consultation on draft tax regulations which set out changes to how pensions tax rules will apply as a result of the public services pensions remedy (closed 19th June).

GP pension records in England

We continue to fight for GPs in England to have access to an accurate, up-to-date pension record. We have agreed Terms of Reference for our meetings with NHS England, NHS Business Services Authority and Primary Care Support England (PCSE) which now take place on a bi-monthly basis. We use these meetings to highlight problems reported to us by members and to influence them to resolve significant ongoing problems with their data processes, their online portal, and to fix the thousands of 'missing year' pension datapoints. We remain deeply unsatisfied with the current progress and will continue to engage with PCSE and NHSE to hold them to account in rectifying these issues urgently. We will also be providing further guidance to members who wish to escalate their complaints.

Summary

This has been an incredibly busy year for the pensions committee, and we have secured very significant improvements, both in terms of the scheme design, but also to minimise the impact of pension taxation for doctors. We will continue to lobby on your behalf to secure further improvements and ensure that whatever happens at the next election, doctors do not find themselves so severely impacted by pension taxation in the future.

Dr Vish Sharma
Chair, pensions committee.