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Sent via email: NHSPSconsultations@dhsc.gov.uk

1 November 2019

**NHS Pension Scheme: increased flexibility**

Thank you for the opportunity to comment on the above consultation.

We welcome this consultation which shows a clear commitment from government to reform the NHS Pension Scheme to address the impact of pension taxation on clinical activity and patient care in the NHS. The proposed reforms are however an incomplete contribution to the objectives which will be set out in the NHS England/Improvement authored *People Plan*.

Our enclosed detailed response to the consultation is informed by evidence from research undertaken and developed further by the collective views, feedback and suggestions received from employers across the NHS. Our response is ordered in line with the structure of the consultation document published by the Department of Health and Social Care (DHSC) on 11 September 2019.

The key points in our response are summarised below:

- Employers strongly believe scheme flexibilities should apply to *all* NHS employees to ensure the NHS Pension Scheme remains an attractive and affordable part of the reward offer, to support recruitment and retention across the NHS and maintain the financial stability of the scheme.
- We commissioned First Actuarial to research into the potential impact of pension flexibilities in the NHS. The research report is enclosed with our consultation response. The report explores the evidence supporting the relationship between extending flexibilities to all staff, higher participation rates in the NHS Pension Scheme, higher levels of staff retention and better patient care and service delivery.
- Employers are clear that targeting the proposals at senior clinicians only will limit their effectiveness and create potential equality risks, the impact of which will need to be considered in more detail.
- We support the proposed pension flexibilities which will give staff the option to choose flexible levels of accrual and to phase increases in pensionable pay. The proposals should be developed further, and the administration processes should be designed carefully to ease the workload for employers and to ensure better customer service to scheme members.
- We strongly agree there is a need to support individuals to understand their tax liability and use the new pension flexibilities.
• Employers would recommend that the new flexibilities are reviewed and evaluated after implementation to ensure they are operating as intended.
• We also support the proposal to improve the operation of scheme pays to settle tax liabilities and believe it will support staff to make well informed decisions.

Although outside the scope of this consultation, Employers welcomed HM Treasury’s intention to review the operation of the tapered annual allowance, which is the fundamental factor impacting on clinical work activities. It is disappointing that no meaningful proposals have been developed by the Treasury therefore. We feel though a combination of scheme flexibilities, removal of the taper and better education for scheme members is likely to be the best overall solution.

Please contact us if you wish to discuss any of the points raised in our response. We look forward to seeing the government response to the consultation in due course.

Daniel Mortimer
Chief Executive, NHS Employers

cc. Secretary of State for Health and Social Care

Enclosed: Research into the potential impact of pension flexibilities in the NHS.
The case for pension flexibility

The NHS Pension Scheme was introduced in 1948 and has from that date provided a range of benefits, as a mutual scheme, to employees in the NHS in England and Wales. The scheme continues to be recognised as a valuable part of the reward package with membership currently running at approximately 90 per cent. However, maintaining the balance of membership, between high and low earners, is important to ensure the delivery of key financial targets. The current scheme regulations allow for enrolment into the scheme from the first date of employment in the NHS and employees have a binary choice to either remain in the scheme or to opt out. It has been recognised for some time that this presents individuals with limited options over their pension savings and the NHS Scheme Advisory Board requested a more meaningful approach on a range of benefits that could be introduced, which would strengthen the attractiveness of the scheme and make it accessible to those employees who have found it necessary to opt out.

NHS Employers welcome the opportunity to respond to the consultation and have sought the views of employers across the NHS to inform this response.

Employers firmly support the introduction of pension flexibilities for all NHS employees to support staff who are facing pension tax issues, whilst ensuring the NHS Pension Scheme remains attractive and affordable for all employees and enabling more staff to join and continue to contribute to the scheme. NHS Employers carried out a survey of employers on the pension flexibilities consultation, 91 per cent of those who responded agreed that introducing scheme flexibilities will have a positive impact on workforce capacity, service delivery and patient care and will support the attraction, recruitment and retention of staff. Even a slight improvement in these areas will make a significant difference to patients.

By allowing individuals to take greater control over their pension growth the current disincentive for some staff groups to take on extra responsibilities and carry out the additional work needed to achieve clinical activity and access standards will be removed. However, there is also clear recognition that the proposals for scheme flexibilities outlined in the consultation will not address annual allowance tapering which is the fundamental cause behind this reduction in activity. There are some concerns that the proposed flexibilities will have a limited or neutral impact as staff may not have the necessary knowledge and understanding to use the flexibilities to their best effect. A combination of scheme flexibilities, removal of the taper and better education and support for those affected is likely to be the best solution.

The impact of pension tax

The impact of pension tax on the NHS has been well publicised. On the next page we have included two charts which support the case for pension flexibilities. These charts are taken from our research with First Actuarial into the impact of pension tax on the NHS. Chart 1 shows the actions already taken by staff to mitigate their pension tax position and Chart 2 shows the key concerns and impacts on the workforce as identified by employers.
Targeting the flexibility

Consultation question 1 - Who do you think pension flexibility should be available to?

NHS Employers hosted a webinar on 2 August 2019 to update employers about the latest developments in pension taxation. A total of 222 employer representatives joined the webinar. At the end of the presentation, we asked attendees a series of questions to gather intelligence to inform our response to the consultation. The questions were based on the proposals in the original version of the consultation which was withdrawn and replaced, but the findings are still relevant.

Webinar attendees were asked - ‘Who should pension flexibilities should be available to? The responses were as follows:
Following the publication of the new consultation on scheme flexibilities on 11 September 2019, we carried out a more detailed survey of NHS employers based on the new consultation questions.

Employers were once again asked – ‘Who should pension flexibility be available to? The updated responses are set out below:

<table>
<thead>
<tr>
<th></th>
<th>Question</th>
<th>Response</th>
</tr>
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<tbody>
<tr>
<td>a)</td>
<td>NHS GPs and consultants who may be affected by the annual allowance tax charge</td>
<td>0%</td>
</tr>
<tr>
<td>b)</td>
<td>All NHS clinicians who may be affected by the annual allowance tax charge</td>
<td>3%</td>
</tr>
<tr>
<td>c)</td>
<td>Non-clinicians in the NHS who may be affected by the annual allowance tax charge</td>
<td>0%</td>
</tr>
<tr>
<td>d)</td>
<td>All NHS staff who may be affected by the annual allowance tax charge</td>
<td>9%</td>
</tr>
<tr>
<td>e)</td>
<td>All members of the NHS workforce, regardless of their tax position</td>
<td>74%</td>
</tr>
<tr>
<td>f)</td>
<td>Other</td>
<td>15%</td>
</tr>
<tr>
<td>g)</td>
<td>None of the above</td>
<td>0%</td>
</tr>
</tbody>
</table>

Of those who responded to our survey, 15 per cent selected the ‘Other’ option. The comments received from this group included the view that pension flexibilities should be implemented for all NHS staff who may be affected by the annual allowance tax charge as an immediate priority and should then be rolled out to all scheme members at a later date.

The views of employers that underpin these results are set out below.

1. **The annual and lifetime allowances affect a broad range of NHS staff, not just senior clinicians.**

While the focus to date has been mainly on the impact on consultants, the annual and lifetime allowances affect other professionals in the NHS and so to offer a solution for just senior clinicians is not equitable and will not support the delivery of services to best effect.

Any NHS employee could in theory build up benefits that exceed the annual allowance if they have enough pensionable service across one or both NHS Pension Schemes, receive significant pay increases, or have pension savings in other workplace schemes or significant taxable income from other sources.

Other staff groups currently affected include:

- Allied health professionals
- Scientists
- Long serving employees on agenda for change terms and conditions
- Senior managers
- Board members
The impact of the pension tax allowances on non-clinical staff is evidenced by the number of senior managers and board members who are opting out of the NHS Pension Scheme for tax reasons. Trusts are reporting increased opt outs across their executive teams, Very Senior Managers (VSMs) and some agenda for change staff, due to the pension tax allowances. In one example an entire executive team had opted out of the pension scheme. However, opt outs may not be increasing as significantly because it is mainly older staff that have been affected, and they may choose to take early retirement instead.

The data below has been provided by an NHS trust in the London region. This demonstrates the impact of pension taxation on NHS Pension Scheme membership levels. Specifically, it shows that only 47 per cent of the current board membership are members of the NHS Pension Scheme.

![Chart 3 - Scheme membership data](Source: An NHS trust in the London region).

Membership levels of the scheme at a national level show a similar trend, with scheme membership levels for non-clinical staff at bands 8 and above falling over the last 12 months.

Current employee contributions are determined by the whole-time equivalent pay and are tiered, with higher earners paying a higher contribution in recognition of the increased value of final salary benefits. It is important to ensure that high earners maintain membership and continue to contribute to the scheme in order to achieve the required financial yield at set out by HM Treasury. Failure to achieve this may impact on future scheme valuations as a cost pressure and may result in higher contributions for both employers and employees.

The consultation document explains that employers have the discretion to pay unused employer contributions to staff who opt out of the scheme due to tax reasons.

The current employer contribution rate of 20.6 per cent consists of three elements as outlined in the Government Actuary’s Department’s report on the 2016 actuarial valuation:

- 14.3 per cent is the cost of future benefit accrual and risk benefits
- 2.7 per cent is the cost of correcting the cost cap floor breach, which would have led to an increase in past and future benefits before this was put on hold due to the McCloud judgement.
- 3.6 per cent is the rate required to pay off the shortfall relating to past service benefits over the next 15 years.
If employers redirect the 3.6 per cent shortfall contribution to staff as extra pay, the deficit will remain unfunded and employers will need to pick up the extra cost at the next valuation. The cost of increased national insurance contributions also needs to be considered when determining how much of the employer contribution can be paid to staff on a cost neutral basis. It will be important to specify the rate of reimbursement that can be made against each decile.

Extending flexibilities to all staff affected by the annual allowances will enable more high earners to continue contributing to the NHS Pension Scheme, albeit at a lower level, which will help to maintain contribution income and the financial stability of the scheme.

2. **The impact of pension taxation on non-clinical staff also has an impact on service delivery and patient care.**

During our pension tax webinar, attendees were asked – ‘Do you have evidence to show pension taxation is affecting non-clinical staff in a way that leads to a reduction in service capacity or patient care?’ 31 per cent of respondents said they were able to provide evidence.

Employers shared the following specific issues and examples to demonstrate the impact on non-clinical staff:

- Increasing numbers of non-clinical staff declining to cover on call duties to manage their tax position. The trust is concerned about the impact on service as they have not yet been able to agree an alternative method of reimbursement.
- Employers told us it is becoming increasingly difficult to encourage senior staff to take up board positions.
- A growing reluctance of non-clinical staff to take on additional responsibilities and promotions has been cited by employers as a potential barrier to the move towards a system of integrated health and social care. The restructuring and merging of organisations that is often required to achieve better integration of services often creates the need for new roles with additional responsibility. The current interaction between the NHS Pension Scheme and the tax allowances creates a disincentive for experienced leaders to take on such positions.
- Increasing numbers of non-clinical staff submitting retire and return requests, citing pensions taxation as the main reason for them doing so. Most of these staff have returned to work on a part-time basis, thereby reducing capacity. With a known shortage of suitable applicants for a range of non-clinical posts, e.g. HR and Finance Directors, pension taxation and lack of flexibility will continue to act as a disincentive and drive demand for part time working and retirement.

Due to the nature of their roles, non-clinical staff generally work fixed hours and have less scope to reduce or vary their work commitments in order to manage their income and pension taxation position.

There is a serious risk to retention nationally because offers of employment from outside the NHS and early retirement may become more attractive. Should non-clinical staff be excluded, there could be a serious decline in individuals wanting to take up senior positions in the future and inequity within teams at board level, where for example, the Chief Nursing Officer and Medical Director may be supported by the pension scheme and by the employer to manage their pension tax position while other board members are effectively left to manage the situation by themselves.
According to the NHS Workforce Statistics published by NHS Digital in July 2019, there are around 650,000 professionally qualified clinical staff in the NHS, compared with approximately 36,000 senior managers and managers. Extending the flexibilities to all staff affected by the annual allowance would present a relatively small additional step, due to the lower numbers of non-clinical staff that may be affected. The potential for increased contribution income as a result of enabling higher paid staff to remain in the scheme should be considered alongside the fall in income from annual allowance tax charges. No additional administration or regulatory change is required to extend the flexibilities to all staff who are affected by the annual allowance. On this basis, employers believe the proposal as it stands is unnecessarily divisive.

The relationship between the role of non-clinical staff and patient care is less direct. However, the important role that senior managers and other non-clinical staff play in improving patient outcomes should not be underestimated or overlooked. Such individuals are vital in ensuring the safe and efficient running of NHS organisations and the delivery of effective patient care. The NHS People Plan reinforces how creating a better leadership culture is critical to making the NHS the best place to work and emphasises the importance of strong leadership to create a culture for the provision of high-quality care and good patient incomes.

3. It is not equitable to offer a solution to pension tax issues for senior clinicians only.

The intention to target the proposals at senior clinicians only is not supported on the grounds of equity and fairness. Providing a solution for senior clinical staff only sends a message that clinical staff (and in particular medical staff) are more valued and appreciated than their non-clinical colleagues. This goes against the efforts made by NHS organisations to develop reward and recognition schemes to ensure all staff feel recognised and appreciated. Senior clinicians do not deliver patient care in isolation and the contribution of all team members who support them should be recognised in the reward offer for all NHS staff.

A guiding value of the NHS, good people management and ultimately the NHS Constitution is that “Everyone counts: We maximise our resources for the benefit of the whole community, and make sure nobody is excluded, discriminated against or left behind.” This value is supported by the NHS People Plan which was developed on the basis that working collaboratively across multi professional and multidisciplinary teams will be the foundation of the future workforce, rather than treating the workforce as a group of separate professions. Introducing flexibilities for just one group of staff goes against this principle.

Employers are aware of the recent age discrimination case in relation to public service pension schemes, where the transitional protections awarded to older scheme members at the time of the 2015 scheme reforms were found to be unlawful on the grounds of age discrimination. Significant scheme changes are now required to compensate affected individuals for their loss. Implementing the remedy will create administration work for employers and may be very time consuming in terms of communicating the scheme changes to staff effectively. Retrospective changes may further complicate the pension tax position of some pension scheme members. Applying another scheme change to generally older and higher paid staff seems very risky in this context and employers would prefer scheme changes to be applied equitably to the whole workforce avoid the risk of claims and corrective action in future.

4. The NHS Pension Scheme is a mutual scheme.

The ethos of a mutual pension scheme is to provide a scheme which provides equal benefits for all NHS employees. The same scheme regulations apply to all staff and those regulations continue to be
amended and improved to ensure greater equality, including the removal of special class status, equalisation of retirement age, the equalisation of death benefits and a recommendation to move from whole time equivalent to actual pay for the purposes of determining member contributions. Extending flexibilities to all will make the scheme more mutually inclusive and incentivise scheme membership.

5. **Affordability is a barrier to scheme membership for NHS staff**

Analysis of total earnings for non-clinical staff shows that:
- Around half earn £25,000 or less
- Around a third earn £21,000 or less
- Around 20 per cent earn £18,000 or less

The Joseph Roundtree Foundation recently published a Minimum Income Standard for the United Kingdom in 2019. The Minimum Income Standard (MIS) is the level of earnings members of the public think is needed for an acceptable minimum standard of living in the UK. 58 per cent of the non-clinical NHS workforce earn less than £28,000 so there are likely to be widespread concerns about affordability. The table below shows the level of earnings required to meet the MIS in work and in retirement. This shows a significant proportion of NHS employees are left with less than the MIS if they join the scheme at full accrual.

<table>
<thead>
<tr>
<th>Situation</th>
<th>JRF Report</th>
<th>FA Estimate of Gross Pay Needed to Achieve MIS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Net Pay needed</td>
<td>If not in the Scheme</td>
</tr>
<tr>
<td>Single adult, working age</td>
<td>£16,311</td>
<td>£18,800</td>
</tr>
<tr>
<td>Couple with two children (figures are per adult)</td>
<td>£20,514</td>
<td>£25,000</td>
</tr>
<tr>
<td>Single pensioner</td>
<td>£10,452</td>
<td>£10,500</td>
</tr>
<tr>
<td>Pensioner couple (figures are per adult)</td>
<td>£8,060</td>
<td>£8,100</td>
</tr>
</tbody>
</table>

There is a clear relationship between income and scheme membership levels which further illustrates the need to extend flexibilities to all to ensure the scheme remains affordable.

![Participation Rates by AfC Band](chart4.png)

**Chart 4 - Participation rates by AfC band** (Source: NHS Digital data)
Analysis of opt-out data over 2018-19 suggests that around 60 per cent of staff who opt out of the scheme do so due to affordability or other financial priorities. This equates to around 47,000 opt-outs due to affordability in 2018-19 alone. In total around 10 per cent of NHS staff do not participate in the NHS Pension Scheme and are likely not to be making any savings to support their retirement. In contrast, only around 4 per cent of total opt-outs (around 3,000) were due to pensions tax issues. For consultants (senior clinicians), only around 1.4 per cent say they opted-out due to pensions tax issues.

A collection of six NHS organisations in the south of England asked their staff why they had chosen to opt out of the pension scheme. The data gathered from this region is consistent with the national position described above, with over 40 per cent of staff who had opted out of the scheme saying this was because they could not afford the employee contributions. In comparison, only around 10 per cent of staff who had opted out of the scheme had done so for tax reasons.

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>I contribute to a different / personal pension elsewhere</td>
<td>5.50% 41</td>
</tr>
<tr>
<td>I have other savings (such as cash savings, property investments)</td>
<td>11.68% 87</td>
</tr>
<tr>
<td>I can't afford the employee contributions</td>
<td>40.48% 302</td>
</tr>
<tr>
<td>Taxation reasons: Lifetime Allowance</td>
<td>3.40% 26</td>
</tr>
<tr>
<td>Taxation reasons: Annual Allowance</td>
<td>4.42% 33</td>
</tr>
<tr>
<td>Taxation reasons: Tapering</td>
<td>2.28% 17</td>
</tr>
<tr>
<td>I already receive a pension</td>
<td>32.17% 240</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>746</strong></td>
</tr>
</tbody>
</table>

Despite efforts to make the NHS Pension Scheme good value for lower earners, affordability is still a concern for many, and employers told us this is the key reason why employees are not joining the scheme. The proposal to introduce scheme flexibilities for senior clinicians only alleviates a tax issue for some high earners but does not address affordability as a reason for leaving the scheme. It effectively makes the scheme more affordable for those who can already afford it whilst not addressing affordability issues for those who can’t afford to join.

6. **Extending flexibilities to all staff will encourage scheme membership and support recruitment, retention, service delivery and patient care.**

The NHS Pension Scheme is a key part of the reward offer for NHS staff. Introducing scheme flexibilities for the whole workforce will ensure the scheme is attractive, affordable and accessible for staff who are in lower earnings brackets and will allow more staff to participate in the scheme.

Our research with First Actuarial into the potential impact of scheme flexibilities on the NHS included a survey on how extending the flexibilities to all staff may affect employee behaviours. The survey showed that all non-scheme members who cited affordability as their reason for not joining the scheme would join the scheme if the flexibilities were available and most would choose an accrual rate of 50 per cent. Of those in the scheme, 58 per cent said they would choose to retain full accrual if the flexibilities were available to them. The full results of the survey are shown in the chart on the next page.
Chart 5 - Chosen actual rates for members and non-members (Source: NHS Employers and First Actuarial research into the potential impact of pension flexibilities in the NHS).

Using the flexibilities will enable employees to find the right balance between competing financial priorities such as paying for education, meeting the cost of childcare, rising rental costs, saving to get on the property ladder and saving for their retirement. Even with less than full accrual members can still achieve good retirement outcomes, whilst securing a good standard of living during their working lives, especially if they have many years of service in the scheme. This is consistent with the themes set out in the Interim People Plan which details how we will make the NHS the best place to work by making the NHS an employer of excellence – valuing, supporting, developing and investing in our people.

In a recent NHS Employers survey, over 70 per cent of employers rated the NHS Pension Scheme as being excellent, effective, or somewhat effective in retaining staff. Analysis of the average length of service data shows that pension scheme members have higher service on average than non-scheme members, which would suggest there is a link between scheme membership and retention. However, longer service is likely to be attributable to a number of other additional factors.

With the stark national challenges on recruitment and retention within the NHS likely to be exacerbated by the UK’s exit from the European Union, the more flexibility and options that can be made to improve our reward offer, the greater our chances are to recruit and retain the best talent in a very competitive job market.

Employers strongly believe therefore that scheme flexibilities should be extended to all NHS staff, with 91 per cent of employers who responded to our pension flexibilities consultation survey agreeing that extending the flexibilities to wider staff groups will benefit their organisation, workforce capacity, service delivery and patient care.

There is of course a risk that extending flexibilities to all staff may lead to poor pension outcomes if staff choose the lowest cost option throughout their employment without understanding the long-
term impact on the value of their pension. However, currently employees who can’t afford to join
the scheme will not earn any NHS pension benefits and will be reliant on the state pension. There is
a strong counter argument to say that some workplace pension saving is better than none, even at a
low level. Employers suggested safeguards could be put in place to protect lower earners by
improving member education and placing time restrictions on the period in which employees can
choose to build up a lower level of pension. These time restrictions could be linked to the existing
automatic enrolment process for ease of administration and compliance.

Targeting the flexibility - conclusion

Scheme flexibilities should apply to all NHS employees, regardless of their earnings or tax
position, to support the recruitment and retention of staff across the NHS. The proposal to
target the flexibilities at senior clinicians only, whilst an understandable response to the impact of
annual allowance taper, is therefore seen as incomplete.

Proposed pension flexibility

Flexible accrual

Consultation question 2 - Do you think the proposal for a more tailored approach to pension
accrual is flexible enough for senior clinicians to balance their income, pension growth and tax
liability?

During our pension tax webinar on 2 August 2019, 65 per cent of attendees said they supported the
previous proposal to introduce a 50:50 section alongside the option for members to purchase
additional pension. However, 82 per cent of webinar attendees said the proposal should be
developed further by introducing more levels of accrual. Employers therefore welcome the greater
flexibilities included in the new proposals and see this as a significant policy improvement.

77 per cent of employers who responded to our pension consultation survey said they believed the
proposal for a more tailored approach to pension accrual is flexible enough for senior clinicians to
balance their income, pension growth and tax liability. Employers believe the flexible accrual option
will be particularly helpful for members of the 2015 Scheme, where annual allowance issues are
largely caused by the higher accrual rate and in-service revaluation.

The new proposal to offer additional accrual options in 10 per cent increments provides greater
flexibility without being overly burdensome. Employers were very positive about the ability for staff
to review, revisit and adjust their decision on flexible accrual later in the scheme year. This goes
some way to addressing employer concerns about the difficulty in reaching a decision on an
appropriate level of accrual before the start of the scheme year, as employees need at least some
certainty of their variable earnings over the year to estimate the impact of the annual allowance
taper. Employers suggested the end of February as a reasonable deadline for revised flexible accrual
elections as March and April are very busy times for payroll teams.

Some respondents to our survey, although supportive of the proposals, questioned if the NHS
payroll and pensions administration systems would be able to cope with increased complexity and
others observed that staff will need greater support and independent financial advice to understand
their options and make appropriate decisions.
‘Zero accrual’ option

The ‘zero-accrual’ option is attractive to employers as it allows staff to manage their pension accrual for tax purposes, while also retaining death in service and ill health retirement cover. The ancillary benefits provided for members of the NHS Pension Scheme provide valuable protection for members of the scheme and their families during difficult times. There is currently a risk that employees who opt out of the scheme for tax reasons or don’t join the scheme due to affordability may not be aware they need to arrange alternative cover. They may not be able to secure or afford cover outside of the pension scheme, due to the stricter underwriting requirements and higher premiums that are applied where employees buy cover individually on the open market. Some employers have explored providing life assurance and income protection benefits separately for staff but there are additional cost and administration issues for employers to consider.

Employers who were not as supportive of the zero-accrual option suggested that it may not be appropriate for individuals with fixed lifetime allowance protections, as there is a risk that continued participation in the scheme may lead to loss of protection and a tax liability. Others questioned if the zero-accrual option would work in practice, particularly if the link to final salary is not broken.

The government’s position on the use of tax relieved contributions to purchase insurance benefits is logical. However, some employers questioned how other UK registered pension schemes, such as the University Superannuation Scheme are operating similar arrangements whilst complying with the same tax legislation. The USS operates an Enhanced Opt Out option which allows staff to keep their death in service and ill health cover without building up any further pension. The Pension Regulator’s guidance on lump sum death benefits also seems to infer that provision of death in service benefits for staff who have opted out of a workplace pension scheme is appropriate.

Consultation question 3 - If not, in what ways could the proposals be developed further?

Employers suggested the proposal could be developed in the following ways:

- Explore how NHS terms and conditions of employment could be amended to give more scope for certain payments and allowances to be non-pensionable.
- Develop online tools to help staff to understand if they may be affected by the annual allowance, to estimate their potential tax liability and to work out if using the flexibilities would help to improve their position.
- Extend the proposal to other staff groups (as covered in our response to consultation question 1).

Phasing the ‘pensionability’ of large pay increases

Consultation question 4 - We’re proposing that large pay increases for high-earning staff should only be included in their pensionable income gradually. Do you agree or disagree with this proposal?

68 per cent of employers who responded to our pension consultation survey agreed with the proposal to gradually phase increases in pensionable pay.

This proposal will help to improve staff morale, as currently, colleagues can be penalised for receiving pay awards, or promotional increases that are designed to reward and recognise their hard work and achievements. Some organisations reported examples of staff turning down pay awards and not applying for clinical excellence awards as they believe the additional payments will make them financially worse off once annual allowance tax charges are factored in. Employers believe
implementing the proposal will help to remove disincentive to take up promotions, board positions and additional responsibilities and ensure career development opportunities remain attractive and this will in turn support recruitment and succession planning.

This proposal will be particularly helpful for members with long periods of service in the 1995/2008 Scheme who retain a link to final salary, as the value of pension earned in every year of service will be increased in line with the rise in pensionable pay. This can create a spike in pension growth during the scheme year, leading to annual allowance issues. This flexibility will work well for individuals who have unused annual allowance to carry forward from previous tax years. It will not be as effective for scheme members who have exhausted their carry forward (broadly those earning over £127,000), as phasing the pensionable pay increase will delay the tax charge, rather than mitigating it. However, deferring the tax charge until a later date could still be helpful by allowing the individual more time to save or arrange funds to meet the tax charge or gaining better value from using scheme pays.

As the proposal to phase increases in pensionable pay favours those with final salary benefits in the 1995/2008 Scheme and the flexible accrual proposal will be most effective for members with CARE benefits in the 2015 Scheme, both proposals in combination will help to support individuals who have benefits in both schemes, who are most likely to be affected by annual allowance issues.

Once again issues of equality should be considered as there is a strong feeling that the proposals should be available to all staff, not just high earners or senior clinicians. A potential benefit of phasing pensionable pay increases for lower paid staff may be to avoid ‘cliff edge’ situations, where a pay award tips an employee into a higher employee contribution tier, leading to a reduction in take home pay. This is another example of how a pay award that is designed to reward and recognise the contribution of an employee can instead have a demoralising impact on staff. Safeguards would need to be in place to protect the lower paid, ensure staff are aware of the impact on their pension benefits and to discourage employees from making decisions based solely on their take home pay.

Flexibilities should be reviewed after the first year of operation to ensure they are working as intended for staff and employers and to identify improvements to the surrounding processes and communications.

Support for individuals to understand their tax liability and use the new pension flexibilities

Our research with First Actuarial highlighted a clear lack of understanding of the NHS Pension Scheme and the annual and lifetime allowances. Staff need to have access to effective communications, high quality guidance and in some cases, independent financial advice, in order to understand their tax position and make well informed decisions. The introduction of scheme flexibilities will create more complexity and choice for members, which will strengthen the need for clear information, guidance and advice.

Whilst we know the impact on some NHS employees has been severe, with staff incurring significant tax charges, the level of publicity surrounding pension tax issues in the NHS has created misunderstanding and concern with some staff taking unnecessary action to reduce their income or pension growth through lack of understanding of their own circumstances, when they are unlikely to be affected.
The following approaches could be developed to support individuals to understand their tax liability and use the new pension flexibilities:

- Developing and delivering pension tax workshops nationally.
- Raising awareness of the tapered annual allowance to encourage staff to be more proactive and request pension saving statements if they feel they may be affected.
- Reviewing pension savings statements with the aim of improving and simplifying the layout of information and content.
- Providing online tools and calculators to help staff understand if they are likely to be affected by pension tax issues and to support decision making following the introduction of new scheme flexibilities.
- Calculating combined pension input amounts – scheme members with benefits in both the 1995/2008 Scheme and the 2015 Scheme tend to be most significantly affected by the pension tax allowances. Employees in this situation currently receive two separate pension savings statements, i.e. one from each pension scheme. Individuals must add together the pension growth (or Pension Input Amount) from both schemes to identify and calculate their liability. Calculating combined Pension Input Amounts would make it easier for staff with benefits in both schemes to identify and calculate their tax liability and would also allow any negative growth in one scheme to be offset against pension growth in the other scheme, potentially reducing the overall liability.
- Exploring cost effective ways of obtaining independent financial advice – employers told us that cost is a barrier to employees seeking independent financial advice about their pension options and suggested the following potential solutions:
  - Work with independent financial advisers to negotiate reduced rates for NHS staff.
  - Allow employees to pay for financial advice by salary sacrifice to take advantage of tax and national insurance savings.
  - Use scheme benefits to pay for independent financial advice. Members of defined contribution schemes can take up to £1,500 from the value of their pension fund towards the cost of financial advice. Some employees may have Additional Voluntary Contribution (AVC) funds to draw from for this purpose. However, the feasibility of extending this facility to main NHS Pension Scheme benefits could be considered.
Improving scheme pays

Consultation question 5 - Currently, the NHS Pension Scheme has a notional defined contribution pot (NDC) approach to Scheme Pays deductions. We’re proposing to replace this with the debit method. Do you agree or disagree with this?

Employers were pleased to see the extension of the scheme pays facility from the 2017/18 tax year. All staff affected by the annual allowance and tapered annual allowance may now use scheme pays to settle their annual allowance tax charge from the value of their pension benefits. This option is useful and valuable to staff who can’t afford to pay their tax charge upfront or would rather leave existing funds invested elsewhere.

In our survey on the consultation proposals, 64 per cent of employers who responded said they support the proposal to replace the current notional defined contribution approach to scheme pays with the debit method. The respondents who did not support the proposal did not give any reasons to support their view.

Employers told us they support the proposal because:

- The pension debit approach would give staff greater transparency and awareness of the ongoing value of their NHS Pension Scheme benefits, which in turn would help with decision making, retirement planning and workforce planning.
- Scheme members will be able to see the real impact of the annual allowance charge on the value of their NHS Pension Scheme benefits at the time the charge is incurred, rather than having to wait until retirement.
- Employees will be able to compare the value of the reduction in their scheme benefits against the value of the pension growth which originally led to the annual allowance tax charge, to understand their overall net position.
- There is a lot of anxiety about the value of the interest applied to the scheme pays loan, particularly for those who are further away from retirement age at the time of incurring an annual allowance tax charge. The interest added to the notional defined contribution pot may vary (either to the member’s benefit or detriment) if the SCAPE discount rate is

Proposed pension flexibility - conclusion

The proposed pension flexibilities which will give staff the option to choose flexible levels of accrual and to phase increases in pensionable pay are supported by employers. The proposals could be developed further by extending eligibility to all staff and by designing the administration processes carefully to ease the workload for employers locally. Further welcome clarity is required on the detail of certain aspects of the proposals at a later stage.

Support should be provided for individuals to help them understand their tax liability and make informed choices about how they use the new pension flexibilities. It is also important to support all staff to improve their understanding and appreciation of the value of the NHS Pension Scheme.

The new scheme flexibilities should be reviewed and evaluated after the first year of implementation to ensure they are operating efficiently and as intended.
changed between the date the tax charge is incurred and the date of retirement. Using the pension debit method removes this risk and uncertainty for scheme members.

- Using the pension debit method would bring the NHS Pension Scheme in line with all other public service schemes.
- The pension debit method is better aligned to the nature of a defined benefit scheme than using a notional defined contribution pot approach.

We understand that GAD estimates suggest the NDC approach produces a scheme pays deduction approximately 2 per cent lower than the debit method, but after considering the very small value of that saving against the benefits of the pension debit approach described above, employers still support the proposal to move to the pension debit approach.

The operation of scheme pays could be improved further by raising awareness of the option and explaining the benefits. This could be achieved by linking to supplementary information from the pension saving statements and total reward statements (TRS). Our research with First Actuarial showed that engagement with TRS amongst senior clinicians and senior managers is much higher than the national average and so TRS could be better used as a communications tool to support staff with pension tax issues.

### Improving scheme pays - conclusion

We strongly support the proposal to adopt the debit method to improve transparency of scheme pays and support staff to make well informed decisions. Employers believe the operation of scheme pays could be further improved by raising awareness and understanding of the benefits.

### Equality impact assessment

**Consultation question 6 - What impact, if any, do you think the following will have on people with one or more protected characteristics:**

- **a. The proposal to target the flexibility to clinicians who have a reasonable prospect of an annual allowance tax charge**
- **b. The proposal to provide flexible accrual to clinicians who have a reasonable prospect of an annual allowance tax charge**
- **c. Other proposals in the consultation document e.g. phasing pensionable pay increases and/or commissioning a modeller to help individuals understand their tax liability and flexibility options**
- **d. Adopting the debit method for scheme pays**

Detailed consideration needs to be given to the risks of direct and indirect discrimination and a full equality analysis should be undertaken in line with Equality Act 2010.

Targeting the flexibilities at senior clinicians or senior employees only may lead to legal claims on the grounds of indirect sex discrimination. The chart below shows that 23 per cent of the NHS workforce is male, but senior employees are far more likely to be male, with the proportion of males working as managers, senior managers and consultants being far higher than the workforce average.
Chart 6 - Percentage of workforce that is male by role (Source: NHS Digital data).

The chart below shows that senior employees are also more likely to be older than the overall workforce, meaning there is a risk that extending flexibilities only to senior employees could lead to indirect discrimination based on age.

Chart 7 – Age distribution of senior clinicians and senior non-clinicians (Source: NHS Digital data)

Employees are more likely to be affected by the annual allowance if they have long periods of pensionable service, high earnings towards the top of the pay scales and legacy benefits in the 1995/2008 Scheme. Younger staff are therefore less likely to be affected by the annual allowance and able to access the scheme flexibilities.

There is a need to consider how the proposals will impact on lower paid staff as generally, due to national demographics, higher proportions of staff with disabilities and from black, Asian and minority ethnic backgrounds may not be able to access the flexibilities.
All employers who attended our pension tax webinar, said they believed targeting the proposals at senior clinicians will have an impact on staff with protected characteristics. 63 per cent said it would have an impact based on age, sex and race, 32 per cent on age alone and 5 per cent on sex.

Employers said the proposals will not have an impact on members with one or more of the protected characteristics if the proposals are extended to all NHS staff.

**Consultation question 7 - Are there any further equality considerations that the Department should be aware of from groups outside the data set?**

We did not receive any comments or feedback from employers in relation to this final question.

**Equality Impact Assessment - conclusion**

Targeting the flexibilities at senior clinicians only will create equality risks and the potential impact on staff with protected characteristics will need further detailed consideration.