

**NHS Pension Scheme**  
**Scheme Advisory Board**

---

**Annual Report 2018/19**

## Contents

Co-Chair statement.....	3
Purpose of the Scheme Advisory Board .....	4
Work areas 2018-19.....	5
Training.....	9
Further information.....	9
Appendix A - Membership .....	10
Appendix B - Work Plan 2018-19 .....	14
Appendix C - Background .....	17

## Co-Chair statement

We are pleased to publish this report on the work of the NHS Pension Scheme Advisory Board (SAB) for 2018-19. The board has met five times between April 2018 and March 2019 and has made considerable progress through the work plan and additional pension-related issues.

In summer 2018, the members of SAB were delighted to welcome Nicola Lee from the Royal College of Nursing as our new trade union co-chair. Nicola brings a wealth of knowledge and experience from her partnership work with the NHS Staff Council and the NHS Pension Board. Nicola replaces Gerry O'Dwyer following his retirement from his position at the Royal College of Nursing. Gerry was part of SAB from the very beginning and was previously the chair of the NHS Pension Scheme Governance Group. SAB is grateful to Gerry for all his support and his significant contribution to the development of the board.

SAB has worked flexibly around the changing timetable for the 2016 scheme valuation. The long-awaited HM Treasury directions and the interim results of the 2016 valuation were published in September 2018. The valuation outcome was unexpected, revealing a significant increase in the required employer contribution rate, alongside a breach of the cost cap floor during the first valuation period of its operation. SAB members worked quickly and effectively by attending additional meetings and contributing to the development of advice outside of the schedule of meetings. We would like to thank members of SAB and the Technical Advisory Group (TAG) for their commitment and flexibility which enabled the board to reach successful outcomes within challenging deadlines.

Looking forward to 2019/20, the challenges presented by the recent age-discrimination judgement and the issues in relation to pension taxation will require SAB to advise on amendments to the scheme in addition to its usual work. We look forward to working together in partnership to ensure scheme changes are well considered, implemented and clearly communicated for the benefit of scheme members and employers.



**Sue Jacques**  
Co-Chair (employers)  
County Durham and Darlington



**Nicola Lee**  
Co-Chair (NHS Trade Unions)  
Royal College of Nursing

## **Purpose of the Scheme Advisory Board**

The board's statutory role is to provide advice to the Responsible Authority (the Secretary of State for Health and Social Care) on the desirability of changes to the NHS Pension Scheme. The board operates on the basis that there is an ongoing request for advice from the Responsible Authority.

The Scheme Advisory Board is responsible for:

- providing advice on the desirability of changes to the NHS Pension Scheme
- making recommendations on adjustments to the NHS Pension Scheme in the event that costs breach the employer cost cap
- responding to policy issues and changes to scheme rules.

Meetings are chaired on a rotating basis between the staff side co-Chair and the employer side co-Chair.

The board reaches decisions by consensus between employer and member representatives. In the event of the board failing to reach a consensus, the Responsible Authority will be informed and individual or collective submissions of advice may be made for consideration.

The Scheme Advisory Board met on the following dates during 2018-19:

- 22 May 2018
- 10 July 2018
- 11 October 2018
- 18 October 2018
- 6 November 2018

## Work areas 2018-19

Work during the year has been carried out in line with the Scheme Advisory Board Work Plan 2018-19 which can be found in Appendix B.

Throughout the year, the work plan has been adapted to ensure that the board remains responsive to issues as they arise.

## Employee contributions

SAB submitted a joint recommendation to the Department of Health and Social Care (DHSC) on the design of member contributions from 1 April 2019. SAB reached full agreement on the following areas:

- Determining employee contributions using actual pay, rather than whole time equivalent (WTE) pay is appropriate.
- 'Cliff edges' in the contribution structure need to be resolved.
- There is a pressing need to explore ways to mitigate pension tax issues and to minimise opt outs.

SAB also reached a majority agreement that the changes outlined above should be deferred by a period of two years, with the new contribution structure taking effect from 1 April 2021.

The Secretary of State agreed with SAB's recommendation and the proposal to maintain current contribution rates until 31 March 2021 was confirmed as part of the NHS Pension Scheme Additional Voluntary Contributions and Injury Benefits (Amendment) Regulations 2019.

SAB will continue to develop their detailed recommendation on employee contributions in the lead up to the implementation date of 1 April 2021.

## Scheme valuation 2016

On 6 September 2018, HM Treasury published the draft directions required to finalise the results of the 2016 scheme valuation. SAB reviewed the draft valuation directions with their independent actuarial advisers and responded to HM Treasury with their comments and feedback, which can be summarised into four key areas:

- rationale for the change in the SCAPE discount rate
- funding available for the higher employer pension contributions
- impact of breaching the cost cap floor
- unintended consequences of increasing the employer contribution rate.

GAD wrote to SAB on 13 September 2018 to outline the preliminary results of the 2016 scheme valuation as follows:

- The employer contribution rate required from 2019 to 2023 will increase to 20.6%, primarily due to the change in the SCAPE discount rate.
- The cost of scheme benefits has fallen below the cost cap floor and scheme changes are needed to restore the cost to the scheme's target cost. This was largely because of lower than expected pay increases and a slow down in life expectancy improvements.

## Rectifying the cost cap breach

DHSC asked SAB to provide advice on the measure or combination of measures, that should be adopted to rectify the cost cap breach. In order to reach joint agreement before the deadline of 9 November 2018, three additional SAB meetings were scheduled and well attended.

Employer and member representatives debated the issues at length with support from their advisers. The impact on the employer contribution rate, take home pay, pension tax implications and acceptability to Treasury were key points for discussion.

SAB was pleased to reach joint agreement on a preferred option for rectification, which included a combination of proposed changes to members benefits and contributions, including:

- Using actual pay to determine member contribution rates
- Indexing member contribution tier boundaries annually with the general pay award
- Combining the three highest member contribution rates at 12.5%
- Equalising survivor benefits earned before 6 April 1988
- Reducing member contribution rates by up to 1% for active members of the 2015 Scheme
- Introducing a new benefit where members build up an additional cash sum on top of their regular scheme benefits (for a time limited period)

In addition, SAB recommended that any scheme changes as a result of the valuation outcome should be accompanied by a firm commitment to introduce scheme flexibilities to address scheme opt outs and help scheme members manage their personal finances.

On 30 January 2019, HM Treasury announced the intention to pause the cost cap element of the 2016 scheme valuation pending the outcome of the Court of Appeal judgement in the cases of McCloud and Sargeant. The judgement published on 20 December 2018 has implications for the value of benefits earned since 1 April 2015.

## Age discrimination ruling in public sector schemes

In December 2018, the Court of Appeal ruled that the transitional protections awarded to members of the Firefighters' and Judges' pension schemes gave rise to unlawful discrimination on the grounds of age. The Government will need to compensate members of those schemes for the difference in treatment since 1 April 2015. The Government is considering the implications for other public service pension schemes with similar transitional protections, including the NHS Pension Scheme.

Implementing an appropriate remedy will be a complex exercise and is likely to involve significant scheme changes which will need to be carefully considered and communicated to staff and employers. The outcome of the judgement will have implications for a number of key work areas for SAB, including the review of employee contributions, exploring scheme flexibilities and rectifying the cost cap breach.

## Autumn Budget 2018

The board discussed the key pension related points from the Autumn Statement on 29 October 2018, in which the Chancellor confirmed:

- the proposed reduction in the discount rate (or SCAPE rate).
- there would be funding for NHS employers to cover the additional pension cost pressures.
- the inflationary measure to determine increases to public service pensions will eventually change from CPI to CPIH (which includes some housing costs).
- the lifetime allowance will be increased in line with CPI to £1,055,000 from 6 April 2019.
- the government is taking steps to support the launch of Pensions Dashboards, which allow an individual to see their pension pots, including their State Pension, in one place.

## Pension taxation

SAB has discussed the impact of the annual and lifetime allowances on the NHS employees, organisations and the NHS Pension Scheme. This is a key issue on the agenda for both NHS employers and trade unions. Members of SAB have expressed their concerns about the financial and emotional impact on affected employees, the impact on workforce supply and service delivery and the potential impact on the financial stability of the scheme.

SAB members unanimously agree on the need to introduce scheme flexibilities to mitigate pension tax issues, as well as ensuring the scheme is affordable and accessible for staff with competing financial priorities. SAB has submitted recommendations on scheme flexibilities to DHSC as part of their advice on the employee contributions review and the rectification of the cost cap breach.

## Monitoring of NHS Pension Scheme membership

The board has received regular information from NHS Business Services Authority (BSA) as the scheme administrator and from the DHSC about the number of members leaving the NHS Pension Scheme. This information was used to monitor and track trends and to assess how automatic enrolment and changes to tax legislation impacted on member behaviour.

## NHS Pension Board

A number of representatives of the Scheme Advisory Board are also members of the NHS Pension Board. This ensures that links are maintained between the two boards and their respective functions.

## Legal cases of interest

The board has followed the progress of a number of ongoing legal cases of relevance to public service pension schemes.

- Walker v Innospec Ltd and others – the Supreme Court ruled that it is unlawful to calculate a survivor's pension payable to a surviving civil partner or same sex spouse based on restricted pensionable service since 5 December 2005. The judgement was applied retrospectively, meaning that survivor's pensions paid to a civil partner or same sex spouse must be based on all the member's pensionable service. The scheme regulations were amended from 1 April 2019 to provide civil partners and same sex spouses will have the same survivor pension rights as widows.

- Application by Denise Brewster for Judicial Review - the Supreme Court judgement removed the need for unmarried partners to complete a nomination form for survivor's benefits. The scheme regulations were amended from 1 April 2019 to remove the need for unmarried partners to complete a nomination form.
- The Lord Chancellor and Secretary of State and another v McCloud and Mostyn and Sargeant and others– The Court of Appeal ruled that the 'transitional protections' given to older members of the judges' and firefighters' schemes during the 2015 scheme reforms gave rise to unlawful discrimination.
- The Fire Brigades Union v Mid and West Wales Fire and Rescue Authority – the High Court ruled that additional earnings through working extended hours or doing additional duties are pensionable. Mid and West Wales Fire and Rescue Service is currently considering its position in relation to any future appeal.

## Training

In order to operate successfully, members of the board have access to training on issues related to the annual work plan. No formal SAB training sessions were held during the 2018/19 scheme year, mainly due to the need to schedule additional meetings to meet key deadlines. However, joint briefing sessions were held before the meetings in relation to the review of member contributions and the scheme valuation, to allow advisers to talk through the papers and give members a chance to ask questions. Members are responsible for assessing their own training needs and maintaining accurate records of training undertaken.

## Further Information

Further information about SAB is available on our [scheme governance web page](#). If you would like more information on the Board or would like to contact one of the co-Chairs, please use the following details:

Rachel Jones, Programme Manager - Pensions and Reward, NHS Employers

Contact number: 0113 306 3000

Email: [pensions@nhsemployers.org](mailto:pensions@nhsemployers.org)

## Appendix A - Membership

The membership of the Scheme Advisory Board is made up of representatives from the following:

### Members

- Member representatives from the NHS trade unions are nominated by the staff side of the NHS Staff Council to ensure a broad representation of scheme membership; for example, to include the interests of deferred members and pensioners.
- Employer representatives from across England and Wales are nominated by NHS Employers and offer the breadth of employer representation for the NHS Pension Scheme; for example, to include Foundation Trusts and independent provider representation.

### Observers

- Welsh and Scottish Governments.
- Department of Health and Social Care (England); to include finance, pension policy and advisors.
- Observers from the scheme administrator (NHS BSA).

### Actuaries and professional advisors

- Independent Actuary appointed to work with the Board (currently First Actuarial LLP).
- Government Actuary's Department.
- other professional advisors (e.g. lawyers, auditors) as required.

Tenure of membership remains while a member is still employed by the organisation they are representing. Membership for the independent actuary is time limited, as determined by their contract. Members may resign from the board by writing to the co-Chairs via the secretariat, giving as much notice as possible.

Attendance is expected of members at all meetings; no alternative representation or substitution is allowed. A full list of members of the Scheme Advisory Board as at 31 March 2019 can be found in Appendix A.

## Scheme Advisory Board membership April 2018- March 2019.

### Members

<b>SAB employer representatives</b>	
<b>Name</b>	<b>Organisation</b>
Rachael Armistead	NHS Employers
Jan Armstrong	South Tyneside and Sunderland NHS Foundation Trust
Jacqueline Bilcliff (appointed 18 June 2018)	Gateshead Health NHS Foundation Trust
Sandra Le Blanc	East Kent Hospitals University NHS Foundation Trust
Kelvin Cheatle (appointed 12 April 2018 and resigned 22 October 2018)	Kingston Hospital NHS Foundation Trust
Martina Govindraj (vice co-Chair)	Whittington Health NHS Trust
Andrea Hester	NHS Employers
Sue Jacques (co-Chair)	County Durham and Darlington NHS Foundation Trust
David Levy	Tees, Esk and Wear Valleys NHS Foundation Trust
Heather Mawson	The University of Manchester
Sally Quinn (appointed 4 January 2019)	Camden and Islington NHS Foundation Trust
Richard Tompkins	NHS Wales Employers
<b>SAB member representatives</b>	
Andy Blake	British Medical Association
Paul Bromley	Society of Radiographers
Alan Fox	Unison
Martin Furlong	Society of Chiropodists and Podiatrists
George Georgiou	GMB
Neil Lark	The Chartered Society of Physiotherapy
Nicola Lee (appointed 18 June 2018) (co-Chair)	Royal College of Nursing
Geoff Lester	Federation of Clinical Scientists
Lynne Galvin (appointed 12 April 2018)	Royal College of Midwives
Phil McEvoy	British Dental Association
John Neal	Unite the Union
Gerry O'Dwyer (resigned 31 July 2018)	Royal College of Nursing
Colm Porter (Vice co-Chair)	Unison
Jon Restell	Managers in Partnership
Eddie Saville (retired 2018)	Hospital Consultants and Specialists Association

## Advisors

<b>Name</b>	<b>Organisation</b>
Julie Murphy	NHS Business Services Authority
Hilary Salt	First Actuarial
Dale Walmsley	First Actuarial
Sean Docherty	First Actuarial
Sue Vivian	Government Actuary's Department
Alan Dorn	Government Actuary's Department
Garry Swann	Government Actuary's Department

## Observers

<b>Name</b>	<b>Organisation</b>
Simon Arden-Davis	Department of Health and Social Care
Tim Sands	Department of Health and Social Care
Annie Jones	Welsh Government
Greg Walker	Scottish Government

## Secretariat

<b>Name</b>	<b>Organisation</b>
Rachel Jones	NHS Employers
Nicola Dermody	NHS Employers

## Technical Advisory Group

The Technical Advisory Group is a subgroup commissioned by SAB to carry out specific pieces of work. The group is made up of employer and trade union representatives as detailed below. TAG is supported by actuarial and professional advisers.

Name	Organisation
<b>TAG employer representatives</b>	
Rachael Armistead	NHS Employers
Anne Clark	Nottinghamshire Healthcare NHS Foundation Trust
Andy Coles	Dorset Healthcare University NHS Foundation Trust
Andrea Hester	NHS Employers
Rachel Jones	NHS Employers
Christine Samosa	Health and Care Partnership for Cheshire and Merseyside
<b>TAG member representatives</b>	
Alan Fox	Unison
Jackey Brodie	British Medical Association
Phil McEvoy	British Dental Association
John Neal	Unite the Union

## Appendix B - Work Plan 2018-19

Policy Area & Context	Questions / Advice Required	Advice Requested By
<p><b><u>Scheme Valuation</u></b> The 4-yearly cycle of scheme valuation means that it is now time to value the scheme for the period 1/4/2012 – 31/3/2016.</p>	<p>DHSC requires SAB’s assistance in accordance with the valuation process.</p> <p>DHSC requested SAB’s assistance on rectifying a cost cap breach on 18 September 2018. SAB is invited to advise the Secretary of State on the measure or combination of measures that should be adopted to rectify the cost cap breach.</p>	<p><b>Completed.</b> SAB submitted a joint recommendation in advance of the deadline of 9 November 2018.</p>
<p><b><u>Member contributions</u></b> Continuation of current review of member contributions.</p> <p>The response document to the 2015 scheme consultation signalled a review at next valuation of the basis upon which contributions are assessed.</p> <p>Scheme benefits are costed on the basis of a 9.8% yield which is not being achieved. The review will in particular assess the appropriateness of design features, including the range and number of tiers, whether the rate payable is determined using WTE or actual earnings, and indexation of tier boundaries.</p>	<p>Advice on the appropriateness of changing the assessment basis, in particular the application of ‘annualisation’ to actual earnings for members whose contributions are assessed using their actual earnings.</p> <p>Recommendations on the appropriateness of current tiers and rates, specifically whether a flatter structure is desirable in light of any changing balance between final salary and CARE scheme accrual.</p>	<p><b>Completed.</b> SAB submitted an initial recommendation in July 2018. The recommendation will need to be developed further in the lead up to the revised implementation date of 1 April 2021.</p>
<p><b><u>Scheme access</u></b> The scheme will need to ensure that changes to the provider landscape are appropriately</p>	<p>Consideration of pension scheme access for organisations</p>	<p><b>Ongoing.</b></p>

<b>Policy Area &amp; Context</b>	<b>Questions / Advice Required</b>	<b>Advice Requested By</b>
<p>accommodated by scheme access rules. In particular the advent of new care models and consideration of access for dental practice staff using the wholly or mainly approach used for Independent Providers.</p>	<p>delivering services under new care models.</p> <p>Advice on whether and how the scheme can be appropriately extended to accommodate dental practice staff.</p> <p>Recommendations on the appropriateness of extending the scope of qualifying contracts for Independent Providers to include PDS contracts.</p>	
<p><b><u>Opt-out data monitoring</u></b></p> <p>SAB to regularly review opt-out reports to establish whether any identifiable patterns emerge.</p>	<p>Consider exception reports produced by NHS BSA/DH to consider if any variations in member levels are significant. Make recommendations regarding this if appropriate.</p>	<p><b>Ongoing.</b> Scheduled for inclusion at each meeting throughout the year</p>
<p><b><u>Training</u></b></p>	<p>Follow your existing training plan to ensure that members are informed and equipped to effectively advise the responsible authority.</p>	<p><b>Ongoing.</b> Training needs identified on an ongoing basis by members</p>
<p><b><u>Review of SAB arrangements</u></b></p>	<p>Annual review and evaluation of SAB business during 2018-19</p>	<p><b>Ongoing.</b> Scheduled for inclusion at each meeting</p>
<p><b><u>Other anticipated policy</u></b></p> <p>We are expecting policy work to be undertaken during the year to look at:</p> <ul style="list-style-type: none"> <li>• Application of the £95,000 cap on exit payments to pensions that still eligible to receive employer top-up.</li> <li>• Consideration of new member flexibility in the form of adopting the 50:50</li> </ul>	<p>TBC</p>	<p><b>Ongoing.</b></p>

Policy Area & Context	Questions / Advice Required	Advice Requested By
<p>facility that exists in the LGPS.</p> <p>The timings and scope have yet to be confirmed.</p> <p><b><u>Areas of interest</u></b></p> <ul style="list-style-type: none"> <li>• Walker v Innospec Ltd judgment.</li> <li>• Outcome of age discrimination appeal in relation to the Firefighter's Pension Scheme.</li> </ul>		<p>Following the Walker v Innospec Ltd judgement, the scheme regulations were amended from 1 April 2019 to provide civil partners and same sex spouses will have the same survivor pension rights as widows.</p>

## **Appendix C - Background**

The Public Service Pensions Act 2013 established in law the requirement for an NHS Pension Scheme – Scheme Advisory Board to operate from 1 April 2015.

The board operated in shadow form from April 2014 to March 2015 and the board was formalised from April 2015. The first meeting of the Scheme Advisory Board took place on 17 June 2015.

The board is required to meet no less frequently than annually.

The secretariat function is undertaken by NHS Employers which ensures:

- facilities are available to hold meetings
- an annual schedule of meetings is organised
- when additional meetings are required a minimum of 2 weeks' notice is provided where possible
- papers are distributed 7 days before each meeting
- minutes of meetings are circulated within 7 working days following each meeting.