

NHS Pension Scheme
Scheme Advisory Board

Annual Report 2020-21

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Co-chair statement

We are pleased to publish this report to highlight the work of the Scheme Advisory Board (SAB) for the NHS Pension Scheme (England and Wales) during 2020-21.

Due to Covid-19 restrictions, all meetings and training sessions were held virtually in 2020-21. We have adapted well to this new way of working, and it provided us with the flexibility to schedule additional meetings and training sessions to support our work this year. We hope to incorporate this more flexible approach into our work going forward.

A significant amount of work has been delivered by SAB this year. A key priority was considering and responding to HM Treasury's consultation on removing age discrimination from public service pension schemes (the McCloud remedy). As part of this work, SAB met with HM Treasury to discuss the proposals in further detail, and spent time carefully considering the consequences of the remedy on the NHS workforce.

Another significant piece of work for SAB this year was to review the scheme's member contribution structure, with a view to introducing any changes from 1 April 2022. Following extensive discussions and analysis of options, the board submitted initial advice to the Department of Health and Social Care (DHSC) in March 2021. The McCloud remedy and the new member contribution structure will continue to be key priorities for SAB in 2021-22.

We would like to thank all members of SAB and the Technical Advisory Group (TAG) for their engagement with complex and challenging topics this year, and for their commitment to debating these issues. Members have worked flexibly to attend additional meetings, and to contribute to the development of advice outside of meetings, to ensure that challenging deadlines could be met.

We would also like to thank our advisors at GAD and First Actuarial, who have been invaluable in supporting our discussions throughout the year.

A number of experienced members have left the board this year, and we are grateful to them all for the significant contributions they have made. We have subsequently welcomed new members to SAB, and look forward to working with them in the coming years.

In 2021-22, the board will be continuing to advise on the new member contribution structure from April 2022, considering the implementation of the McCloud remedy and engaging with the 2020 scheme valuation process. We look forward to continuing to work in partnership to ensure that successful outcomes are achieved for both members and employers.



Sue Jacques
Co-chair (employers)
County Durham and Darlington
NHS Foundation Trust



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

Introduction to the Scheme Advisory Board

The Scheme Advisory Board (SAB) of the NHS Pension Scheme (England and Wales) was established under the Public Service Pensions Act 2013. Its role is to provide the Secretary of State for Health and Social Care (SoS) with advice on the desirability of changes to the NHS Pension Scheme.

SAB has an ongoing request for advice from the Department of Health of Social Care (DHSC) in the form of an annual work plan (Appendix B).

In addition to its responsibility to respond to requests for advice from DHSC, SAB will often consider and respond to other public consultations from the government, as appropriate.

SAB is a partnership board, with its members representing both NHS employers and NHS trade unions (Appendix A). As a partnership board, SAB aims to reach decisions by consensus between its employer and staff side representatives.

Further information about the responsibilities and operation of the Scheme Advisory Board can be found on the [NHS Employers website](#).

Meetings held in 2020-21

Meetings of the Scheme Advisory Board are scheduled to be held quarterly, and are chaired on a rotating basis between the staff side co-chair and the employer co-chair.

The board met seven times between April 2020 and March 2021, all in a virtual capacity. In addition to the quarterly meetings that were scheduled, three further meetings were held to ensure that sufficient time could be dedicated to complex discussions when necessary.

Meetings were held on the following dates:

- 3 June 2020
- 2 September 2020
- 29 September 2020 (additional meeting)
- 2 December 2020
- 4 February 2021 (additional meeting)
- 10 March 2021
- 30 March 2021 (additional meeting).

Work areas in 2020-21

Work during the year was aligned to the Scheme Advisory Board work plan 2020-21, which is DHSC's formal request for advice from SAB (Appendix B). The key aspects of SAB's work this year are detailed below.

McCloud: removing age discrimination from public sector pension schemes

In 2018, the McCloud judgement ruled that the transitional arrangements to the 2015 pension schemes across the public sector gave rise to unlawful discrimination on the grounds of age. This discrimination needs to be removed from all affected schemes, including the NHS Pension Scheme.

The McCloud remedy involves giving eligible members the choice of whether they receive benefits from their legacy scheme (1995/2008) or from the reformed (2015) scheme for the period between 1 April 2015 and 31 March 2022, known as the remedy period.

Between July and October 2020, HM Treasury consulted on two proposed options for when this choice should be offered to members:

- Immediate choice - all eligible members make their choice shortly after the end of the remedy period.
- Deferred choice underpin (DCU) - all eligible members make their choice when they come to take their benefits, usually at retirement.

SAB, with support from its sub-group TAG, considered both options carefully and submitted a [response](#) to the consultation with a strong preference for DCU as the remedy option. This would allow members to make an informed decision that best suits their personal circumstances when they come to take their benefits.

Within its response, SAB highlighted the importance of clear communications to both members and employers about the remedy. SAB also outlined the potential unintended consequences that the remedy could have on workforce supply in the NHS.

In February 2021, HM Treasury [confirmed](#) that DCU will be the remedy option across the public sector, and that all members will move to the reformed scheme from 1 April 2022 for future accrual.

SAB awaits further detail from HM Treasury on a number of key aspects of the remedy, including how annual allowance tax positions will be revisited. In 2021-22, SAB will advise on changes to the scheme regulations to ensure that the remedy is successfully implemented in the NHS Pension Scheme.

Member contributions from 1 April 2022

The Scheme Advisory Board has previously identified a number of desired changes to the member contribution structure of the NHS Pension Scheme. This work has previously been put on hold due to the uncertainty surrounding the McCloud remedy.

This year, DHSC asked SAB for advice on changes to the member contribution structure from 1 April 2022. Any changes would align with the end of the McCloud remedy period, with all members being in the 2015 CARE scheme for future accrual from 1 April 2022.

SAB reviewed its previous advice and commissioned TAG to analyse a full range of potential contribution structures for SAB to consider.

Extensive discussions were had by SAB about the principles underpinning the member contribution structure. SAB also debated the interactions of member contributions with factors such as NHS pay policy, pensions taxation policy, the impacts of Covid-19 and the McCloud remedy.

In its advice to DHSC in March 2021, SAB outlined the following key aspirations of the member contribution structure from 1 April 2022:

- Actual pay should be used to determine contribution rates (rather than whole time equivalent pay).
- “Cliff edges” within the structure need to be resolved.
- Scheme opt outs across all tiers should be minimised.

The board identified that the high yield of contributions required from the NHS Pension Scheme presents a significant barrier to designing a structure that is acceptable to all members. In its advice, SAB therefore reiterated its strong support for the introduction of flexible accrual rates for all members of the NHS Pension Scheme, to help address affordability concerns and maintain scheme membership at all levels.

In 2021-22, SAB will consider proposals from DHSC and will aim to reach agreement with the department on an acceptable contribution structure from 1 April 2022.

2016 valuation - cost cap process

In January 2019, the cost cap element of the 2016 scheme valuation was paused, pending the outcome of the Court of Appeal judgement in the cases of McCloud and Sargeant. Following the announcement of the McCloud remedy in February 2021, HM Treasury published a set of draft directions for the re-run of the 2016 cost cap. The McCloud remedy was included as a member cost within these directions.

SAB considered the draft directions and their provisional impact on the NHS Pension Scheme. The board provided feedback on these directions, particularly on the inclusion of the McCloud remedy as a member cost. SAB awaits confirmation of the final directions from HM Treasury.

A key part of SAB’s work in 2021-22 will be to engage with the 2020 valuation process.

Proposed changes to scheme regulations

SAB considered and responded to DHSC's consultation on proposed changes to the regulations of the NHS Pension Scheme in 2021. SAB welcomed the proposals, which included amendments to the final pay control regulations that were based on SAB's review and recommendations last year.

DHSC's [response to the consultation](#) confirmed that the changes will go ahead as proposed.

NHS Pension Scheme: increased flexibility

In 2019, DHSC consulted on proposals to introduce decile accrual rates for senior clinicians in the NHS Pension Scheme to help mitigate against pension tax issues. It was [confirmed in February 2021](#) that these flexibilities would not be implemented, due to the changes to the annual allowance taper thresholds that were introduced by HM Treasury in April 2020.

Although these taxation changes partly address the affordability issue for higher earners, SAB still strongly supports the introduction of flexible accrual rates for all members of the scheme to ensure it is accessible to all staff. The board will continue to urge the government to reconsider this decision.

Budget 2021

In the Budget on 3 March 2021, the Chancellor confirmed that the lifetime allowance would be frozen until March 2026, rather than increasing annually with inflation. SAB discussed the potential long-term impacts of this on the NHS workforce, particularly when considering existing taxation policy, the effects of the pandemic and the potential impacts of the McCloud remedy. The board will continue to engage with DHSC on this issue in 2021-22.

Increasing the normal minimum pension age

In February 2021, HM Treasury published a [consultation](#) on implementing the increase to the normal minimum pension age from 55 to 57 in 2028. SAB submitted a brief response to this consultation, which outlined some of the potential unintended consequences of this on the NHS workforce. SAB awaits the outcome of this consultation.

Monitoring of NHS Pension Scheme member trends

The board received regular updates from NHS Business Services Authority (the scheme administrator) throughout the year. These updates included the latest information about TRS statements being viewed by members, as well as the number of members that decided to opt out of the scheme for a range of different reasons. This has allowed SAB to monitor key trends in scheme membership and TRS uptake this year.

SAB arrangements and training in 2020-21

Training

Training sessions are provided to SAB members on issues relating to the work plan, to ensure that this work can be delivered effectively.

A series of virtual training sessions were held in 2020-21, with topics including the McCloud remedy and a detailed overview of member contributions and benefits. These sessions were provided for members of SAB, TAG and the NHS Pension Board, and were recorded to allow members to revisit this information as needed.

Videos were also made to introduce topics and accompany complex papers ahead of meetings, to ensure that members had a full understanding of specific agenda items to be discussed.

Review of SAB arrangements

SAB and TAG carried out an annual review of their respective Terms of Reference, with no changes identified as part of this process.

SAB members also took part in a review of the effectiveness of the board, with the results presented at the SAB meeting on 2 December 2020. No significant changes were identified as needed to be made to the way that SAB operates.

Interaction with the NHS Pension Board

The NHS Pension Board provides scrutiny and assurance of the administration of the NHS Pension Scheme.

A number of representatives of the Scheme Advisory Board are also members of the NHS Pension Board, and meeting minutes were shared between both boards this year. This ensures that links are maintained between the two boards and their respective functions. In addition, the SAB co-chairs will set up discussions with the chair of the NHS Pension Board to share information if considered necessary.

More information about the role of the NHS Pension Board can be found on the [gov.uk website](https://www.gov.uk).

Further information and contact details

Further details about the Scheme Advisory Board are available on the [NHS Employers website](#). For more information about SAB, or to contact one of the co-chairs, please use the following details:

Olivia Desmond

Programme Manager, Pensions and Reward, NHS Employers.

Contact number: 0113 306 3000

Email: pensions@nhsemployers.org

Appendix A – SAB and TAG membership 2020-21

Scheme Advisory Board:

Members

Employer representatives	
Name	Organisation
Andrea Ashman (vice co-chair from December 2020)	East Kent Hospitals University NHS Foundation Trust
Rachael Armistead (to December 2020)	NHS Employers
Jan Armstrong	South Tyneside and Sunderland NHS Foundation Trust
Jacqueline Bilcliff	Gateshead Health NHS Foundation Trust
Martina Govindraj (member and vice co-chair to June 2020)	Whittington Health NHS Trust
Sarah Hayden (from November 2020)	Kent Community Health NHS Foundation Trust
Andrea Hester	NHS Employers
Sue Jacques (co-chair)	County Durham and Darlington NHS Foundation Trust
Rachel Jones (from January 2021)	NHS Employers
David Levy (to February 2021)	Tees, Esk and Wear Valleys NHS Foundation Trust
Heather Mawson	The University of Manchester
Sally Quinn (to February 2021)	Camden and Islington NHS Foundation Trust
Richard Tompkins	NHS Wales Employers
Member representatives	
Andy Blake	British Medical Association
Paul Bromley (to June 2020)	Society of Radiographers
Alan Fox	Unison
Martin Furlong (to September 2020)	Society of Chiropractors and Podiatrists
Lynne Galvin	Royal College of Midwives
George Georgiou	GMB
Neil Lark	The Chartered Society of Physiotherapy
Nicola Lee (co-chair)	Royal College of Nursing
Geoff Lester	Federation of Clinical Scientists
Phil McEvoy	British Dental Association
John Neal	Unite the Union

Gerry O'Dwyer (from September 2020)	The College of Podiatry
Colm Porter (vice co-chair)	Unison
Jon Restell	Managers in Partnership
Hannah Reed	Royal College of Nursing
Dean Rogers (from September 2020)	Society of Radiographers

Advisors

Name	Organisation
Julie Murphy	NHS Business Services Authority
Hilary Salt	First Actuarial
Garry Swann	Government Actuary's Department
Sue Vivian	Government Actuary's Department
Dale Walmsley	First Actuarial
Charlotte White	First Actuarial

Observers

Name	Organisation
Annie Jones	Welsh Government
Tim Sands	Department of Health and Social Care
Greg Walker	Scottish Government

Secretariat

Name	Organisation
Olivia Desmond	NHS Employers
Mary Rollinson	NHS Employers

Technical Advisory Group:

Members

Employer representatives	
Name	Organisation
Rachael Armistead (to December 2020)	NHS Employers
Andy Coles	Dorset Healthcare University NHS Foundation Trust
Rachel Jones	NHS Employers
Martina Govindraj (from June 2020)	King's College Hospital NHS Foundation Trust
Christine Samosa	Health and Care Partnership for Cheshire and Merseyside
Member representatives	
Andy Blake (to August 2020)	British Medical Association
Alan Fox	Unison
Tony Goldstone (from August 2020)	British Medical Association
Phil McEvoy	British Dental Association
John Neal	Unite the Union

TAG members are supported by advisors from GAD, First Actuarial and the NHS Business Services Authority.

Appendix B – SAB work plan 2020-21

The work plan is DHSC’s formal request for advice from SAB in 2020-21.

<i>Policy Area & Context</i>	<i>Questions / Advice Required</i>	<i>Advice Requested By</i>
<p><u>McCloud judgment</u> Following the Court of Appeal judgment in December 2018 the Government has committed to addressing the difference in treatment since 2015 across all schemes for all members with relevant service, regardless of whether they have lodged a claim.</p> <p>HMT have asked schemes for their initial views on two proposals currently being considered.</p> <p>HMT will launch a formal public consultation after these discussions have concluded, which will set out the proposals in more detail.</p>	<p>Feedback on HMT outline remedy proposals.</p> <p>Consider and respond to HMT public consultation</p>	<p>End of March 2020</p> <p>Consultation: 16 July to 11 October 2020.</p>
<p><u>Member contributions</u> Continuation of current review of member contributions.</p> <p>Scheme benefits are costed based on a 9.8% yield which is not being achieved. The review assesses 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>The SAB reached full agreement on a number of areas, and a majority recommendation that current contribution arrangements be retained until 31 March 2019 to allow for further work. This was subject to review should a cost cap breach be confirmed.</p> <p>In anticipation of a cost cap breach based on draft valuation results, the SAB recommended a new contribution rate structure.</p>	<p>Complete the member contribution review and make recommendations on a new contribution approach for implementation from 1 April 2021. There are dependencies on McCloud remedy, cost cap and the Budget outcome (i.e. tax relief on pension contributions).</p>	<p>We expect to implement this in line with the McCloud remedy. Date TBC.</p>
<p><u>Valuation cost cap process</u> HMT announced a pause to the cost control part of the valuations of public service pension schemes, following the McCloud judgment.</p> <p>Court process is underway to consider the detail of how the discrimination is to be addressed. As the court process is ongoing, the value of the schemes to members cannot be</p>	<p>TBC – to be revisited upon confirmation of McCloud remedy.</p>	<p>TBC</p>

<i>Policy Area & Context</i>	<i>Questions / Advice Required</i>	<i>Advice Requested By</i>
assessed with any certainty. The pause will continue until there is more clarity about the remedy.		
<p><u>Employer flexibility</u> A more flexible reward package could address workforce challenges such as retaining nurses early in career.</p>	Explore greater employer flexibility in context of the impact of the scheme on recruitment, retention, and productivity of NHS staff.	TBC
<p><u>Scheme access</u> The scheme will need to ensure that changes to the provider landscape are appropriately accommodated by scheme access rules. In particular the advent of Integrated Care Systems, Primary Care Networks and consideration of access for dental practice staff using the wholly or mainly approach used for Independent Providers.</p> <p>SAB will monitor existing scheme access arrangements on an ongoing basis, including the pension aspects of staff transfers to Wholly Owned Subsidiaries and the operation of New Fair Deal.</p>	<p>Consideration of pension scheme access for organisations 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>DHSC is pursuing scheme access on an issue-by-issue basis, using the general principles adopted.</p> <p>SAB co-Chairs meeting regularly with the WIG co-Chairs will provide updates to SAB.</p>
<u>Training</u>	Follow existing training plan to ensure that members are informed and equipped to effectively advise the responsible authority.	Training needs identified on an ongoing basis by members
<u>Review of SAB arrangements</u>	Annual review and evaluation of SAB business during 2020-21	Scheduled for inclusion at each meeting

<i>Policy Area & Context</i>	<i>Questions / Advice Required</i>	<i>Advice Requested By</i>
<p><u>Other anticipated policy</u> We are expecting policy work to be undertaken during the year to look at:</p> <ul style="list-style-type: none"> • Pension disincentives for retired nurses returning to the NHS or increasing hours in context of supporting the 50,000 nurse’s commitment. • Application of the £95,000 cap on exit payments to pensions that are still eligible to receive employer top-up. 	<p>The timings and scope have yet to be confirmed.</p>	<p>TBC</p>