NHS

NHS England and NHS Improvement Board meetings held in common

Paper Title: **Pensions update**

Agenda item: 6 (Private session)

Report by: Julian Kelly, Chief Financial Officer

Paper type: For information

Summary:

The purpose of this paper is to inform the Board about recent announcements regarding the impact of pensions tax on clinical labour supply, operational performance and patient access in winter 2019/20, following:

1. discussion with the Board on 30 October where it was agreed that the executive would continue to work with the DHSC on in-year solutions; and
2. agreement on 18 November that under NHSE's Standing Orders and following final direction by the Secretary of State for Health and Social Care on behalf of the Government, the Chief Executive and Chair of NHSE would take emergency action in using powers reserved to the full Board to progress the proposals, and that finalisation of operational detail would be delegated to the Chief Executive and Chief Financial Officer.

A request for ratification of that emergency action will be made in the public session of the Board, and this paper is to inform the private session.

Background

1. On 22 July 2019 the Government launched a consultation on the introduction of a 50:50 pension flexibility, whereby clinicians affected by the change to pensions savings taxation (and in particular by the reduction in the pensions tax annual allowance and the introduction of the tapered annual allowance) could choose to pay 50% fewer personal contributions, with a 50% reduction in their pension benefits accrual.

2. However, it was clear from the early responses that a 50:50 option did not provide sufficiently broad flexibility for individuals to balance their pay, pension growth and tax liability. This consultation was therefore withdrawn on 11 September 2019, and instead the Government launched a consultation on a package of new proposals that go significantly beyond the narrow 50:50 flexibility (in essence, the introduction of a flexible accrual rate and the flexibility to phase in any increases in pensionable pay). The NHS Pension Scheme is a statutory scheme, so the flexibilities outlined in this consultation would require legislation and significant amendments to pension administration and payroll systems. As such, they are not currently planned for implementation before April 2020.

3.
4. For 2019/20, NHS Employers issued guidance on 2 September 2019 outlining the shorter-term, local approaches that are available to trusts to help mitigate the impact of pensions tax system on clinical labour supply. It has become increasingly clear following further correspondence from and discussions with the system that these options are not having sufficient impact. Furthermore, the delay to the Budget held up the planned Treasury review of how the tapered annual allowance operates in order to support the delivery of public services.

5. The Academy of Medical Royal Colleges has recently written to the Secretary of State highlighting what they describe as “a stark picture of the negative impact” on “clinical services and patient care.” This message has been consistently borne out by direct feedback from senior clinicians and experienced operational leaders across the NHS.

6. Given the gravity of the operational challenges and the likely absence of a more fundamental solution before the NHS finalises its staffing plans for the remainder of the critical winter period, and following Chief Executive and Chair’s emergency action agreed on 18 November, we announced on 22 November following direction from the Secretary of State exceptional measures designed to ameliorate the impact on clinical labour supply.

Approach for 2020

7. At present, members can elect to have some or all of their Annual Allowance tax charge levied in respect of pensions savings in the NHS schemes paid by the scheme itself through completing and returning a ‘Scheme Pays’ form. In return, future pension benefits are reduced by a corresponding sum, plus interest, at the point of retirement.

8. **The Government and NHS England & NHS Improvement will support NHS employers to make a commitment to make payments outside of the NHS pension schemes to certain clinical staff to restore the value of their pension benefits package, if they have elected to use the “Scheme Pays” facility to settle an annual allowance tax charge arising in virtue of their pension saving in the NHS schemes in 2019/20 only.** This means that clinical staff do not have to worry about paying a tax charge now relating to 2019/20 out of their own pocket now, nor about the impact on their income in retirement. NHS England will meet the costs and reimburse the employers for payments made meaning there is no net cost for trusts or CCGs.

9. **Eligibility:** the commitment applies only to clinicians registered with a specified healthcare regulatory body, in active clinical roles. Local employers will be expected to certify that these criteria are met. It applies only to 2019/20, and only to pension savings in the NHS pension schemes, excluding additional voluntary contributions. Clinicians employed by non-NHS providers who are delivering NHS services and are members of the NHS pension scheme are eligible, provided they meet the relevant criteria. Further work remains to be done in order to ensure that the scheme can be implemented for independent contractors who are not employed directly by NHS employers but who are members of the NHS pensions

scheme in virtue of holding a qualifying contract for the provision of clinical services (notably most GPs).

10. **Costs:** the central estimate from the Government Actuary's Department is ca. £250m (subject to further analysis of certain tax impacts), although total costs could be significantly higher depending on behavioural responses and take-up. There will be no net costs to local employers. The impact on NHS England & NHS Improvement budgets will be felt only when payments begin to be made as scheme members retire, and as such will be spread over a significant number of years. We expect that first payments will not be made until 2021/22 although are doing more work with GAD to refine costings and profiles. NHS trusts and NHS foundation trusts will need to create a provision equal to the owed tax charge in 2019/20, which will be offset by a commitment from NHS England and the Government to fund the commitments as and when they arise. The provision and offsetting asset will increase year on year in line with the pension scheme growth and be released as commitments are met, i.e. as affected members retire under the rules of the NHS Pension Scheme.

11. Existing pensions flexibilities remain available to scheme members. Members of the scheme who have previously opted out will have the opportunity to opt back in for the remainder of the tax year.

12. **Implementation:** The announcement was supported by a letter from Simon Stevens to leaders of the British Medical Association, Unison and a range of Royal Colleges, and a letter from Simon Stevens and Amanda Pritchard to trust Chief Executives and CCG accountable officers and clinical chairs. FAQs for staff and employers have also been made available on the NHS England website, and will continue to be updated to reflect issues that are raised by employers and employees. The letters and current FAQs are attached to this note.

13. We are working closely with regional HR and medical directors, and with the BMA and other representative bodies, to ensure that the scheme is well understood, and, for example, to provide assurances about the robust guarantees which apply to the commitment which in many cases will not crystallise for many years hence. We are also supporting implementation and roll-out by working with 'early adopter' Trusts; by engaging with the community of legal firms advising NHS employers on these issues, and with audit firms; and by developing as far as possible 'off the shelf' materials for employers' use.

14. In advance of making the announcement we considered our legal duties, including the Public Sector Equalities Duty, our so-called 'level playing field' duties, and our general public law obligations. There remains a risk of legal challenge, in particular from scheme members who are not eligible for support. Government were clear that they would only support our in-year scheme for clinical staff. Legal advice was provided to the Chief Executive and Chief Financial Officer for consideration and is available if required.

15. Following final direction by the Secretary of State for Health and Social Care, the Chief Executive and Chair took emergency action to progress the proposals and delegate finalisation of operational detail to the Chief Executive (to be ratified by

the Board in public session in accordance with NHSE's Standing Orders). As designated Accounting Officers, the Chief Executives of NHS England and NHS Improvement are required to perform their duties in line with particular requirements set out in Managing Public Money (MPM) . Given the risk that the proposed approach could be considered tax planning or tax avoidance, DHSC and HMT advised that a written Ministerial direction was obtained before proceeding with the announcement. This was sought on 18 November 2019, and confirmed on 22 November (letters attached). The Comptroller and Audit General has therefore been informed.

16. We will continue to make the case to the Treasury and wider Government around the remaining urgent need for a longer term and more equitable solution to the problem from April 2020 onwards.

Attachments:

Correspondence between Simon Stevens and the Secretary of State regarding the Ministerial direction

22 November letters from Simon Stevens and Amanda Pritchard to representative bodies and local leaders.

FAQs for staff and employers

Minutes from a call with board committee chairs