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FEATURE

WORKFORCE CRISIS

The fight to end the pension tax trap continues

Changes announced by the government this month will bring welcome relief to thousands of doctors—and NHS patients. But the underlying problems remain. Other public servants face similar problems, and they're also fighting back, reports **Melanie Newman**

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The prospect of lengthening NHS waiting lists and a consultant exodus to avoid massive tax bills led to the government promising on 7 August "immediate action" and a consultation on giving senior clinicians more flexibility in how much they can pay into their pension pots.[1]

Waiting lists have risen by 50% in some hospitals because doctors have declined extra shifts.[2] Rules from 2016 imposed new limits on how much higher earners could contribute to their pensions without incurring tax charges. A tapered annual allowance gradually reduces the tax free limit. About a third of NHS consultants and GP partners were affected, the government said.

The rules are complex, and some doctors have received huge unexpected tax bills after exceeding the new limits, effectively paying more to work more.[3,4] To avoid that risk some doctors have reduced their hours, retired early, or quit the NHS pension scheme.[5]

Proposed new rules

The government has proposed new rules that from the next financial year would allow senior doctors to decide the exact level of their pension contribution at the start of each year so they could do extra work without breaching the limits.

Employers and doctors could stop contributing to the pension once the level is reached, and employers could choose to pay their contribution into doctors' salaries instead so that doctors do not lose out on the value of their employer's share.

This financial year, employers will be given guidance to offer local flexibility so that doctors can opt out of the NHS pension scheme mid-year. Employers can use "discretionary flexibility" to maintain the value of clinicians' total reward.

And the Treasury will review the tapering annual allowance, the government said.

The announcement is a victory for doctors and the BMA. Unions representing dentists and firefighters have threatened legal action if the same flexibilities are not extended to their members.[6]

Chaand Nagpaul, the BMA's chair of council, said, "After a year's tireless lobbying by the BMA . . . it is good to see the government finally sitting up, taking notice, and proposing action."

However, the proposals amount to only "short term relief," he added, and would not fix underlying problems. He welcomed the review of "the punitive tapered annual allowance" but said the BMA will continue to argue that wider reform is needed.

50:50 option "not fit for purpose"

Previously, to stem the growing disquiet, the government had proposed a "50:50" option for NHS pensions, whereby doctors could halve their contributions.[7] Since 2014 a similar option in the local government pension scheme has allowed members to halve their contributions while retaining full life and ill health cover, instead of completely variable contributions as in the new NHS proposals.[8]

The 50:50 option for local government employees was intended to help low paid workers stay in the pension scheme in periods of financial hardship. However, most users have been people wanting to manage their lifetime allowance for pension tax purposes.

Nagpaul described the 50:50 option as "not fit for purpose." He said, "This method is overly restrictive and can leave doctors putting either too much or too little into their pensions."

Jeff Houston, head of pensions at the representative organisation the Local Government Association, agreed, warning, "It really only works for those who are approaching the lifetime allowance limit." Most problems with exceeding the annual allowance are caused by closed final salary pension schemes, he said.

Many staff who have transitioned to "new" career average defined benefit schemes, introduced by the NHS and other public sector employers in 2015, still have a link between their current pensionable pay and their "old" final salary pension. That is, future increases in pay increase the value of the old pension. That's normally good news. But where members have a new

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pension as well, the growth in both schemes counts towards their annual allowance, which can then create a tax charge.

Breaking the link

Houston belongs to the cross sector Public Services Pensions Tax Working Group, which has been working on an option to break the link between current pay and final salary pensions. "This may be the best way forward on the annual allowance issue for all public sector workers, including doctors," he said.

He believes this would still be the case even with the government's latest concessions to doctors. "The ability to vary your pension accrual will not apply to final salary pensions," he explained.

He told *The BMJ* that he had heard that the government's consultation will include a proposal to phase in increased pension contributions arising from pay rises and promotions. So, for example, a doctor might get a £10 000 pay rise but would receive only 50% of the associated increase in pension contributions in the first year, 75% in the second year, and 100% in the third year.

This would have some impact on the final salary element of the annual allowance, Houston said, but also raises more questions. "These are a few more sticking plasters," he said. "I don't see anything that will help as much as enabling the member to break the link with the final salary scheme or opting to count some of their pay as non-pensionable."

The working group's chair, Andrew Hopkinson, national leader of the Fire Leaders Association, told *The BMJ* that breaking this link would prevent future increases in pay from pushing the final salary element of a member's pension above inflation. Old benefits would increase only with inflation (not pay), so there would be no growth for annual allowance purposes. Only new pension growth would be considered towards the annual allowance.

"There is a risk for members that future pay increases not counting towards their old pension will mean that this is lower than if they were still connected. But there is also a possibility that the [inflation] growth on their old pension is better than having the salary link and a tax charge," Hopkinson explained.

Hopkinson set up the working group a year ago. "We started to see the impact of the tax allowances and began to talk to colleagues—the police, NHS, local government, civil servants, the prison service, the armed forces, education," he said. "This was a growing issue for all public services."

Since its first meeting in June 2018 the group has expanded to about 30 member individuals and organisations, including employers (NHS Employers is a member, but the BMA is not), and experts on private sector pensions. It's collecting evidence of the effects of pension tax changes, including by surveying members, and is proposing solutions.

Remove or raise the limits

The BMA has asked the government to remove or raise the allowance limits.[9] The working group is also exploring other alternatives. "We'd like to see that. It's an easy fix, winding the clock back," Hopkinson said. "But if that's not possible we want to discuss other options."

The group met the chancellor in June and discussed several options, including breaking the link with final salary pensions, Hopkinson said. Voluntary limits could also be placed on pensionable pay—for example, to exclude acting-up allowances from increasing a final salary pension.

"Our approach is collaborative and solution seeking," Hopkinson added. "Our hope is that by being representative of many factions our single voice will be heard more willingly in Whitehall."

A BMA spokesperson said, "We are working with colleagues in other trade unions to share information and represent a unified argument to government.

"We have met previously with the Public Services Pensions Tax Working Group and propose to meet with them again in the near future."

Litigation over scheme changes

Litigation has also led to some successes. As part of the 2016 changes that moved most public sector workers to new, less generous, pension schemes, the government introduced transitional arrangements whereby workers within 10 years of retirement age could stay on the old terms.

Firefighters and judges took the government to court, arguing unlawful age discrimination.

After a long struggle ending in the Supreme Court, and a strike, the firefighters and judges won their battle. Discussions on remedy are under way.

Sean Starbuck, national officer for the Fire Brigades Union, said, "We took it on because of the injustice." Under the 2016 scheme, firefighters would not have been able to retire before 60. Research showed that much of the workforce would have been unable to meet compulsory fitness requirements at that age.

"We had a huge swathe of members suddenly facing some sort of capability dismissal when they couldn't maintain their fitness," said Starbuck. "We were criticised by other unions for doing it. They were frustrated because they'd made deals."

But any such deal would still have meant too many FBU members working longer and potentially being sacked on capability grounds, he said. "We couldn't sit by and let that happen."

Judges and police

The judges were in a different position. They faced being moved from a tax exempt scheme to one covered by the new tax limits, as well as being asked to work for longer. "They stuck by their guns as well," said Starbuck, as they saw their case through.

Doctors could learn from the firefighters' uncompromising stance. After their union's victory, the BMA wrote to the health secretary for England, Matt Hancock, threatening to take legal action on behalf of doctors over the 2015 NHS pension scheme changes.[10] On 3 July the BMA said in a statement that it was supporting "at least a dozen" doctors who were suing the government for age discrimination.

The Police Federation of England and Wales arguably has a lesson in how not to approach such problems. Its handling of the pension changes has lost the organisation considerable support from members. Officers were furious that the federation decided not to take legal action against a new police pension scheme. Four police officers then mounted their own challenge without federation support, which they won this month.

The federation's chair tweeted that he had been subjected to "relentless and considerable" personal abuse since the June 2019 Supreme Court ruling in favour of the firefighters and judges. But any chance that bridges could be built were lost after the federation reiterated that it would not cover the four officers' legal fees, a decision that prompted even more social media outrage.

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