NHS Pension Scheme

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The NHS Pension Scheme is a Defined Benefit (DB) public service pension scheme. Like most of the main public service pension schemes, it operates on a pay-as-you-go basis. Pension benefits are based on final salary (although GPs and dental practitioners accrue pensions on a "career average" basis). Reforms were introduced on 1 April 2008 and the scheme now has a 1995 section and a 2008 section. Members of the 1995 section have a Normal Pension age (NPA) of 60 (55 for special classes). For members of the 2008 section, it is 65. Members of the 1995 section accrue pension benefits at a rate of 1/60th of final salary for each year of service, compared to 1/80th (plus a lump sum of three times the pension) in the 1995 section. Members of both sections pay contributions at a rate which is tiered according to pay.

In June 2010, the Government established an Independent Public Service Pensions Commission, chaired by Lord Hutton of Furness, to look at "the long-term affordability of public sector pensions, while protecting accrued rights". The Commission's interim report, published in October 2010, concluded that the most effective way of making short-term savings was to increase member contributions and that there was a case for doing this. In response, the Government said it would increase member contributions by an average of 3.2 percentage points by 2014-15, with increases phased-in and designed to protect the lower paid. The first increases were implemented in 2012/13.

Recommendations of the Commission's final report, published in March 2011, included replacing existing schemes with new ones, with pension entitlement based on career average earnings rather than final salary, and increasing the normal pension age. The Government accepted these recommendations as a basis for consultation. In March 2012, it announced the proposed final agreement for a new NHS Pension Scheme in England and Wales, to be introduced in 2015. Key features of its preferred design are pensions based on career average rather than final salary and a normal pension age linked to the State Pension age. There would be transitional protection arrangements for those closest to retirement. The *Public Service Pensions Bill 2012-13,* which would implement these changes, is due to have its Second Reading on 29 October 2012. For more detail, see Library Research Paper RP 12/57 *Public Service Pensions Bill.*

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1 Background

1.1 How the scheme works

The National Health Service (NHS) Pension Scheme in England and Wales is an unfunded, contributory public service occupational pension scheme.[1] It was established at the same time as the NHS itself in July 1948. The legislative framework is provided by the *Superannuation Act 1972*. The detailed rules are in regulations, including the *National Health Service Pension Scheme Regulations 1995* (SI 1995/300) as amended (for example, by SI 2008/654) and NHS *Pension Scheme Regulations 2008* (2008/653).[2]

People who are directly employed by the NHS as well as medical, dental, ophthalmic practitioners and general medical practice staff can become members of the scheme. Non-NHS employers who meet specified criteria can apply for "direction body status" in order for their staff to join the scheme. Direction bodies can include social enterprises, charities and their sector organisations.

The scheme is administered by the NHS Business Services Authority.[3] The NHS has separate schemes in Scotland, Northern Ireland and the Isle of Man.[4] In Scotland, the NHS Superannuation Scheme is administered by the Scottish Public Pensions Agency on behalf of Scottish Ministers.[5] This note concentrates on the scheme in England and Wales.

1.2 Numbers

In 2007-08, NHS Employers described the NHS as the third largest employer in the world and the NHS Pension Scheme the largest single occupational pension scheme in Europe.[6] At 31 March 2011, the scheme had over two and a half million members:[7]

Active members	1,320,479
Deferred members	560,332
Pensioners in payment	669,090

As at March 2011, there were 435 participating NHS Trusts, Primary Care Trusts, Local Health Boards and Health Authorities, 8,275 participating GP practice employers and 415 Direction Bodies.[8]

The average (mean) pension in payment in 2009/10 was £7,234. Payments from the scheme are very dispersed, with three quarters receiving less than £9,000 a year, but one per cent receiving about £55,000 or more.[9] Looking across public service pension schemes, the Commission said:

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1 General Practitioners have a Career Average Revalued Earnings (CARE) scheme

2 For further details, see *NHS Pension Scheme and NHS Compensation for Premature Retirement Scheme: Resource Accounts 2010-11*, 14 July 2011, HC 1007, p2

3 Ibid, page 3

4 See, for example, NHS Business Services Agency, *NHS Pension Scheme – Scheme Guide*

5 SPPA Website, NHS Superannuation Scheme (Scotland)

6 NHS Employers, NHS Pension Scheme Review – Facts and figures

7 *NHS Pension Scheme and NHS Compensation for Premature Retirement Scheme: Resource Accounts 2010-11*, 14 July 2011, HC 1007

8 Ibid

9 Independent Public Service Pensions Commission: Interim Report, 7 October 2010, para 1.27

1.30 The top one per cent, receiving at least £37,000 per annum is dominated by the NHS, which represents almost two thirds of the pensions paid at this level or above – mostly long-serving doctors. The NHS continues to be strongly represented in the top 0.1 per cent and top 0.01 per cent of the distribution. Almost one in six judicial pensioners receives over £67,000, placing them in the top 0.1 per cent of the distribution of public service pensions.[10]

1.3 Liabilities

As at March 2011, the liabilities of the scheme were valued at £257.7 billion.[11] The Independent Public Service Pensions Commission has said that estimates of liability need to be treated with caution:

> 4.12 The changes in the discount rate assumptions over this period [March 2008-March 2009] did not result from adjustments to the assumed security or generosity of public service pensions. Instead, as they were linked to AA corporate bond yields they reflected the change in assumed risk of corporate defaults during and after the credit crunch. A change of this kind in bond yields has no implications for the actual cost of providing public service pensions, so such estimates of accrued liabilities need to be used with caution.[12]

1.4 Contributions

Like most of the main public service pension schemes, the NHS Pension Scheme is unfunded and operates on a pay-as-you-go basis.[13] This means that it has no fund of assets that are invested. Instead, contributions are paid to the sponsoring government department, which pays out benefits to pensioners, netting of the contributions received. Where contributions exceed expenditure, a payment is made to the Government's Consolidated Fund.

Employer contributions are set on the basis of periodic actuarial valuations of the scheme. The Government Actuary's Department (GAD) explains:

> 5.1 The funding objective is to ensure that benefits are paid for as they accrue during active service, but means of a contribution or a level percentage of pay called the Standard Contribution Rate (SCR). The SCR in respect of a typical new member would be just sufficient, if paid throughout the whole of his or her service, to finance the benefits under the scheme, provided that experience is in accordance with the actuarial assumptions made. [...]
>
> 5.2 The employers' contribution rate for the scheme as a whole will remain stable provided that the actuarial assumptions are borne out and that the pay distribution of new members by age and gender does not change significantly. [14]

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[10] Ibid

[11] *NHS Pension Scheme and NHS Compensation for Premature Retirement Scheme: Resource Accounts 2010-11*, 14 July 2011, HC 1007, p7. This issue is discussed in more detail in Library Standard Note SN 5678 Public service pension reform – 2010 onwards (section 6.1)

[12] Independent Public Service Pensions Commission: Interim Report, page 60

[13] The main exception is the Local Government Pension Scheme, which is funded

[14] *The National Health Service Pension Scheme Actuarial Investigation as at 31 March 2004. Report by the Government Actuary,* December 2007. For a more detailed discussion of the funding arrangements, see para 3.4 and 3.5

Following the valuation of the scheme as at 31 March 2008, employers contribute 14% of pensionable pay.[15] Employee contribution rates are set in regulations.[16]
Employee contribution rates that were tiered according to pay were introduced as part of reforms to the 2008 reforms to the NHS Pension Scheme (see section 3 below). Prior to this, employees contributed at 6% or 5% (manual staff), so the introduction of tiered contribution rates represented an increase for higher paid members. Further increases are to be implemented in April 2012 as part of the current Government's reform of public service pensions. Member contribution rates in 2010/11 and 2012/13 are in the table below:[17]

Full-time pay 2010-11	2010/11 contribution (gross)	2012/13 contribution (gross)	Contribution increase (gross)
Up to £15,000	5.0%	5.0%	0.0%
£15,001 to £21,175	6.5%	6.5%	0.0%
£21,176 to £26,557	6.5%	6.5%	0.0%
£26,558 to £48,982	6.5%	8.0%	1.5%
£48,983 to £69,931	6.5%	8.9%	2.4%
£68,932 to £110,273	7.5%	9.9%	2.4%
Over £110,272	8.5%	10.9%	2.4%

The Government intends to increase contribution rates further in 2013/14 and in 2014/15. It proposes an average member contribution rate of 9.8%, with tiered contributions, for the new NHS Pension Scheme to be introduced in 2015 (see section 4.3 below).

At present, the Government intends the employer contribution to remain at 14%. However, this may change in future.[18]

According to the NAO, total employee contributions to the NHS scheme increased from £1.48 billion in 1999-2000 to £2.55 billion in 2008-09. This was the combined result of more employees and higher average annual contributions. [19] Contributions to the scheme are projected to exceed pensions in payment in the years to 2015/16:

15 *NHS Pension Scheme and NHS Compensation for Premature Retirement Scheme: Resource Accounts 2009-10*, 31 March 2010, HC 300, page 4
16 *NHS Pension Scheme Regulations 1995 (SI 1995/300),* Section D1
17 Source: NHS Employers, Increased employee contributions for the NHS scheme April 2012, 19 January 2012
18 DoH – additional Q&A on contribution increases
19 NAO, The cost of public service pensions, March 2010, HC 432, page 17. 1999/20 figures adjusted to 2008-09 prices; See also NHS Employers, *The revised NHS Pension Scheme Factsheet*

2.14 Breakdown of March forecast for expenditure & receipts to pension schemes							
	£ billion						
	Outturn	Forecasts					
	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
NHS Pension Scheme							
Pension Scheme Expenditure	6.3	6.9	7.1	7.7	8.1	8.7	9.3
Pension Scheme Receipts	-8.4	-8.7	-8.9	-8.9	-9.0	-9.2	-9.5
of which:							
Employer Contributions	-5.3	-5.5	-5.5	-5.6	-5.8	-5.9	-6.1
Employee Contributions	-2.7	-2.8	-2.8	-2.8	-2.9	-3.0	-3.1
Other Income	-0.3	-0.3	-0.5	-0.5	-0.3	-0.2	-0.2

Notes
The data shown here provide a scheme by scheme breakdown of the CG unfunded pensions AME line shown in Table 4.15 of the March 2011 *Outlook*.
Other small schemes (e.g. DfID) are not shown because their receipts are zero / negligible.

The receipts data do not include the additional receipts from the increase in contribution rates from 2012-13 that was announced in the 2010 Spending Review. Details of how this will be impact across schemes have not been announced and this has been included in the OBR forecast at a global level.

However, it is worth noting that employer and employee contributions are not in fact designed to balance pensions paid to retired staff in any one year. They are designed to meet the cost of the benefits being accrued by active members. So whether or not an Exchequer top-up is required will depend on the ratio of staff to pensioners. The NAO said in its report on the cost of public service pensions:

> [...] recent employer contributions to the NHS scheme, unlike the situation in the other schemes, have been more than sufficient to cover current pension payments, so the scheme has returned surplus cash to the Treasury. This has occurred because increasing staff numbers have generated higher total employer contributions, leading to the current net cash surplus but giving rise to higher future pension obligations. Payments out of the NHS scheme can be expected to exceed contributions in future as this is the natural position for mature schemes in which employers and employees are changed at a level reflecting future pensions being earned.[20]

1.5 Cost sharing and cost capping

One of the aims of the Labour Governments 2007-08 reforms of the NHS scheme was to limit the future cost to the taxpayer. As with the schemes for teachers and civil servants, an agreement was made to cap the employer contribution and to share future cost pressures between employer and employee.[21] The aim was to secure on-going scheme sustainability, requiring members "to accept a degree of responsibility for future cost pressures, rather than seeing them as an issue for the employer (and taxpayer) alone."[22]

In the NHS scheme, it was agreed that the employer contribution should be capped at or just above 14% until 2016, and at 14% after that. Should there be an increase in cost employers will pick up the first part through an increase in contributions up to 14.2%. Any further increase would have to be met by employees either through contribution increases or benefit changes:

> 56. An agreed aim is to maintain employer contributions at or just above the 14% level and employee contributions at the levels tabulated on page 12 until 2016. Reductions in the employer contribution rate would therefore not take place. Any surplus as a result of this will be used to reduce any upward pressure on the member contribution rate over a 15 year period after 2016.

[20] NAO, The cost of public service pensions, HC 432, Session 2009-2010, 12 March 2010, para 2.12-3
[21] For further information, see SN/BT/405, *Teachers' Pensions* and SN/BT 3224, *Civil Service Pension Scheme*
[22] HC Deb, 26 July 2007, c105WS

> 57. An overall cap on employer contributions of 14.2% will apply in 2008 and 2012 (when the 2008 valuation is expected to be implemented). This means employers would pick up the first part of any contribution rate increase up to a maximum 14.2% employer contribution. If costs had increased so as to require any further increase, this would fall to employees in the form of contribution increases, benefit changes or some mixture of the two.
>
> 58. Employer contributions will be capped at 14% from 2016 (when it is expected that the results of the 2012 valuation will be implemented).
>
> 59. The basic principle behind the design and application of cost sharing and capping is that factors that change the expected value of members' benefits, as assessed by the scheme actuary, should be taken into account.[23]

The agreement covers increases in cost due to rising longevity. Increases for reasons such as changed funding assumptions will be addressed separately as they arise:

> The agreed cap relates to those risk factors that increase the value of the Scheme to members such as people living longer and drawing their pension for longer. Going forward, a partnership group, involving employer and staff side representatives, will consider the four-yearly valuations and if required, make recommendations to the government on changes to employee contribution rates or benefits, or both. If costs increase for other reasons such as major legislative changes or the Scheme's funding assumptions, this will be addressed separately as and when they arise.[24]

The intention was to keep employee contributions at the agreed levels until 2016:

> 54. A new contribution rate structure will be implemented at the same time as benefit changes for existing staff, which will apply to both Schemes. This is set out in the table below. Contributions will be paid on whole pensionable pay and the relevant contribution band will be determined on the same basis. For part timers, allocation to tiers is according to full time equivalent whole pensionable pay. Those currently paying 5% as manual staff will move onto the contribution rate appropriate to their pensionable pay. The first two thresholds are linked to AfC pay points. All thresholds will be annually revalued in line with revaluation of the AfC pay scales. It is estimated that the initial average member contribution rate under the new structure will be about 61/2% of pensionable pay.[25]

NHS Employers said the agreement would limit taxpayers' liability in the long-term by ensuring adequate funding from members. It argued that, in contrast, a move to a defined contribution scheme would increase the cost to the taxpayer in the short and long term:

> Changes to the pension scheme mean that the employers' contribution, which is paid by the taxpayer, is now capped so that the taxpayers' liability in the long-term has been limited. Every four years, the employee contribution will be re-evaluated to ensure the rates and benefits structure is adequately funded by members of the scheme.
>
> The review of the NHS Pension Scheme demonstrated that staff were willing to increase their contributions in order to ensure adequate provision for their retirement. Under the revised scheme the employees of the NHS bear the risk of future costs of benefits, and contributions have and will increase as a result.

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[23] *NHS Pension Scheme Review. Agreement between NHS Employers and the NHS trade unions*, September 2007

[24] NHS Employers' website, *NHS Pension Scheme Review: FAQs: costs*

[25] *NHS Pension Scheme Review. Agreement between NHS Employers and the NHS trade unions,* September 2007, para 54

The number of staff working in the NHS who contribute to the pension scheme has increased significantly since 2000 as the NHS has grown to meet the needs of healthcare today. This has offset the costs incurred by the number of people retiring and drawing a pension from the scheme.

There has been much debate about the pros and cons of a defined contribution vs a defined benefit scheme. Moving to a defined contribution scheme now in the NHS would not save the taxpayer money. In fact, it would increase the cost to the taxpayer both in the short and long term. It jeopardises the cost sharing with employees, the main way in which risk is managed in the revised scheme.[26]

The current Government has decided to replace cap and share with increases in employee contributions (see section 4.4 below).[27] For more detail see Library Standard Note SN 5252 *Pensions: cost capping and sharing* and SN 6137 *Public service pension contributions.*

2 The current scheme

The NHS Scheme is a final salary scheme (although dental and general practitioners accrue pensions on a "career average" basis). Following the recent review of the scheme, there are now two sections, for those who joined before and after 1 April 2008. Some of the main features of the current scheme are:

	1995 section	**2008 section**
Normal retirement age	60	65
Members contributions	Tiered according to pay (see section 1 above)	Tiered according to pay (see section 1 above)
Members' pension	1/80th	1/60th..
Lump sum	Three times annual pension, though this may be increased up by commuting part of the pension at a rate of £12:£1	Pension can be commuted to a lump sum, up to certain limits. £12 of pension must be given up to accrue a lump sum of £1
Pension increases	In line with the CPI	In line with the CPI

Detailed information about the scheme can be found on the NHS Pensions website. This includes leaflets such as the *NHS Pension Scheme – Scheme Guide*.

3 Recent reforms

3.1 1995 Changes

Changes were made to the NHS Pension Scheme from 6 March 1995 in England and Wales (from 1 April 1995 in Scotland and Northern Ireland). Briefly, more choice and flexibility were

[26] NHS Employers, *The revised NHS Pension Scheme Factsheet*

[27] Letter from Chief Secretary to the Treasury, Danny Alexander, to TUC General Secretary, Brendan Barber, 18 July 2011

introduced with benefit improvement financed by withdrawing special early retirement rights for new entrants. The main changes were as follows:[28]

- Death-in-service lump sum increased to twice annual salary, with no deductions for pre-1972 service
- Death benefit for preserved pensioners to be three times pension (the better of the two options available under the previous rules)
- A “death deficiency payment” to spouse (or dependants), made following death after retirement, guarantees five years’ pension payment, subject to an overriding maximum payment of twice annual salary at retirement less retirement lump sum
- Introduction for all members of voluntary early retirement from age 50, with actuarially reduced benefits
- Introduction for all members of voluntary early retirement from age 50 with no actuarial reduction, but with no enhancement of benefits and at local management’s discretion and cost. (Not available to medical and dental practitioners)
- The NHS pension can be commuted to a tax free lump sum if a member is terminally ill. The lump sum will be five times the ill health pension with an overriding cap of twice final year’s pensionable pay less the retirement lump sum. The normal lump sum (usually three times pensionable pay) is also payable
- The introduction of formal retirement arrangements so that a member of 60 or over is able to decide on the date of retirement: ‘retirement’ (i.e. receipt of pension benefits) to require a significant break in employment before any return to work.
- Membership of the scheme ceases on retirement and there is no abatement of benefits on re-employment from age 60
- Abolition of modification of benefits in respect of state retirement pension for all scheme members
- Early retirement arrangements (‘special class’ status) which allowed female nurses, physiotherapists, health visitors and midwives to retire at age 55 had been extended to male nurses etc with effect from 17 May 1990. These arrangements were withdrawn from all new entrants
- The early retirement arrangements for mental health officers (MHOs) were withdrawn for new entrants, but those already holding the status were allowed to retain it (provided they did not have a break in service of more than five years). These special arrangements not only allow MHOs to retire at 55, but also allow each year’s service beyond 20 to count double for pension purposes.

The changes were included when the scheme’s provisions were consolidated in the *National Health Service Pension Scheme Regulations 1995* (SI 1995/300).[29]

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28 BMA Fact Sheet, *Changes to the NHS Pension Scheme*, April 1995
29 http://tinyurl.com/3bzabm (Internet Archive, retrieved 27 July 2011)

3.2 Pension Scheme Modernisation Review, 2000-2002

In February 2000 a pension scheme modernisation project was initiated to:

> Prepare a set of coherent and manageable NHS Scheme modernisation proposals which would underpin recruitment, retention and mobility strategies in the NHS, be consistent with "Working Together" principles and welfare reform policies, and offer all interested parties "value for money". The proposals to pay full regard to opportunities for streamlining administration, and carry the broad support of the membership and employers. The recommendations to be forwarded to Ministers in April 2001.[30]

Work on the project took place in 2000 and 2001 and the NHS Pensions Agency eventually published a report - *Pension Scheme Modernisation: A Millennium Health Check for the NHS Pension Scheme* - on 17 December 2002. This was the same day as DWP's Pensions Green Paper was published (see section 3.3 below).[31] The work of the project was rather overtaken by events as the report's Executive Summary makes clear:

> 4. At that time the Agency was able to conclude that there is no compelling case for major change at the moment. Given that change has cost implications, the Department's HR policy stresses the need to make changes based on evidence that benefits will be achieved. Little evidence exists for behavioural effects arising from pension changes:
>
> The NHS Pension Scheme remains a very good scheme – one of the best in its class. It is valued by and provides good value for employees.
>
> Few, if any, improvements to the current scheme are possible at little or no cost to employer or employee.
>
> Some options would be possible if members choose to pay for them. The current mutual scheme assumes payment spread across all the membership.
>
> Wider access to scheme benefits and more flexible personal choice of benefits would require a new scheme – and may increase member costs. The project did not attempt to make a proposal for a new scheme, nor did it conclude that there was significant demand for one at present.
>
> 5. Many ideas are discussed in the report - and those raised by stakeholders have not been restricted – some are the requests of a small group, others more generally raised. Nor have any of them been specifically tested for legal robustness or affordability or in any way approved. However, where there was weak demand, no consensus or there are service reasons to the contrary, some ideas have been expressed as a negative intention.
>
> 6. The debate on pensions has come into sharper media focus since the project was commissioned. The pension marketplace has experienced a turbulence, which has had implications for AVC holders in the NHS scheme and there have been a number of withdrawals from final salary schemes by large private sector organisations. As a final salary scheme with significant employer contribution, the attractiveness of the NHS scheme is a positive aid to recruitment and retention. Any changes to the Scheme must be seen to be both relevant to members and sustainable in the longer term.[32]

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[30] NHS Pensions Agency, 2002, *Pension Scheme Modernisation: A Millennium Health Check for the NHS Pension Scheme,* para 1.9

[31] DWP, *Simplicity, security and choice: Working and saving for retirement*, December 2002, Cm 5677

[32] Ibid

3.3 2008 reforms

Public service pension age, 2002 - 2004

The Pensions Green Paper, DWP, *Simplicity, security and choice: Working and saving for retirement*, published in December 2002, asked for views on the proposal that the pension age throughout the public service should be raised from 60 to 65.[33] The Pensions White Paper, *Simplicity, security and choice: Working and saving for retirement. Action on occupational pensions* published in June 2003, confirmed that the Government would be going ahead with this proposal.[34] By the end of 2006 all new staff would join on the new conditions. The pension rights of existing staff already accrued from past service would be fully protected. Reviews by the individual schemes would decide "how the higher pension age will apply to the future service of existing staff and how to ensure that transitional arrangements are fair and balanced".[35]

A consultation document on *Simplifying the taxation of pensions,* published at the same time as the Pensions Green Paper in December 2002, announced the Government's intention of raising the minimum age at which a pension could be taken from 50 to 55 by 2010. The results of the consultation, published in December 2003, confirmed that this would go ahead.[36] Schemes would be free to decide how and when to move to the minimum age of 55 by 2010. People with a contractual right, in place in December 2003, to a pension between the ages of 50 and 55 would be able to keep it. Legislation increasing the minimum pension age to 55 was contained in the *Finance Act 2004*. It applies to all private pensions, not just the public service schemes.

In April 2003, John Hutton, the then Secretary of State for Health, announced that he had asked the NHS Confederation to lead a review of the NHS Pension Scheme. The NHS Confederation explained that the review had come about due to:

- pressure to modernise the scheme from staff and employers, which cannot easily be met without restructuring
- the Inland Revenue proposals on changes to the tax regime for pensions, which create new opportunities for making the scheme more flexible
- the Government policy of moving public sector schemes over time to a normal pension age of 65.[37]

"Important assurances" were given to scheme members:

- the review will maintain the principle of a defined benefit scheme
- existing scheme members will be given the right to transfer to a new scheme
- existing scheme members' accrued rights will be fully protected
- any change to the terms of future service are unlikely to affect anyone currently within ten years of retirement.[38]

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33 Cm 5677, paras 65-69

34 Cm 5835, paras 32-34

35 Ibid, para 34

36 HM Treasury and Inland Revenue, *Simplifying the taxation of pensions: the Government's proposals*, December 2003

37 NHS Confederation briefing, August 2003, *Working together for a 21st century pension scheme,* August 2003

38 Ibid

Moving to a 21st Century Pension Scheme, January 2005

On 10 January 2005, proposals resulting from this review were published by the NHS Employers in a technical document called, *Moving to a 21st century pension scheme*. The document was signed by both employer and employee representatives, but they had not been able to reach agreement on all points. In particular, the unions remained strongly opposed to the proposal to increase the pension age to 65 and to the Government's view that any improvements (e.g. to survivors' pensions) should be paid for by increased contributions or the increase in the pension age.

Bearing this in mind, the document proposed that in the new scheme to be introduced in 2006, the minimum pension age would rise from 50 to 55 and the normal pension age from 60 to 65. Existing members would be protected as follows:

- Minimum pension age on grounds of Voluntary Early Retirement (VER) with employer's consent would increase from 50 to 55 by 2010. In other cases it would remain at 50

- Pension benefits earned up until 2013 would be payable in full at the age of 60. The consultation sought views on the possible extension of the protection period for NHS staff by a further three to five years (to between 2016 and 2018). However, because the protection period arrangements were an issue that spanned all public sector schemes the review recognised that any decisions would be made in the light of issues across the public sector.

It also suggested a move from a final salary to a career average scheme for all members, though this (like several other proposals in the document) was just one of a number of options put up for discussion.

Public Service Pension Scheme Framework Agreement, October 2005

All the public service pension scheme reviews were dominated by the pension age question. By the spring of 2005, threatened public service strikes against the Government's imposition of a higher pension age persuaded the Government to promise a "fresh start" on discussions with unions on 18 March 2005. The strikes were called off and a "pensions summit" held on 31 March 2005. Following this summit, the then Secretary of State for Work and Pensions, Alan Johnson, and General Secretary of the TUC, Brendan Barber, issued a joint statement. A process of discussion and negotiation would now take place "overseen by special sessions of the Public Services Forum, with both sides committed to finding negotiated solutions."[39]

An agreement was reached at a meeting on 18 October 2005 that would allow current teachers retain a normal pension age of 60 while new scheme entrants would retire at 65. The PSF agreement contained four "framework principles for scheme negotiations". This included the principle that existing scheme members would "have the right to suffer no detriment in terms of their normal pension age and will retain their existing pension provision unless individual or collective agreements within sector specific negotiations are reached which allow changes to those provisions or transition to new schemes." New entrants would be offered "pensions in the new schemes negotiated through the sector specific discussions."[40] The agreement went on to list eight features the new schemes should have:

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39 TUC press release, 31 March 2005, *Statement from Alan Johnson and Brendan Barber*

40 *Public Services Forum, Final Principles*, October 2005

5. New schemes should continue to guarantee defined benefit provision, linked to an individual's earnings. Schemes should also offer indexation to protect retired members against rises in the cost of living.

6. All changes to schemes should be equality-proofed before implementation.

7. New schemes should be designed with the objective of increasing appropriate take-up especially amongst part-time and lower paid workers and others who are eligible but where participation in the scheme may be lower currently.

8. As people live longer, healthier lives, it is likely more will choose to continue working for longer. This makes it crucial that schemes give greater flexibility than in the past to those who wish to use part-time work as a stepping stone to retirement, and also greater recognition to service by those who chose to work beyond typical retirement ages.

9. For the purposes of calculating accrual of pensions, 65 will be the reference age (the "NPA") for new entrants to the new schemes entering employment after the implementation date. But not all new members will want to work longer, and all new scheme members will continue to have the right to retire at age 60. All new scheme members who under the new arrangements would retire on a lower pension than they would under existing rules will be offered the opportunity to increase contributions so members can continue to retire on a full pension at age 60. Those who wish to continue to work to the new normal pension age will be able to do so at the standard contribution rate.

10. Government will make available approximately 1% of pay roll to improve benefits in the new schemes, such as improved survivor benefits, or to deal with transition arrangements/protection for existing scheme members.

11. Scheme specific negotiations should take account of the special physical and mental demands of many public sector jobs, and the resultant continuing importance of early retirement provision for those with ill health.

12. The PSF will review the operation of these principles early in the New Year.[41]

Reactions to the agreement were mixed. Unions generally welcomed the deal. Dr Andrew Dearden, chairman of the BMA's Pensions Committee, said:

> This is good news for the doctors already in the NHS Pensions Scheme. The government's proposal to increase their pension age to 65 was met with outright opposition and was seen as an unfair imposition.
>
> "We are delighted that the government has recognised that people signed up to a set of benefits and are entitled to keep those conditions of work unless they agree to them changing. To try to force people to work longer by this arbitrary method caused anger and doctors would have voted with their feet."
>
> The BMA does however have anxieties about implications for the future medical workforce in the NHS. Dr Dearden said: "We are concerned that 65 is to be the normal pension age for new doctors coming into the NHS as we still maintain that it is inappropriate for a great number of NHS roles. There will need to be strong 'safety nets' to support those who are physically and mentally unable to continue working in

[41] Ibid

their full role to this age. We are committed to negotiating the best possible deal for these future doctors."[42]

However, news reports variously described the deal as a "feeble climbdown" and the Government as having "caved in".[43]

Joint proposals from employers and trade unions

On 1 August 2006, NHS Employers published a consultation document which marked the "culmination of three years' partnership working between NHS Employers and NHS trade unions" - *Moving to the future: the NHS Pension Scheme Review: joint proposals from NHS Employers and the NHS trade unions*. This time, employers and unions had agreed all the proposals. The formal consultation period ran from 1 September 2006 until 30 November 2006. The review partners were to consider responses before making final proposals to Ministers, who would make the final decision. Regulations would then be laid to implement the new arrangements. It was expected that the new scheme would come into operation for new entrants by the end of 2007 and that changes to the current scheme for existing members would come into effect no later than April 2008.[44] Although this was later changed such that both sets of changes would happen in April 2008.[45] The document proposed the retention of the current scheme (with some improvements) for existing members, and the introduction of a new scheme for new entrants. Existing members would have the option of transferring to the new scheme at a date to be agreed once the new scheme has been established.

NHS Employers summarised the consultation responses as follows:

> **Employer responses**
>
> Almost all supported the proposed changes for both existing and new member schemes
>
> Welcomed the increased flexibilities, ensuring that the pension continues to provide an attractive recruitment and retention tool
>
> Supported the retention of a final salary scheme and the current normal pension age (NPA) of 60 for existing members, and the introduction of an NPA of 65 for new members
>
> Welcomed proposals to cap organisations' cost at around 14%
>
> **Staff responses, including responses from the NHS trade unions**
>
> Broadly supported the proposals for both existing and new members
>
> Welcomed the retention of final salary for both schemes and keeping the current NPA of 60, and special class status for existing members
>
> Supported the introduction of new benefits including unmarried partner pensions and increased flexibilities

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[42] BMA press release, 18 October 2005, *Retirement age stays at 60 for current NHS doctors*

[43] See, for example: "Retirement age pact 'is a feeble climbdown'", *Daily Telegraph*, 19 October 2005; "Ministers cave in over public sector early retirement", *The Times*, 19 October 2005; and "Abject surrender over public sector pensions", *Financial Times*, 19 October 2005. This issue is discussed in more detail in Library Standard Note SN/BT 2209, *Public service pension age.*

[44] NHS Employers, *Moving to the future: the NHS Pension Scheme Review,* 2006, para 3.7 and 3.8

[45] HL Deb, 11 June 2007, c1564

Supported the introduction of tiered contribution rates where individual contributions are directly linked to individual earnings, although the high earners expressed concerns about their higher rates

Staff and union concerns included: the cap on employer contributions; introducing an NPA of 65 for the new scheme and the value of the current added years facility compared to the new facility to buy more pension.[46]

Final agreement – September 2007

The final agreement was announced on 21 September 2007, concluding "four years of partnership working between the NHS trade unions and NHS Employers".[47] It was welcomed by the then Health Minister, Ben Bradshaw.[48] The agreement was in line with the August 2006 proposals. The main change was that the band of earnings at which the lowest employee contribution rate (5%) applies had been increased from £15,107 in the August 2006 proposals, up to £19,165.[49]

An updated Scheme was to be introduced from 1 April 2008 for existing members that kept most of the current benefits, as well as introducing new ones, alongside a new Scheme for new members. Existing members would have a one-off choice of moving to the new members' Scheme.[50] Both schemes would be final salary schemes (except from GPs and dental practitioners). Contribution rates would be tiered according to pay. Existing members would retain the same Normal Pension age (NPA) (60 for most staff, 55 for those with "special class status"). New entrants would have an NPA of 65 and more flexibility in the run-up to retirement:

Key facts

- Two Schemes: updated NHS Pension Scheme for existing members and New NHS Pension Scheme for new members – both implemented on 1 April 2008
- Existing members keep final salary pension and Normal Pension Age (NPA) of 60, with new benefits
- New members get final salary scheme with NPA of 65 and more flexibility in the run-up to retirement
- Both Schemes have the same, new tiered contribution rates for a fairer way to fund benefits and costs
- One-off choice for existing members to move to the new members' Scheme
- The Scheme changes reflect employer and staff views on key benefits
- They also manage costs and risks for employers – employer contributions remain at current rate of around 14 per cent.[51]

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46 NHS Employers website, *Consultation 2006*

47 NHS Staff Council, *NHS Pension Scheme Review – Agreement between NHS Employers and NHS trade unions*, September 2007

48 *Joint letter from Review Chairs announcing the Final Agreement on 21 September 2007*

49 Ibid and NHS Employers, *Moving to the future: the NHS Pension Scheme Review,* (August 2006) page 5. The 5% contribution rate now applies up to pay point 16, compared to pay point 9.

50 NHS Employers, *NHS Pension Scheme Review – Final agreement on changes to the NHS Pensions Scheme*

51 NHS Employers Briefing, *Changes to the NHS Pension Scheme*, September 2007

The main change between the September 2007 final agreement and the August 2006 proposals for reform was an increase in the band of earnings at which the lowest contribution rate (5%) applied (from £15,107 up to £19,165).[52]

The changes were introduced by the *National Health Service Pensions (Amendment) Regulations 2008 (SI 2008/654)* and *NHS Pensions Regulations 2008* (SI 2008/653). The Government Actuary's Department has produced a factsheet, comparing the pre April 2008 rules with the Schemes for new and existing members from 1 April 2008 - *National Health Service pension scheme (NHSPS) Key features pre/post 1 April 2008.* NHS Employers has produced briefing, *Changes to the NHS Pension Scheme* (September 2007).[53] Its website also has a list of FAQs related to the review.

Comment and analysis

The British Medical Association (BMA) said it had negotiated a fair deal for its members:

> Following the review of the NHS Pension Scheme (NHSPS) in England and Wales the review partners, made up of health sector trade unions, the Department of Health, employer's representatives and NHS Employers have reached agreement on the proposed changes to the NHSPS which have been put before ministers.
>
> We believe that we have negotiated a fair deal for our members and one which is within the mandate we received following last year's consultation exercise.
>
> Certainly the proposals are an improvement on the Government's original position; which was that by 2013 the NHSPS would move to a normal pension age of 65 and a reduced value Career Average Revalued Earnings (CARE) method of accrual for all members.[54]

The Royal College of Nursing welcomed the final agreement:

> As NHS Employers and trade unions announce details of the new NHS Pension scheme arrangements, the Royal College of Nursing (RCN), has expressed delight at the outcome.
>
> Dr. Peter Carter, General Secretary of the RCN, said: "We are very pleased with the new arrangements for the NHS Pension Scheme in England and Wales. The announcement today is the culmination of four years hard work and negotiation between NHS Employers, the RCN and other healthcare trade unions.
>
> "Over the course of the pensions review process, the RCN surveyed a number of its NHS members to find out what they wanted us to fight for. We are delighted to say that, four years on, current nurses will keep their normal pension age of 60 and both existing and new nurses will have a pension based on a final salary.
>
> "The RCN and other trade unions representing healthcare workers set out to reach a sustainable long-term agreement with NHS Employers that would provide security in retirement for NHS nurses, hope for future NHS nurses and value for money. This agreement does all three."[55]

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[52] Ibid and NHS Employers, *Moving to the future: the NHS Pension Scheme Review,* (August 2006) page 5. The 5% contribution rate now applies up to pay point 16, compared to pay point 9.

[53] See also NHSBSA, *"NHS pension scheme changes: rules and benefits comparison",* (September 2007), which included a table summarising the changes.

[54] http://www.bma.org.uk/ap.nsf/Content/PensionreviewfinalEW (retrieved 28 September 2007).

[55] RCN Press release, "RCN welcomes new NHS pension scheme arrangements", 21 September 2007

As did the GMB union:

> GMB welcomes today's announcement of the changes to the NHS pension scheme. Both the amendments to the existing scheme and the new scheme for new starters joining the NHS from 1 April 2008 will provide scheme members with generous pension benefits. Both schemes will substantially aid recruitment and retention in the NHS.
>
> The changes fully comply with the agreement reached in the public sector forum on pensions. Existing staff will retain their final salary pension and a pension age of 60. New joiners will uniquely have access to a new final salary pension scheme with a 1/60th accrual rate and a pension age of 65.
>
> Employee contribution rates will be linked to pay with contributions starting at 5% for the lowest paid and 8.5% for the high earners. The new rates ensure that those who benefit the most from the pension scheme - those with high salaries - will pay more for their benefits. Low paid staff paying lower contribution rates is not only fairer but GMB hope will encourage individuals to join the pension scheme.
>
> Sharon Holder, GMB National Officer for Public Services, said, "The NHS Trade Unions and NHS Employers have worked closely together to produce a set of agreed changes for the NHS pension scheme. GMB particularly welcomes the change in employee contribution rates which will mean many of our members will pay 5%; this representing a reduction for some members of 1%. Overall, the changes to the scheme ensure that the scheme is sustainable in the long term and is an excellent package of benefits for both existing and new staff and maintains a final salary scheme provision in the NHS."[56]

The *Financial Times* reported the agreement as follows:

> More than a million National Health Service staff are to keep one of the most generous final salary pension schemes running in return for a small increase in average contributions and an agreement that staff rather than the taxpayer will meet much of any future increases in its cost.
>
> The deal, one of the last of the current round of revamps of big public sector pension schemes, comes as the closure of final salary pensions in the private sector continues, albeit at a slower pace.
>
> About 80 per cent of private sector final salary schemes are closed to new members, with 14 per cent closed to further contributions from existing members, according to the Association of Consulting Actuaries.
>
> Under the NHS deal, existing staff retain the right to a normal pension age of 60 in return for a rise in average contributions from 6 to 6.5 per cent of pay - an increase that NHS Employers say covers the cost.
>
> For new joiners from next April, however, a new, more flexible, final salary scheme will have a normal pension age of 65. It includes arrangements that make it easier to take a lower paid job in the run up to retirement without suffering a big hit on the pension paid.
>
> The employers' contribution - funded by the taxpayer - will broadly be capped at 14 per cent for both new and existing staff, unions agreed.

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56 GMB Press Release, "Many GMB members will pay less of new pension arrangements", 21 September 2007

> Any rise in the cost of the scheme from increasing life expectancy, or from upward pay drift caused by recent new contracts that encourage staff to increase their skills, will be paid for by higher contributions from staff, or by reductions in the generosity of the scheme, said Tim Sands, NHS Employers' project manager for the deal.
>
> The higher pension age for new joiners means the new scheme is likely to cost about 18.9 per cent of total pay, against 20.5 for those in the existing scheme, he said.
>
> That, together with the cap on employer's contributions, means "we think it is a good deal for taxpayers", Mr Sands added.
>
> But Philip Hammond, the Conservative Treasury spokesman, said the deal re-inforced the growing "apartheid" between public and private sector pensions. "It does nothing to reduce the massive burden taxpayers will ultimately have to bear," he said.[57]

Choice exercise

As part of the NHS Pension Review final agreement, existing members were to be given a choice to move to the New NHS Pension Scheme:

> The choice will be for past and future pensionable service only (including any prior service not yet aggregated). The basis of the transfer, including the treatment of those with added years contracts, is yet to be agreed but will be determined under the governance framework.[58]

A document announcing the agreement reached between the review partners on "choice terms" was published in January 2009.[59] The general proposal was that "all members aged under 60 should be offered transfer terms of one year in the 2008 scheme for one year in the 1995 scheme." Recommendations were made in relation to particular groups to avoid them "receiving a disproportionate benefit at the expense of the other members of the scheme." The Government Actuary's Department (GAD) advised that the true costs of the choice exercise would never be known because it depends on behaviour, for example, whether people retire earlier or later than they would have done otherwise. The costs, though not identified separately, will be covered by the cost sharing agreement (see section 1.5 above).[60]

The "NHS Pensions Choice exercise" was set up to run until July 2012.[61] Information for scheme members can be found on the "*Your NHS Pensions Choice*" section of the NHS Pensions website.[62] A news item, in response to Lord Hutton's final report on public service pension reform, said:

> We still want to give all members an opportunity to switch to the 2008 Section. If you have already made your NHS pensions choice, your choice will apply to the benefits you build up until the date any new arrangements are introduced.[63]

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57 Financial Times, *NHS will keep final salary pension schemes*, 23 September 2007
58 NHS Staff Council, *NHS Pension Scheme Review – Agreement between NHS Employers and NHS trade unions*, September 2007
59 NHS Staff Council,
60 NHS Staff Council, *Addendum to the NHS Pension Scheme Review agreement between NHS Employers and the NHS trade unions,* January 2009
61 NHS Employers, *Pensions Choice. Career and retirement options for the NHS,* November 2009; NHS Employers website- Pensions choice exercise
62 See for example, NHS Pensions leaflet, *Your NHS Pension Choice,* May 2009
63 NHSBSA website, news 1 April 2011

Impact of the 2008 reforms

The Pensions Policy Institute (PPI) published an assessment of the Government's public sector pension reforms in October 2008.[64] It found that the reforms to the NHS and Teachers' schemes had reduced the average "effective employee benefit rate" [65] from 22% to 19% of salary." It said:

> If the NHS scheme were not reformed, a 40 year-old male new entrant would have had an effective employee benefit rate of 22% of salary. Under the reforms, assuming he joins the new scheme that came into operation on 1 April 2008, his effective employee benefit rate reduces to 19% of salary. The components of this reduction can be broken down as follows (Chart 4):
>
> - The increase in normal pension age from 60 to 65 means that pensions will come into payment later and will be in payment for a shorter period of time. This reduces his effective employee benefit rate by 4% of salary.
> - The NHS scheme has improved its accrual rate from 80ths to 60ths and has abolished the additional 3/80ths lump sum for new entrants. This offsets around half of the impact of raising the normal pension age, increasing his effective employee benefit rate by 2% of salary.
> - Tiered contributions have been introduced for the NHS scheme, so that member contribution rates now depend on level of salary. If the man has an average salary for the NHS scheme, this will reduce his effective employee benefit rate by 0.5% of salary as his member contribution will increase.
> - The NHS scheme, in common with other public sector schemes, has also increased the amount of tax-free lump sum that members can choose to receive through giving up some of their pension income. Since the rate at which pension is exchanged for lump sum is less than actuarially fair, this could reduce his effective employer benefit rate by 0.5% of salary.
> - Overall, the combined net effect of the reforms is to reduce his effective employee benefit rate by 3% of salary, from 22% before the reforms to 19% after.[66]

The National Audit Office (NAO) looked at changes introduced the Teachers', NHS and civil service schemes in 2007-08. The main changes aimed at reducing and better managing taxpayer costs were:

> - **Employee contribution rates** were increased for NHS staff and teachers;
> - The **normal pension age** rose from 60 to 65 for most new staff;
> - A '**cost sharing and capping**' mechanism [...] was introduced to spread future cost increases between employers and employees.[67]

The NAO said:

[64] Pensions Policy Institute, An assessment of the Government's reforms to public sector pensions, October 2008, page 14

[65] PPI explains that "the effective employee benefit rate measures the value of the scheme to an "average" member" (page 13).

[66] Ibid, page 16-17

[67] NAO also produced a helpful note summarising the changes to the other main public service PAYG schemes

> We estimate that the 2007-08 changes will reduce costs to taxpayers in 2059-60 by 14 per cent compared to what they would have been without the changes. In net present value terms, using the Treasury's discount rate of 3.5 per cent above increases in RPI, aggregate savings over all years in the period to 2059-60 are equivalent to £67 billion in 2008-09 prices. Savings peak at 0.2 per cent of Gross Domestic Product (GDP) in 2047-48, lying between 0.1 and 0.2 per cent of GDP from 2025-26 onwards (Figure 1 overleaf). The peak occurs because of a temporary reduction in numbers of retirements as the changes start to delay the age at which employees retire. Beyond 2059-60, annual savings will initially remain at 14 per cent, rising slowly from 2065-66. As a consequence of the changes, overall costs to taxpayers will stabilise at around 1.0 per cent of GDP, close to their current levels.[68]

Its conclusion on value for money was that:

> 14 By making changes in 2007-08 to pension schemes for civil servants, NHS staff and teachers, the Treasury and departments overseeing the schemes acted to tackle potential future growth in costs to taxpayers. As a result of the changes, which are on course to deliver substantial savings, long-term costs are projected to stabilise around their current levels as a proportion of GDP. The changes are also set to manage one of the most significant risks to those costs, by transferring from taxpayers to employees additional costs arising if pensioners live longer than is currently projected.[69]

4 The current Government's reform proposals

4.1 Change in indexation arrangements

In the June 2010 Budget, the Coalition Government announced changes to the indexation arrangements for public service pensions:

> **1.106 The Government will use the CPI for the price indexation of benefits and tax credits from April 2011.** The CPI provides a more appropriate measure of benefit and pension recipients' inflation experiences than RPI, because it excludes the majority of housing costs faced by homeowners (low income households are subsidised separately through Housing Benefit, and the majority of pensioners own their home outright), and differences in calculation mean it may be considered a better representation of the way consumers change their consumption patterns in response to price changes. This will also ensure consistency with the measure of inflation used by the Bank of England. **This change will also apply to public service pensions through the statutory link to the indexation of the Second State Pension. The Government is also reviewing how the CPI can be used for the indexation of taxes and duties while protecting revenues.[70]**

Trade unions applied for judicial review of the decision to switch to the CPI for increasing public service pensions. [71] On 2 December 2011, the High Court dismissed three of the four grounds of challenge and rejected one by a majority of two to one. The unions were given permission to appeal to the Court of Appeal on some of the issues raised.[72] On 20 March 2012, the Court of Appeal announced its decision to uphold the High Court ruling in favour of

[68] NAO, The impact of the 2007-08 changes to public sector pensions, HC 662, 8 December 2010, para 5
[69] Ibid
[70] HM Treasury, Budget 2010, HC 61, June 2010
[71] Prospect Press Release, 15 April 2011, Unions launch legal challenge to CPI switch; See also FDA Press Release, 19 April 2011, 'Union challenges legality of Government's pension decision'
[72] R v Staff Side of Police Negotiating Board and Others ; [2011] EWHC 3175 (Admin); NHS Employers website, High Court rules switch to CPI lawful, 2 December 2011

the Government's switch from RPI to CPI for uprating public sector pensions.[73] The unions decided not to appeal further.[74]

These issues are discussed further in Library Standard Note SN 05434 *Public service pension increases* and SN 5830 *The CPI – uprating benefits and pensions.*

4.2 The Independent Public Service Pensions Commission

The Conservative-Liberal Democrat Coalition Government established an Independent Public Service Pensions Commission, chaired by Lord Hutton of Furness, to undertake a review of public service pensions.[75] Lord Hutton was asked to produce two reports – an interim report considering the case for delivering savings on public service pensions within the spending review period (2011-12 to 2014-15) – and a final report, on longer-term structural reforms.[76]

Interim report

In his interim report, published in October 2010, Lord Hutton said that reforms to date had not gone far enough to address the underlying issues of sustainability and fairness:

> Although some existing members of some schemes have had increases in their pension ages, to reflect increasing longevity, most have not. Cap and share cannot take account of the increases in cost of pensions over recent decades because people have been living longer. Also, untested, complex cap and share arrangements cannot of themselves, address the underlying issue of structural reforms, nor significantly reduce current costs to taxpayers.[77]

Lord Hutton's interim report also recommended that "the most effective way to make short-term savings is to increase member contributions and there is also a clear rationale for doing so." The rationale for this was "increased longevity, the imbalance between employer and employee contributions and the fact that total contributions may be too low if the discount rate is too high suggests there is a case to make short-term changes, pending long-term reform."[78] The proposed increase would apply to the main public service pension schemes, with the exception of the scheme for members of the armed forces.[79]

Final report

In its final report, published in March 2011, the Commission made recommendations for longer-term structural reform of public service pensions. These were summarised in its press release as follows:

> The main recommendation of the report is that existing final salary public service pension schemes should be replaced by new schemes, where an employee's pension entitlement is still linked to their salary (a "defined benefit scheme") but is related to their career average earnings, with appropriate adjustments in earlier years so that benefits maintain their value.

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[73] FDA & Ors, R (on the application of) v Secretary of State for Work and Pensions & Anor [2012] EWCA Civ 332 (20 March 2012)
[74] FDA press release, 19 April 2012, 'Unions' RPI-CPI legal challenge to end'
[75] HM Treasury, Budget 2010, HC 61, June 2010
[76] Ibid, p133-4; HM Treasury press release, 8 June 2010, Spending review 2010 – the Government's approach
[77] Ibid, p39
[78] Ibid, 7 October 2010
[79] In other words, those for teachers', NHS employees, local government employees, civil servants, police and firefighters

The report suggests that it should be possible to introduce these new schemes before the end of this Parliament, in 2015, while allowing a longer transition, where needed, for groups such as the armed forces and police.

Other key recommendations in the report include:

- Linking Normal Pension Age (NPA) in most public service pension schemes to the State Pension Age;
- Introducing a Normal Pension Age of 60 for those members of the uniformed services – armed forces, police and firefighters – who currently have a NPA of less than 60;
- Setting a clear cost ceiling for public service pension schemes – the proportion of pensionable pay that taxpayers will contribute to employees' pensions – with automatic stabilisers to keep future costs under more effective control;
- Honouring, in full, the pension promises that have been earned by scheme members (their "accrued rights") and maintaining the final salary link for past service for current members;
- Introducing more independent oversight and much stronger governance of all public service pension schemes;
- Encouraging greater member involvement in consultations about the setting up of new schemes, and in the running of schemes; and
- Overhauling the current legal framework for public service pensions to make it simpler [80]

4.3 Taking the reforms forward

In response to the Commission's interim report October 2010, the Government said it would implement increases in member contributions by 3.2 percentage points by 2014/15.[81]

In the 2011 Budget, the Government said it accepted the recommendations of the Commission's final report as a basis for consultation and would bring forward proposals in the autumn that were "affordable, sustainable and fair to both the public sector workforce and the taxpayer."[82]

Scheme specific discussions

On 19 July 2011, Chief Secretary to the Treasury, Danny Alexander said a series of meetings with the TUC had established a basis for agreement in several areas, but that differences remained on some of the key recommendations. Scheme level discussions would be established. Consultations on contribution increases for 2012/13 would be completed by October in order to ensure implementation by April 2012. There would also be consultation on contribution increases for 2014/15 and initial proposals for reformed schemes.[83]

On 2 November 2011, the Chief Secretary to the Treasury announced a new offer to the unions, including:

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[80] Independent Public Service Pensions Commission press release, 10 March 2011, *Lord Hutton publishes his final report on public service pensions*

[81] HC Deb, 24 May 2011, c589-90W. This is discussed in more detail in SN 5768 Public service pension reform – 2010 onwards

[82] HM Treasury, Budget 2011, para 1.132

[83] HC Deb, 19 July 2011, c91-4

- **A more generous accrual rate**. In October it had proposed "cost ceilings based on Lord Hutton's recommendations that generate an accruals rate of 1/65th for the new schemes." It was now proposing a cost ceiling of 1/60th of average salary accruing for each year worked. This represented an 8% improvement in the Government's offer.

- **Transitional protection.** Scheme negotiations would be given the flexibility outside the cost ceiling, to ensure that anyone with 10 years or less to their pension age on 1 April 2012 would see no change in when they retire, nor any decrease in the amount of pension they receive at their current normal pension age.[84]

He said reform along the lines proposed could endure for 25 years or longer.[85] The offer was conditional on agreement being reached - "an agreement by the end of the year on the heads of terms on a scheme-by-scheme basis."[86]

The Government set out the key features of its preferred design for the new schemes for teachers, NHS, civil service and local government. They included:

- a Career Average Revalued Earnings (CARE) pension scheme;
- Public service workers benefits to be earned at a rate of 1/60ths of pensionable earnings each year;
- Public service workers will have their benefits increased each year they are working in the public services in line with earnings revaluation;
- a Normal Pension Age linked to State Pension Age (or 65, whichever is higher);
- pensions in payment to increase in line with the Consumer Prices Index (CPI);
- benefits earned by leavers to increase by CPI from the date of leaving until retirement;

  average member contributions for the unfunded public service pension schemes set at the level of the existing schemes after the increase of 3.2 percentage points currently planned.[87]

However, because the Government recognised that different designs might suit different workforces, it set cost ceilings (expressed as a proportion of pensionable pay) within which alternatives could be considered. For the NHS scheme, it proposed a gross cost ceiling of 21.9%, with contributions of 12.1% from employers and 9.8% from employees.[88]

The trade unions welcomed the Chief Secretary's announcement but said more needed to be done. The TUC's public service liaison group (PSLG) chaired by Dave Prentis of UNISON said:

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84 HC Deb, 2 November 2011,c928
85 HC Deb, 2 November 2011,c930
86 Ibid, c928 and c935
87 HM Treasury, Public Service Pensions: good pensions that last, CM 8214, November 2011
88 HM Treasury, Public Service Pensions: good pensions that last, Cm 8214, November 2011, Table 3.A

> The PSLG welcomed this movement in the government's position which has come as a direct result of the strength of feeling and determination shown by public sector workers and the groundswell of support for the TUC's day of action at the end of this month.
>
> These proposals, and their detailed implications for the pensions offer within each scheme, will now need to be considered in detail within the sector specific negotiations, alongside all the other issues including proposed contribution increases, increases in the pension age, and the impact of the indexation change from RPI to CPI on which the government's position remains unchanged.
>
> All the unions have indicated throughout this process their determination to reach a negotiated settlement on all these issues. That remains the position and unions will engage intensively in the coming weeks. But unless and until further real progress is made and acceptable offers are made within those negotiations, unions remain firmly committed to continuing their preparations for the planned day of action on November 30.[89]

Unions whose members took part in a day of strike action on 30 November 2011 included UNISON, Unite, the Chartered Society of Physiotherapy, the Society of Radiographers and the Chartered Society of Chiropodists and Podiatrists.[90]

An announcement on contribution increases for 2012/13 was made in December 2011 (see section 4.4 below – contribution increases).

The Scottish Government has initiated separate talks on reform of the reform of National Health Service Superannuation Scheme (Scotland).[91]

Heads of agreement

On 20 December, the Chief Secretary to the Treasury confirmed that changes already announced – the switch to the CPI and the contribution increases for 2012 - would go ahead.[92] In addition, "heads of agreement" had been established with most unions in the local government, health, civil service and teachers' schemes. This meant the offer made in November had been "secured". This meant that, in the new schemes, individuals would have their normal pension age aligned with their State Pension age. There would be transitional protection for those closest to retirement:

> Those within 10 years of their normal pension age on 1 April 2012 would retain their existing entitlements, i.e: they would remain in their current existing scheme until they draw benefits or are entitled to do so. Those within 13.5 and 10 years would remain in the current scheme on a tapered basis.[93]

A key change was to the proposed accrual rate:

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[89] UNISON press release, 2 November 2011, Action on 30 November still on; See also RCN website - Pensions: An important update – viewed 22 November 2011

[90] CSP website – ballot result – viewed 22 November 2011; Society of Radiographers; Society of Chirpodists and Podiatrists website – viewed 22 November 2011

[91] Scottish Government press release, Pension reforms imposed without consultation, April 2012; UNITE press release, Scottish move on public sector pensions undermines coalition's hardline stance, 26 April 2012

[92] HC Deb, 20 December 2011, c1201-03; HC Deb, 20 Dec 2011, c160-1WS

[93] Ibid

> In the health scheme, we have agreed to a revised revaluation factor of CPI plus 1.5%, which will allow the accrual rate to be improved to 1/54th. [...] All those heads of agreement are within the cost ceiling that I set out in November, but in a configuration preferred by the unions.[94]

It agreed to retain the “fair deal policy”:

> In the course of the talks, unions have stressed the importance of ensuring that their members will continue to be able to receive the benefits of their scheme if it is outsourced. That is the purpose of the fair deal policy, the future of which we have been consulting on. Because we have agreed to establish new schemes on a career average basis, I can tell the House that we have agreed to retain the fair deal provision and extend access for transferring staff. The new pensions will be substantially more affordable to alternative providers, and it is right that we offer workers continued access to them.
>
> In addition, the Government will consider what practical options might be available to reform the terms of access to the NHS pension scheme, in particular for NHS staff who move to a non-NHS “any qualified provider” delivering NHS services.[95]

It made a commitment that there would be no further change for 25 years:

> I have made the commitment that these reforms will be sustained for at least 25 years. The Government intend to include provisions on the face of the forthcoming public service pensions Bill to ensure that a high bar is set for future Governments to change the design of the schemes.[96]

Further details for the NHS scheme were provided in a written statement:

> **The Secretary of State for Health (Mr Andrew Lansley):** On 2 November the Chief Secretary to the Treasury made a statement to the House setting out an improved offer on public service pensions to public sector workers (Cm 8214). This offer provided a more generous cost ceiling for scheme-specific discussions to work within, and protected all those within 10 years of their pension age from any further change. This generous offer was conditional on the Government and trade unions reaching agreement by the end of the year, including in the NHS pension scheme, bringing to a conclusion talks that have lasted since February 2011.
>
> Since 2 November I have been engaged in detailed and intensive talks with the health trade unions and employer representatives. I can now report to the House on the heads of agreement on the scheme design for the NHS pension scheme to be reached in 2015, on which talks have concluded. The Government have made it clear this sets out their final position on the main elements of scheme design, which unions have agreed to take to their Executives as the best that can be achieved through negotiations. Further work on the remaining details will take place in the new year, and Executives will consult members as appropriate. This includes a commitment to suspend any further industrial action while the final details are resolved and unions are consulting their members.
>
> The main parameters of the new scheme are set out below:
>
> a. a pension scheme design based on career average ;

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[94] HC Deb, 20 December 2011, c1201-03
[95] HC Deb, 20 December 2011, c1201-03
[96] Ibid

b. a provisional accrual rate of l/54(th) of pensionable earnings each year, subject to further agreement on outstanding issues not covered by this agreement (see annex A);

c. revaluation of active members' benefits in line with CPI plus 1.5% per annum;

d. a normal pension age equal to the state pension age, which applies both to active members and deferred members (new scheme service only). If a member's SPA rises, then NPA will do so too for all post 2015 service. Those within 10 years of NPA are excluded and accrued rights will also be related to existing NPA;

e. pensions in payment to increase in line with prices index (currently CPI);

f. benefits to increase in any period of deferment in line with prices index (currently CPI);

g. average member contributions of 9.8%, with tiered contributions. Member contributions in year 1 to increase between 0% and 2.4% in year 1. There will be no increase in year 1 for staff with WTE pensionable pay less than £26,557. There will be further discussions on contribution rates and increases in years 2 and 3;

h. optional lump sum commutation at a rate of £12 of lump sum for every £1 per annum of pension foregone in accordance with HMRC limits and regulations;

i. early/late retirement factors on an actuarially neutral basis;

j. ill-health retirement pensions to be based on the current ill-health retirement arrangements but with enhancement for higher tier awards to be at the rate of 50% of prospective service to normal pension age;

k. spouse and partner pensions to continue to be based on an accrual rate of 1/160(th). For deaths in retirement spouse and partner pensions will remain based on pre-commuted pension;

l. an employer contribution cap as detailed in the heads of agreement.

There will be transitional protection:

- all accrued rights are protected and those past benefits will be linked to final salary when members leave the scheme;

- all active NHS pension scheme members who as of 1 April 2012, have 10 years or less to their current pension age, including MHOs and members of the special classes will see no change in when they can retire, nor any decrease in the amount of pension they receive at their current normal pension age. This will be achieved by allowing such members to remain in their current arrangements until they retire (for 2008 members until they have taken all their 2008 pension benefits);

- members who are within a further 3.5 years of their normal pension age, (i.e. up to 13.5 years from their NPA) will have limited protection with linear tapering so that for every month of age that they are beyond 10 years of their normal pension age, they lose two months of protection. At the end of the protected period, they will be transferred into the new pension arrangements; and the costs associated with the protection outlined above sit outside the costs of the reference scheme.

On the basis that the scheme design within the heads of agreement is agreed, the Government agree to retain fair deal provision and extend access to public service pension schemes for transferring staff. This means that all staff whose employment is compulsorily transferred from the NHS under TUPE, including subsequent TUPE transfers, will still be able to retain membership of the NHS pension scheme when transferred. These arrangements will replace the current provisions for bulk transfers under fair deal, which will no longer apply. In addition, a partnership review of the implementation of the provisions set out in this paragraph for staff working in "Any Qualified Providers" (AQP) will be carried out.

The Government Actuary's Department has confirmed that this scheme design does not exceed the cost ceiling set by the Government on 2 November. Copies of the heads of agreement and GAD verification have been placed in the Library.[97]

Areas for continuing discussion in 2012 included:

- abatement (for service accrued prior to and post 2015)
- partial retirement and re-employment including the issue of the impact on active pension scheme membership of taking 1995 Scheme benefits
- lump-sum on death in service
- treatment of members who leave active service but rejoin within 5 years
- options for giving members greater choice over their contribution rates including paying higher contribution rates to reduce the impact of early retirement factors, subject to HMT agreement over the cash profile of scheme contributions, minimising the likelihood of scheme opt-outs and delivering the required contribution rate increases
- treatment of members who transfer between Public Sector Transfer Club schemes
- contribution rates and structure, including the distribution of years two and three of planned increases. (Details of the year one increases can be found here)
- the implications of the pension reforms for total reward.[98]

The NHS Employers website has links to information about the reforms, including the Heads of Agreement. There is also information on the Department of Health website, including a factsheet for nurses and an NHS Pensions calculator.

Proposed final agreement

The Proposed Final Agreement was announced on 12 March 2012:

NHS Pension Scheme (England and Wales)

The Secretary of State for Health (Mr Andrew Lansley): On December 2011, I reported to the House that a heads of agreement had been reached on a new NHS Pension Scheme for England and Wales for introduction in 2015. The heads of agreement set out the Government's final position on the main elements of scheme design.

Following this, my Department has been engaged in detailed discussions with health sector trade unions and employer representatives over the remaining details for the

[97] HC Deb, 20 Dec 2011, c160-1WS
[98] NHS Employers' website, Agreement on NHS Pension Scheme changes, viewed 2 March 2012

new NHS pension scheme. I can now report to the House that these discussions have concluded and the outcome reflected in a proposed final agreement. The headline elements of the proposed final agreement remain unchanged from those set out in my previous statement to the House concerning pension reform on 20 December 2011.

The Government have made it clear that the proposed final agreement represents our final position on scheme design. The final scheme design is conditional on acceptance by trade unions of the proposed final agreement. Trade unions have agreed to take this proposed final agreement to their Executives as the outcome of negotiations. Furthermore, the proposed final agreement includes a commitment by trade unions to seek Executives' agreement to the cessation of any further industrial action on pension reform.

The core parameters of the new scheme are set out below:

a. a pension scheme design based on a career average revalued earnings methodology;

b. an accrual rate of l/54th of pensionable earnings each year with no limit to pensionable service;

c. revaluation of active members' benefits in line with the consumer price index plus 1.5% per annum;

d. a normal pension age equal to the state pension age, which applies both to active members and deferred members (new scheme service only). If a member's state pension age rises, then their normal pension age will do so too for all post-2015 service. Those within 10 years of their current normal pension age are excluded and accrued rights will also be related to current normal pension age;

e. pensions in payment to increase in line with inflation (currently consumer price index);

f. benefits to increase in any period of deferment in line with inflation (currently consumer price index);

g. member contributions on a tiered basis to produce a total yield of 9.8% of total pensionable pay in the scheme;

h. optional lump sum commutation at a rate of £12 of lump sum for every £1 per annum of pension foregone up to the maximum limit on lump sums permitted by HM Revenue and Customs;

i. the current flexibilities in the 2008 section will be included in the 2015 scheme—early/late retirement factors on an actuarially neutral basis, draw down of pension on partial retirement and being able to retire and return to the pension scheme;

j. ill-health retirement pensions to be based on the current ill-health retirement arrangements but with enhancement for higher tier awards to be at the rate of 50% of prospective service to normal pension age;

k. spouse and partner pensions to continue to be based on an accrual rate of 1/160th. For deaths in retirement, spouse and partner pensions will remain based on pre-commuted pension;

l. the current arrangements for abatement (for service accrued before and after 2015) will be retained;

m. the lump sum on death in service will remain at twice actual pensionable pay;

n. for members who in the new scheme have a normal pension age higher than 65 there will be an option in the new scheme to pay additional contributions to reduce or, in some cases, remove any early retirement reduction that would apply if they retire before their normal pension age. Only reductions that would apply in respect of years after age 65 can be bought out and the maximum reduction that can be bought out is for three years (that would apply to a member with a normal pension age of 68 or higher);

o. added years contracts in the 1995 section will continue on compulsory transfer to the 2015 scheme;

p. arrangements to purchase additional pension will continue;

q. the public sector transfer club will continue and further consideration will be given to the best way of operating it in the reformed schemes; and

r. there will be an employer contribution cap.

The Government Actuary's Department (GAD) has confirmed that this scheme design does not exceed the cost ceiling set by the Government on 2 November 2011. The proposed final agreement and GAD verification have been placed in the Library. Copies are available to hon. Members from the Vote Office and to noble Lords from the Printed Paper Office. The documents are also available at:

www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_133003.pdf[99]

The Proposed Final Agreement is on the Department of Health website.

Response of the Trade Unions

Unions representing health service workers have responded in different ways.

The Government's proposals have been rejected by the BMA, UNITE and the GMB:

- UNITE rejected the heads of agreement as a "basis for a satisfactory outcome."[100] On 20 March it announced that its members had voted to reject the proposals. Its concerns centred on three areas – the linking of the normal pension age to the State Pension age, the increase in member contributions and the switch to the CPI.[101] Its members took part in industrial action on 10 May.[102]

- On 22 May 2012, the GMB announced that its NHS members had voted to reject the proposals on the table on changes to the NHS Pension Scheme. Key concerns included proposed increases in member contributions and the normal retirement age.[103]

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[99] HC Deb, 12 March 2012, c7-8WS

[100] UNITE press release. UNITE unanimously rejects NHS pensions officer, 5 January 2012

[101] UNITE to ballot members on NHS pensions offer, 9 February 2012; Unite NHS members to stage protest after emphatic rejection of pension proposals, 20 March 2012. Over 94 per cent of Unite's members voted for rejection on a turn-out of 25 per cent.

[102] Unite members to take pensions industrial action on 10 May, 18 April 2012

[103] GMB Press Release, NHS GMB Members Vote No On Pensions, 22 May 2012; see also GMB newsletter, April 2012/04

- Following a vote of its members to reject proposed changes to the NHS scheme, the BMA said it would ballot on industrial action short of a strike.[104] On 30 May it announced that the results showed "a clear mandate for industrial action on a very high turnout." Its members took part in a day of action on 21 June. This did not involve a full withdrawal of labour.[105] The DoH has issued - NHS Pension Scheme proposal – what it means for doctors (12 June 2012). The BMA has issued a point by point response.

- In February 2012, the RCN members voted to reject the Government's proposals, although on a low turn-out.[106]

Organisations such as the Royal College of Midwives and the Chartered Society of Physiotherapists announced their "reluctant" acceptance of the Government's final offer.[107]

UNISON agreed to continue to negotiations following the announcement of the Heads of Agreement in December 2011.[108] On 30 April it announced the result of a ballot of its members: a combination of a low turn-out and a close vote meant there was "no mandate to endorse the pensions proposals, but equally no mandate to take further industrial action."[109]

Public Service Pensions Bill 2012-13

The Government published its *Public Service Pensions Bill* on 13 September 2012. The Bill is scheduled to have its second reading on 29 October. The Bill would establish a framework enabling the Government to introduce new public service pension schemes. In line with the recommendations of the Independent Public Service Pensions Commission, the new schemes would provide pension benefits based on career average rather than final salary and in schemes such as the NHS scheme, individuals would have a normal pension age linked to their State Pension age. For more detail, see Library Research Paper RP 12/57 *Public Service Pensions Bill.*

4.4 Debate on issues

The need for further reform

As set out in section 4.2 above, the Independent Public Service Pensions Commission took the view that the reforms introduced so far had not gone far enough:

> My interim report therefore attempts to establish a proper baseline from which we can answer the fundamental question – are public service pensions on a fair and sustainable footing that provides the best possible value for money to the taxpayer as well as adequate retirement incomes for public service employees? It is my clear view that the figures in this report make it plain that the status quo is not tenable. I believe

[104] BMA press release, Survey reveals doctors' strength of feeling against pension deal, 18 January 2012; BMA, Doctors to be balloted on industrial action, but strike ruled out, 25 February 2012; BMA response to government's "proposed final agreement", 9 March 2012

[105] BMA Briefing, June 2012; The ballot results can be seen on its website

[106] 'Results of RCN member vote on pensions', 28 February 2012. 65,759 votes were cast, a turnout of 16.17%; 41,009 members (62.36%) voted to reject the Government's proposals, while 24,533 members (37.30%) voted to accept the proposals; NHS Employers, 'Industrial action roundup', 23 April 2012

[107] RCM press release, 3 May 2012, 'Government pensions offer accepted'; Chartered Society of Physiotherapy press release, 1 May 2012, NHS members reluctantly accept changes to their pension scheme

[108] UNISON website – homepage (viewed 12 January 2012)

[109] 'UNISON health workers to decide on final pension proposals, 9 March 2012' UNISON press release, 30 April 2012, UNSON NHS pension ballot result. A ballot UNISON health members in England, Wales and Northern Ireland on changes to the NHS scheme returned a turnout of 14.8% of those eligible to vote. Of that, 14.8%, the result was close with 50.4% voting to reject and 49.5% to accept

> we need to adopt a more prudent approach to meeting the cost of public service pensions in order to strike a fairer balance not just between current taxpayers and public service employees but also between current and future generations.[110]

On 17 June 2011, Chief Secretary to the Treasury, Danny Alexander, gave a speech explaining why the Government thought reform was needed:

> Under the current system, as we live longer, current levels of contributions are unfairly balanced between the employee and taxpayer. Under the current system, the final salary scheme is unfairly biased towards the higher earners. The case for reform is clear and compelling.
>
> As Lord Hutton says himself, and let me quote ...“there will need to be comprehensive reform.” Change is needed to “make public service pension schemes simpler and more transparent, fairer to those on low and moderate earnings, better able to deal with the changes that we know are coming to our economy and our society, and will therefore help ensure greater prospects for sustainability over the longer term.”[111]

In a letter to *the Guardian* on 31 March 2011, a number of organisations representing NHS staff argued that the 2008 reforms had left the scheme in a strong financial position and that further changes at this stage would be unfair:

> The publication of Lord Hutton's review (Report, 11 March) has sparked considerable debate about pensions, not all of it well informed. The cost of public sector pensions is already decreasing. The NHS pension is an example of a highly effective final salary scheme. It underwent a radical overhaul in 2008 and was subject to a three-year review, achieved through partnership working between unions, employers and the Department of Health. Contributions paid by NHS workers increased substantially and are now among the highest in the public sector. The normal pension age for new entrants increased to 65, and a rigorous governance regime was introduced. A cost-sharing agreement was accepted, under which employees, rather than employers, would bear additional costs. As a result, the scheme is in a very strong financial position. Over the next five years it will provide a surplus to the Treasury (over benefits paid out) of £10.7bn. And NHS pensions are far from "gold-plated" – the median pension is less than £4,000.
>
> Changes to pensions for NHS staff – such as another increase in contributions – would be particularly unfair when they agreed to major changes to their pensions only three years ago. Many would opt out or decide to retire earlier. So there is a risk not only of destabilising the largest public sector pension scheme – ultimately adding to the numbers of people unprepared for their retirement and increasing the burden on the state – but also of depriving the NHS of its most talented staff.
>
> Dr Susie Sanderson British Dental Association, Dr Hamish Meldrum BMA, Phil Gray Chartered Society of Physiotherapy, Rehana Azam GMB, Cathy Warwick Royal College of Midwives Dr Peter Carter Royal College of Nursing, Eddie Saville Society of Chiropodists and Podiatrists, Richard Evans Society of Radiographers, Glyn Jenkins Unison Len McCluskey Unite[112]

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110 Independent Public Service Pensions Commission: Interim Report, 7 October 2010, foreword
111 Danny Alexander, Speech to IPPR, 17 June 2011
112 Letter to Guardian 31 March 2011, ‘Informed debate on NHS Pensions’; See also, BMA, NHS pensions changes, June 2012

On 20 December 2011, setting out what he described as his final offer to the unions, the Chief Secretary described the case for reform as “self-evident”:

> The case for reform is self-evident. The average 60-year-old lives longer now than in the 1970s. That means that people are living in retirement for longer. The life expectancy of a 60-year-old was 18 years in the 1970s; that has risen to 28 years today. As a result, the cost of public service pensions has risen to £32 billion a year—an increase of one third over the last 10 years.[113]

Contributions

As explained above, the Commission’s interim report said that:

> There is also a strong case for looking at some increase in pension contributions for public service employees, to better meet the real costs of providing these pensions, the value of which has risen in recent years with most of these extra costs falling to taxpayers.[114]

In response, the Government said it would implement increases in member contributions:

> Spending review 2010 announced progressive changes to the level of employee contributions to public service pensions that lead to savings of £2.8 billion a year from the unfunded pension schemes by 2014-15, to be phased in from 2012-13, excluding the armed forces. This is equivalent to 3.2 percentage point increase on average. No decisions have been taken on individual schemes—this is subject of discussions with trade unions and other work force representatives.[115]

Once the armed forces are excluded the required increase is 3.2 percentage points on average.[116] The policy would be phased-in and designed to protect the low paid and with a view to mitigating a possible increase in opt-out rates. It was expected to lead to savings of £2.8 billion a year by 2014-15, to be phased in from April 2012.[117] On 17 June 2011, Chief Secretary to the Treasury, Danny Alexander, set out the case for contribution increases, as follows:

> And the costs have already risen dramatically...total payments to public service pensioners and their dependents were almost £32bn in 2008-9, an increase of a third in real terms over the last decade. But whilst it is the individual public service employee that reaps the benefits of receiving a pension for longer... as things stand, it is not the employee that’s paying extra for it. In fact, personal contributions compared to taxpayer contributions have gone down. For instance, when the Teacher’s Pension Scheme began, employee and taxpayer contributions were equal at 5%. Today however, current members pay around 6% with taxpayers contributing more than double that at 14%.[118]

He also gave more detail about how the Government proposed to protect the lower paid and phase-in the increase.[119] On 19 July 2011, the Chief Secretary to the Treasury announced

[113] HC Deb, 20 December 2011, c1201
[114] Independent Public Service Pensions Commission: Interim Report, 7 October 2010, p4
[115] HC Deb, 24 May 2011, c589-90W. This is discussed in more detail in SN 5768 Public service pension reform – 2010 onwards
[116] HC Deb, 24 May 2011, c589W
[117] HL Deb, 7 February 2011, cWA31 (i.e, savings of £1.8bn in addition to the £1bn already expected through cap and share mechanisms. The figure does not included expected savings from theLGPS. see para 1.16 Independent Public Service Pensions Commission: final report, March 2011
[118] Danny Alexander, Speech to IPPR, 17 June 2011
[119] Danny Alexander, Speech to IPPR, 17 June 2011

scheme-specific consultation on the contribution increases.[120] On 28 July, the Government published its consultations on pension contribution increases for civil servants, teachers and NHS staff for 2012/13.[121]

In December 2011, the Department of Health (DoH) issued its response to the consultation. However, it explained that it had accepted an argument made by NHS employers that the distribution of increases should take into account the effect of tax relief and therefore issued a revised proposal for contribution increases in 2012/13. The threshold of earnings below which there would be no increase in contributions would be raised from £15,000 to £26,557. To pay for this, there would be a "small increase" in the contribution paid by members within the £26,558 to £48,982 and the £48,983 to £69,931 bands:

> 5.4 Looking at the 2011-12 contribution rates, when the effect of tax relief is taken into account (i.e. net of tax) this meant that higher rate taxpayers earning an FTE salary of £60,000 actually paid the lowest contribution rate at 3.9%. Those earning FTE salaries of £80,000 and £130,000 paid a lower net contribution than members earning FTE salaries of £25,000, £30,000 or £40,000. [...]
>
> 5.5 NHS Employers and several other respondents argue that there is a strong case for reconsidering the distribution of increases for 2012-13 (and for future increases in 2013-14 and 2014-15) on a net rather than a gross basis. This would facilitate, over the three year period to 2014-15, the Government objective to apply increases progressively - basing these on the actual burden that falls on members. We therefore agree with this conclusion.[122]

The DoH also responded directly to some of the arguments made against increasing contributions (for example that the scheme had a positive cash-flow).[123]

The Government intends to achieve further savings – equivalent to a 3.2% contributions increase by 2014/15.[124] On 20 December, the Chief Secretary to the Treasury announced that the Government would review the impact of the 2012/13 increases before taking final decisions on future increases.[125] For the new NHS Pension Scheme for England and Wales to be introduced in 2015, the Government has proposed:

> Member contributions on a tiered basis to produce a total yield of 9.8% of total pensionable pay in the Scheme' (subject to the detailed arrangements for determining future contribution structures set out in annex A).[126]

Response of trade unions

The BMA and trade unions representing NHS staff issued a joint statement to the effect that they did not accept the rationale for the proposed increases:

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[120] Letter from the Chief Secretary to the Treasury to TUC General Secretary, Brendan Barber, 18 July 2011. 'Cap and share' arrangements were part of the 2007-08 reforms to public service pensions. Under cap and share, increases in cost pressures identified at scheme valuations would be shared between employees and employers, up to the value of a cap on employer contributions. Above the cap, increases in cost would be met by employees, either by changing employee contributions or by altering benefits.

[121] HM Treasury press release, 'Government consultation on proposed pension contribution changes for civil servants, NHS workers and teachers, 28 July 2011'; *NHS Pension Scheme - consultation on proposed increases to employee contribution rates effective from April 2012*

[122] DoH, NHS Pension Scheme. Consultation on proposed increase to employee contribution rates effective from April 2012, Government response, 8 December 2012

[123] Ibid

[124] HC Deb, 19 July 2011, c91-4 WS

[125] HM Treasury press release, Government announces Heads of Agreement on public service pension reform, 20 December 2011

> These proposals have been formulated without the agreement of NHS Staff Side, who do not view the proposals as justified or necessary. An equivalent consultation could have emerged from the cost sharing approach to funding the NHS Pension Scheme which was agreed in partnership in 2007. This approach would most likely have led to a requirement to increase contributions or amend benefit structures and the NHS Staff Side would have participated fully in any resulting discussions and consultation emerging from this process. Unfortunately this agreed procedure has been unilaterally dismantled by Government.
>
> We have not and still do not accept the Treasury's rationale for imposed contribution increases which have been devised to counteract the effects of the financial crisis caused by reckless risk taking in the banking sector. The contention that these contributions are necessary to pay for increased longevity is false; this cost pressure is identified in the cost sharing agreement under which NHS employees (not taxpayers) would stand to pick up the cost of living longer. In essence this is simply a tax on hard working and loyal health service workers.
>
> The reality is that the proposed increased contributions will not help the NHSPS but go straight to the Treasury to help pay off deficits that have nothing to do with our members. [...].[127]

UNISON said a survey of its members indicated that more than a third (37%) would opt out if the likely contribution increases for 2013 and 2014. It argued that this could have a detrimental effect on the cash-flow to the scheme. [128] It was also concerned at the impact on some part-time workers whose whole-time pay fell into higher bands.[129]

In response to the publication of the *Public Service Pensions Bill*, the BMA set out its concerns in more detail. In particular, it argued that doctors would have to pay a high rate of contributions compared to civil servants:

> Contribution rate tiers are higher and steeper for NHS Pension Scheme members. Under current plans, by April 2015, the NHS scheme will have seven tiers of contributions with a top rate of 14.5%, while the indicative contribution rates for the Principal Civil Service Scheme have four tiers with a top rate of 9%. Most doctors will pay significantly more for their pensions than other public sector employees earning similar salaries. At the top end of pay scales, doctors will be paying almost twice as much a year in contributions for a similar pension as civil servants or high court judges.[130]

In response to such concerns, the Department of Health has made the point that comparing contribution rates cannot be done isolation and that pensions "are just one aspect of wider remuneration packages which of course vary between different sectors."[131] In its report, the Independent Public Service Pensions Commission noted that contribution rates varied widely across schemes, reflecting the way the schemes have developed. It commented that, given

[126] DoH, Reforming the NHS Pension Scheme for England and Wales – Proposed Final Agreement, March 2012
[127] Joint statement to the Department of Health's formal consultation on the imposition of higher pension contributions, 27 July 2011
[128] UNISON response to Department of Health NHS Pension Scheme Consultation on proposed increases to employee contribution rates effective from April 2012, October 2012
[129] Ibid; See also Unite response to NHS Pension Scheme: consultation on proposed increases to employee contribution rates effective from April 2012
[130] BMA website, NHS Pension Fairness, Lack of fairness across public service schemes, October 2012
[131] DoH – additional Q&A on contribution increases

this historic legacy, moving towards a more uniform structure of employee contribution rates would be complex.[132]

The BMA is also concerned that contributions are tiered too steeply, given the design of the new CARE scheme to be introduced under the Bill:

> The BMA accepts the general principle that the lowest paid NHS staff should be encouraged by scheme design to join the pension scheme. It also accepts that tiering is appropriate within a CARE system at the gross level to recognise higher rate tax relief. However, the steep tiering that is being phased into the new CARE scheme is completely unjustified.[133]

It refers to a comment in the Commission's Final Report, to the effect that there was less justification for tiered contribution rates in a career average. However, the Commission also noted that there were other reasons why tiered contributions would remain appropriate – such as higher life expectancy among higher earners.[134]

Scheme design

Lord Hutton's final report recommended that "a new career average revalued earnings (CARE) scheme should be adopted for general use in the public service schemes." It did not consider final salary schemes provided the "right design for future public service schemes". This was because:

> Final salary schemes unfairly benefit high flyers who can receive up to twice as much in pension payments per £100 of contributions. It exposes taxpayers to salary risk (the risk that higher than expected salary rises increase the cost of providing pensions), which should be borne by the scheme member who benefits from the salary rise. And final salary creates a barrier to employees moving from the public to private sector. These inherent problems of final salary schemes impact on fairness and sustainability and have led the Commission to conclude that an alternative model should be chosen for the future.[135]

In his speech of 17 June 2011, the Chief Secretary to the Treasury said the Government was proposing that for future pension accruals, the defined benefit would be linked to career average salary, not final salary. There would be protection for accrued rights:

> The benefits that you have already secured under the current final salary scheme would be protected. Let me be clear what this means: for what you have accrued, the 'final salary' which is used to calculate that pension would be the one you have when you eventually decide to retire or leave the scheme altogether. And again, for what you have accrued, we would not be changing the age at which you can claim those benefits.[136]

UNISON commented that:

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[132] Independent Public Service Pensions Commission: Final Report, 10 March 2011, p79
[133] BMA website, Lack of fairness within the NHS scheme (viewed October 2012)
[134] Independent Public Service Pensions Commission: Final Report, 10 March 2011, para 3.82-5
[135] Independent Public Service Pensions Commission: Final Report, 10 March 2011, p10
[136] Danny Alexander, Speech to IPPR, 17 June 2011

> It is essential that any CARE scheme is not a cost cutting exercise and we are concerned that this is not spelt out in the [Commission's] final report.[137]

The BMA argued that the existing scheme:

> Represents an example of a highly successful and sustainable final salary scheme, fair to taxpayers, staff and employers. Most doctors pay into it for the majority of their working lives, and most saw their contributions increase significantly with the implementation of the new scheme.[138]

Responding to the announced heads of agreement on 20 December, UNISON said:

> The new proposed scheme would come into effect in 2015 and would be a career average scheme with an accrual rate of 1/54 uprated by CPI plus 1.5%, this represents a significant improvement from the outset of the negotiations.[139]

The Proposed Final Agreement is that the new scheme to be introduced in England and Wales should be:

> (a) A pension scheme design based on career average;
>
> (b) An accrual rate of 1/54th of pensionable earnings each year with no limit to pensionable service;
>
> (c) Revaluation of active members' benefits in line with CPI plus 1.5% per annum;
>
> [...]
>
> (e) Pensions in payment to increase in line with inflation (currently CPI);
>
> (f) Benefits to increase in any period of deferment in line with inflation (currently CPI);[140]

Normal pension age

Lord Hutton's final report recommended linking the normal pension age for future accruals for members of most public service schemes (though not those for the uniformed services) to their State Pension age:

> **Recommendation 11**: The Government should increase the member's Normal Pension Age in the new schemes so that it is in line with their State Pension Age. The link between the State Pension Age and Normal Pension Age should be regularly reviewed, to make sure it is still appropriate, with a preference for keeping the two pension ages linked.
>
> Ex.27 The introduction of the link to the State Pension Age, which will initially move Normal Pension Ages to 65, will move the proportion of adult life in retirement for public service pension scheme members back to about a third: roughly where it was in the 1980s. The current State Pension Age of 65 is already the Normal Pension Age for most new entrants to public service pension schemes. Moving to this for future accrual will more fairly distribute the benefits between scheme members. In the long term, the timetabled increases in State Pension Age should help to keep the proportion of adult

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[137] UNISON briefing, Hutton recommendations – UNISON comment; See also GMB Press Release, 10 March 2011, Final Hutton report – more recipe for disaster than blueprint for reform
[138] BMA, NHS Pension Scheme – myths and facts, June 2010
[139] UNISON news – update on NHS pension scheme – 20 December 2011
[140] DoH, Reforming the NHS Pension Scheme for England and Wales – Proposed Final Agreement, March 2012

> life in retirement for members around this level, on current life expectancy projections.[141]

Under current legislation, the State Pension age (SPA) for women is increasing so that it reaches 65 in November 2018. The SPA for men and women will then increase from 65 to 66 by October 2020.[142] Under legislation passed by the Labour Government, the SPA is then scheduled to increase to 67 over two years starting in April 2034; and to 68 over two years starting in April 2044.[143] However, the Government has announced its intention to bring forward the increase to 67 between April 2026 and 2028.[144] In Budget 2012, the Chancellor announced that in future there would be an automatic review of the state pension age to ensure it kept pace with increases in longevity. Details of how this would operate would be published in the summer.[145]

On 17 June, Danny Alexander said that, as recommended by Lord Hutton:

> we are proposing to link the Normal Pension Age to the State Pension Age**.** That is, we propose linking the age you can draw your occupational pension, to the age that you can draw your State pension. And the two would continue to track each other in the future as we as a society benefit from greater longevity.[146]

This reason was to respond to increasing longevity:

> The average 60 year old today is living ten years longer now, than they did in the 1970s. But that also means we are spending longer in retirement. As the Hutton report says, with a retirement age of 60, approximately 40 to 45% of our adult lives are now spent in retirement, compared with around 30% for pensioners in the 1950s.[147]

Accrued rights would be protected:

> For those that would change, as I said, we are still protecting those benefits that you have accrued to date under the old scheme. But not only would we protect those amounts, we would protect when you can draw them. As such, you would still have and you could still draw that first part of your pension at the retirement age you were originally expecting.[148]

The BMA said:

> The BMA believes that another increase in the normal pensionable age for NHS staff would be unacceptable, particularly so soon after the introduction of a new scheme to which both unions and employers agreed.[149]

UNISON opposed the change, arguing that evidence suggested that "the life expectancy of public service workers does not mirror the general advance of the population as a whole because lower life expectancy is linked to low earnings."[150] The GMB argued that "the raising

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[141] Independent Public Service Pensions Commission: Final Report, 10 March 2011, Executive summary
[142] *Pensions Act 2011*, section 1
[143] *Pensions Act 2007*
[144] HC Deb, 29 November 2011, c803
[145] Budget Statement, 21 March 2012; HM Treasury, Budget 2012, para 2.11
[146] Danny Alexander, Speech to IPPR, 17 June 2011
[147] Ibid
[148] Ibid
[149] BMA, NHS Pension Scheme – myths and facts, June 2010
[150] UNISON briefing, Hutton recommendations – UNISON comment

of retirement ages is unrealistic in the current economic climate and will simply mean that pension calculations are reduced."[151]

On 2 November, the Government proposed additional protection for those closest to retirement:

> for those with 10 years or less to their pension age on 1 April 2012, the Government's objective is that they will see no change in when they retire, nor any decrease in the amount of pension they receive at their current Normal Pension Age. Schemes specific discussions will determine the fairest way of achieving this objective, taking full account of the equalities impacts and legislation, while ensuring that costs to the taxpayer in each and every year do not exceed the Office for Budget Responsibility forecasts of public service pension costs, which do not take account of the further reforms set out in this document[152]

It was also "willing to consider tapering of transitional protection over a further three to four years."[153] Younger workers would have a choice as to when they retired:

> they are not being forced to work to their State Pension Age. Current public service workers can draw the full pension benefits they have earned under their current pension scheme at their current Normal Pension Age. However, they may choose to work longer and earn more pension benefits under the new scheme.[154]

This is because any rights accrued up to the date of change would continue to be accrued under current terms, including the lower normal pension age – 60 for members of the NHS Pension Scheme 1995. Benefits accrued after the date of change would be accrued under the new terms, with an individual's normal pension age linked to their State Pension age. An individual could still opt to draw their pension at age 60. However, if they did so, any pension accrued with the higher normal pension age would be actuarially reduced to reflect the fact that it would be in payment for longer. The effect of this is that if they want to accrue the same level of pension as if current terms continued, they will need to work longer. The impact is greater for younger people, who accrue more of their pension under the new terms. Case studies to illustrate this can be found in HM Treasury, *Public Service Pensions: good pensions that last.*[155]

The heads of agreement announced in December 2012 set out the transitional protection arrangements in more detail as follows:

> a. All accrued rights are protected and those past benefits will be linked to final salary when members leave the scheme.
>
> b. All active NHS Pension Scheme members who as of 1 April 2012, have 10 years or less to their current pension age, including MHOs and members of the special classes will see no change in when they can retire, nor any decrease in the amount of pension they receive at their current Normal Pension Age. This will be achieved by allowing such members to remain in their current arrangements until they retire (for 2008 members until they have taken all their 2008 pension benefits).

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[151] GMB Press Release, 10 March 2011, Final Hutton report – more recipe for disaster than blueprint for reform
[152] HM Treasury, Public Service Pensions: good pensions that last, Cm 6214, Nov 2011, para 3.8
[153] HM Treasury website – Public service pensions – what are the proposed changes?
[154] Ibid
[155] CM 6214, November 2011, p22

> c. Members who are within a further 3.5 years of their normal pension age,(ie up to 13.5 years from their NPA) will have limited protection with linear tapering so that for every month of age that they are beyond 10 years of their normal pension age, they lose 2 months of protection. At the end of the protected period, they will be transferred into the new pension arrangements d. The costs associated with the protection outlined above in paras a,b and c sit outside the costs of the reference scheme.[156]

The Government has also set up a review to address the impact of working longer for those in frontline and physically demanding roles:

> These changes may impact more on certain categories of staff within the NHS. As a result, it is agreed to set up a tripartite review between DH, NHS Employers and the NHS Trade Unions on addressing the impact of working longer in the NHS with particular reference to staff in frontline and physically demanding roles including emergency services.[157]

A particular concern of BMA members, who voted to reject the changes to the NHS scheme proposed on 20 December 2011, was increases in the normal pension age:

> Dr Meldrum said there were particular concerns about forcing doctors to practise medicine to almost 70 years of age, and the pressure this would put on them to work beyond an age at which they felt competent and safe.[158]

The Final Agreement confirmed that there would be a link between the State Pension age and normal pension age for service from 2015, which would be kept under review. A review would be established to look at the impact of working longer, particularly on those in front-line and physically demanding roles:

> 3. These changes may impact more on certain categories of staff within the NHS. As a result, it is agreed to set up a tripartite review between the Department of Health, NHS Employers and the NHS Trade Unions on addressing the impact of working longer in the NHS with particular reference to staff in frontline and physically demanding roles including emergency services.[159]

The BMA recommends that the Public Service Pensions Bill should be amended to remove the link between the normal pension age and the State Pension age in the new scheme:

> The Working Longer Review of the planned increase to 68 in the normal pension age for staff in the NHS Pension Scheme is currently being undertaken jointly by Government, employers and health unions. The Review should be allowed to make genuinely evidence-based recommendations as to whether all or some NHS staff have roles that are particularly physically, mentally and or emotionally demanding and so should be allowed to cap their normal pension age at 65. As a minimum, the Public Service Pensions Bill should be amended to include provisions, which would allow changes to be made in the light of the Review's report.[160]

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[156] DoH, NHS Pension Scheme – heads of agreement, 20 December 2011
[157] Ibid
[158] BMA press release, Survey reveals doctors' strength of feeling against pension deal, 18 January 2012
[159] DoH, Reforming the NHS Pension Scheme for England and Wales – Proposed Final Agreement, March 2012
[160] BMA, NHS Pension Changes – our recommendations, October 2012

5 Other issues

5.1 Widowers' pensions

As outlined in the following WPA, there is a difference between the benefits provided to widows and widowers of NHS scheme members:

> NHS Pension Scheme
>
> Ms Moffatt: To ask the Secretary of State for Health whether the spouses of male and female members of the NHS pension scheme, both contributing the same amounts to the scheme between 1972 and 1988, are entitled to the same pension following the death of their spouse.
>
> Mr Byrne: The spouses of male and female members of the national health service pension scheme are entitled to the same initial pension for three months and up to six months following the death of their spouse. Thereafter a widow is entitled to a pension equal to one half of her husband's pension based on his total scheme membership; a widower is entitled to a pension equal to one half of his wife's scheme membership from 6 April 1988.[161]

A more detailed account of survivors' benefits can be found in *NHS Pension Scheme – Scheme Guide,* pages 30-1. The relevant provisions are in regulation G7 of the *National Health Service Pension Regulations 1995* (SI 1995/300) as amended.

The reason is that provision for widowers' benefits was introduced in the NHS scheme in 1998. It was not made retrospective, although a limited scheme was introduced to allow women to pay for additional cover:

> **Mr. Prior:** To ask the Secretary of State for Health if he will backdate the pension arrangements for widowers of female doctors to align them with the pension arrangements for widows of male doctors.
>
> **Mr. Denham:** The National Health Service Pension Scheme provides equal survivor benefits for legal spouses on service from 6 April 1988. A scheme was available until June 1989 which allowed female members to purchase widowers' cover for earlier service, the costs being shared with NHS employers. The capitalised cost of backdating widowers' cover, updated to take account of pay rises, is now estimated to be in the order of £500 million. These costs would have to be paid in full by the whole membership and there is no indication that they would be willing to do so.[162]

It is a general principle, adopted by successive governments, that improvements in public service pensions should not be retrospective, largely on grounds of cost.[163]

The British Medical Association (BMA) successfully applied for a judicial review of these rules. The case was heard by the High Court on July 11, 12 and 13.[164] The judgment of the High Court in *R v Iain Cockburn and Secretary of State for Health [2011] EWHC 2095 (admin)* was delivered on 29 July. The BMA explained that it had lost its legal battle but would consider an application for permission to appeal:

> The BMA has lost its legal battle for equal pensions for the widowers of doctors.

[161] HC Deb, 3 November 2005, c 1344W
[162] HC Deb 13 January 1999 cc 211-2W
[163] , for example, HC Deb, 17 Jan 2011, c 584-5W
[164] See BMA, NHS Pension Scheme – myths and facts, June 2010; BMA, Pensions Report to ARM 2011

Mr Justice Supperstone today (29/07/11) ruled that the government had 'an objective and reasonable justification' to maintain the NHS pension scheme rules.

In a ruling at the High Court in London, Mr Justice Supperstone rejected the claim that pension benefits paid to widowers of doctors should be based retrospectively on contributions that women had paid into the NHS pension scheme before April 6, 1988.

Lawyers acting for the BMA had argued that the pension rules treat men differently from women and therefore amounted to sex discrimination.

BMA council chairman Hamish Meldrum said: ‘It is unfair that female members of the NHS pension scheme do not have the same rights as men. We’re disappointed that this sexual discrimination couldn’t be stopped in the High Court, but we will continue to highlight it, and to fight for fair pensions for all doctors.’

Acting for GP’s widower

The association had acted on behalf of Iain Cockburn, the widower of Warwickshire GP Clare Boothroyd, who died of cancer in February 2007. Mr Cockburn would receive an extra £3,200 a year in survivor pension payments if he was a widow.

NHS pension scheme rules say service accrued by women before April 6, 1988, does not count towards widowers’ pension entitlements, even though women doctors paid the same contributions as male doctors.

Mr Justice Supperstone’s ruling states: ‘There was an objective and reasonable justification when introducing a change to the NHS pension scheme by the 1989 regulations, entitling non-dependant widowers to survivors’ pensions, to make that change prospective in the sense that it applied in relation to periods of service after 5 April 1988, and an objective and reasonable justification to maintain that position, rather than introducing a retrospective change, has remained since that date.’

Discrimination acknowledged

Lawyers on behalf of the health secretary had acknowledged there was discrimination but said it was justifiable because there had been a ‘progressive realisation of gender equality’ and the initial rules had been set up to recognise the weaker economic position of widows.

The ruling says correcting the discrimination would have cost the NHS pension scheme in England and Wales up to £905m, as an estimated 600,000 people are affected, and up to £120m in Scotland.

The test case could have had a knock-on cost of £4bn as a finding in favour of Mr Cockburn would have set a precedent for other public sector pension schemes such as those for teachers, civil servants, police, local government workers and the armed forces.

The BMA, in conjunction with its legal team, will now consider an application for permission to appeal.[165]

[165] BMA news, Judge rules against BMA in equality case, 29 July 2011

5.2 Review of ill-health retirement

Ill health pensions

In general, if a person draws an occupational pension before the scheme's "Normal Pension Age" (usually 60 or 65) it will be "actuarially reduced" to reflect the fact that it is likely to be in payment for longer. However, most schemes allow early payment of a full pension where retirement is on ill health grounds.

In 2005, the NHS Employers and Staff Side began a joint review of Ill Health Retirement benefits, the NHS Injury Benefit Scheme and the management of sickness absence across the NHS. Achieving financial sustainability was a "key concern for the review partners."[166] Review was needed, in part, because of the introduction of a normal retirement age of 65 for new members:

> 3.4 Underpinning the review was the need to ensure the continuation of the provision of appropriate ill health retirement benefits whilst supporting staff to remain in work wherever possible. Historically there has been a dramatic fall in the number of ill health retirements since reaching a peak in the 19902. However, with the rising to age 65 in the "new" Scheme, the total cost of ill health retirements is expected to increase. Therefore, the aim is to mitigate the risk of rising costs to the NHS Pensions Scheme posed by premature and unnecessary ill health retirements and the move to a higher normal pension age (NPA) of 65.[167]

A consultation document published in October 2007 explained the existing provisions in broad terms:

> 4.19 The NHS Pension Scheme provisions relating to ill health are set out in the Scheme's regulations as follows:
>
> *"A member who retires from pensionable employment because of physical or mental infirmity that makes him permanently incapable of efficiently discharging the duties of that employment shall be entitled to a pension if he has at least two years' qualifying service"*[168]

An ill health pension could be "enhanced" to compensate for the loss of further opportunity for pension accrual. In the case of a member returning to NHS employment under the age of 60, their pension could be "abated" (reduced) if earnings were above a certain level[169]:

> 4.22 The amount of extra membership an individual applicant receives will depend on how long they have been a member of the Scheme and their age at retirement. There are different arrangements in place for deferred members. A Scheme member must also have at least five years' membership when they have to retire, with their membership being increased to improve the benefits they receive. Members over the age of 60 can retire on the grounds of ill health with enhancement if they do not have 20 years' of service.

[166] NHS Staff Council, *Partnership review of ill health retirement, NHS injury benefit scheme and sickness absence. Joint proposals for consultation,* October 2007, para 3.10

[167] Ibid

[168] NHS Staff Council, *Partnership review of ill health retirement, NHS injury benefit scheme and sickness absence. Joint proposals for consultation*, October 2007

[169] See also HC Deb, 29 April 2008, c253W, which explains that abatement is a common feature of public service pension schemes.

4.23 The principle is that the enhancement should help to compensate for loss of further opportunity for pension accrual, which has been prematurely curtailed through ill health. This is why the Scheme's regulations insist on the measure of permanence, i.e. permanently incapable of efficiently discharging the duties of that employment. Once awarded, an ill health pension cannot be withdrawn*, although members returning to NHS employment under age 60 are deferred members subject to the Scheme's rules on abatement.**

* The Scheme's 1980 regulations impose certain restrictions and allowed for the review of ill health pensions for those under age 60 and withdraw payment where the person had become capable of resuming employment. This provision was revoked in 1987 on the grounds that the provision was inoperable.

**The method of restricting the amount of pension NHS pensioners can secure if they return to NHS employment.

The provisions did not differentiate between those employees who were unlikely to ever work again and those who had a reasonable prospect of finding alternative work.[170]

Following consultation, it was agreed that there should be two tiers of ill health retirement benefits, dependant on the severity of a person's condition and the likelihood of them being able to work again:

In tier 1 the individual is assessed as being unable to do their own job, as with the current arrangements. Staff are entitled to benefits where the NHS Pension Scheme administrators are satisfied that the member is suffering from mental or physical infirmity that makes them permanently incapable of doing the duties of that job. As this tier assumes they will still be able to carry out another job, they will be awarded a lower level of benefits.

In tier 2 the individual is assessed as being permanently unable to carry out regular employment. This will include being unable to take on any substantial employment that is similar to their job as a Scheme member, either full or part time. They could not reasonably be expected to do work across a general field of employment, bearing in minds their physical and mental capacity, and their training and experience to date. This aims to give a greater level of benefit to those who are permanently incapable of working again. It also recognises the need for some flexibility to allow for possibility of therapeutic or voluntary employment within certain limits.[171]

There would be some scope to move between the tiers. Those in tier one would receive accrued service only, with no actuarial reduction. Those in tier two would receive an enhancement of 2/3 prospective service (with some transitional protection). The minimum qualifying service of five years for ill health retirement enhancement would be removed.[172]

In future, abatement would only apply to part of the pension above that which would have been paid had the pension been actuarially reduced:

The review partners have agreed that earnings from NHS employment after ill health retirement (up to NPA) will lead to abatement of pension. The amount of pension that

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[170] NHS Staff Council, *Partnership review of ill health retirement, NHS injury benefit scheme and sickness absence. Joint proposals for consultation*, October 2007

[171] NHS Employers, *Briefing 42. Ill health retirement and sickness absence management: new arrangements for the NHS,* March 2008

[172] NHS Staff Council, *Partnership review of ill health retirement, injury benefit and sickness absence in the NHS. Final agreement,* March 2008, page 5-9

can be abated is restricted to the proportion of pension above that which is payable following actuarial reduction.[173]

The current rules are outlined in NHS Pensions *Ill health retirement benefits factsheet* (March 2009).

Injury benefit scheme

NHS Employers explains that the injury benefit scheme is separate to the NHS Pension Scheme:

> The NHS injury benefit scheme makes payments to NHS staff that become ill or are injured as a result of their work in the NHS. The scheme forms part of the terms and conditions of NHS employment and is regulated by the *NHS (Injury Benefit) Regulations 1995*. It is separate to the NHS Pension Scheme.

Further details are on the NHS Injury Benefit section of the NHSBSA website.

5.3 Review of redundancy compensation

In November 2005, NHS Employers announced that it had been commissioned by Government to "review the current arrangements for early retirement on grounds of redundancy, including negotiating new arrangements with the trade unions."[174] This was due to concern that there could be difficulties with the existing system in the context of age discrimination legislation:

> 17. The current NHS arrangements for redundancy compensation only follow statutory arrangements for those under the age of 41 or over the age of 50 who are given early retirement. The arrangements for those over the age of 50 who are not members of the Pension Scheme are substantially different. If the NHS was to keep its current arrangements, there could be difficulties in the context of age discrimination.
>
> 18. A further difficult is that the current arrangements leave the NHS with a substantial 'cliff edge' at the age of 50, whereby the value of the benefit package can increase by as much as five times compared with the redundancy payment available at 49. This is problematic and may cause resentment amongst employees under the age of 50 who are made redundant and there is a significant risk of challenge.

Changes to NHS Redundancy Arrangements came into effect on 25 October 2006. A briefing produced by NHS employers, *Retirement and redundancy: the right approach*, explained the new arrangements removed the "former age-related thresholds":

> **How redundancy compensation has changed**
>
> To coincide with the Age Regulations, a revised collective agreement on redundancy has been negotiated that removes the former age-related thresholds and is intended to provide an objectively justifiable option for those over the minimum pension age to choose early retirement. Any NHS member of staff whose employment ends through redundancy on or after 1 October 2006 will come under the revised arrangements, and this includes anyone who was given notice beforehand.

[173] Ibid, p8

[174] NHS Employers, *Changes to the NHS redundancy arrangements. Joint proposals from NHS Employers and the NHS trade unions*, 2006

> Entitlement to redundancy compensation depends on qualifying and reckonable service but can be complicated by individual employment history and service with different employers all of which is governed by statutory regulation and by NHS conditions of service.
>
> For staff with sufficient qualifying employment, redundancy compensation provides one month's pay for each full year of reckonable service up to a maximum of 24 months. As an alternative to the one month per year of service pay-out, NHS Pension Scheme members over the minimum pension age (normally 50) can instead request their employer to 'spend' the money on releasing their pension early with no actuarial reduction. Pension added years that were available under the old scheme are being phased out in traditional arrangements over the five years to September 2011. For more details on the new arrangements, visit our website.
>
> N.B. NHS redundancy compensation includes any entitlement under the statutory redundancy scheme.[175]

As this explains, NHS Pension Scheme members who are made redundant when over minimum pension age can opt for an early unreduced pension as an alternative to their lump sum. If the cost of this is less than the lump sum that would be due, the balance can be paid to the member. If it is more, the employer picks up the balance:

> The new arrangements (the only option for those under 50 or who are not members of the pension scheme) are: one month's pay per year of reckonable service up to a maximum of 24 months, with a minimum qualification of two years' reckonable service. Staff over the minimum pension age can opt for unreduced early retirement with no actuarial reduction to be paid from their redundancy payment. Any balance left over from a single payment of the capitalised cost would be paid to staff as a redundancy payment. If the cost to the employer is greater than the redundancy payment due, the employer picks up the balance of the cost. This alternative will not be available until 1 December when regulations will be in place.
>
> Staff over 50, with at least five year's pensionable service in the NHS Pension Scheme, have a choice between payment under the new arrangements or the transitional arrangements.[176]

Employers also have discretion to award an early unreduced pension where an employee is retiring early in the interests of the service. In this case, no redundancy payment is due. The employer undertakes to pay the costs of paying the pension early.[177]

There are transitional arrangements allowing some scheme members who reach 50 before 30 September 2011 to access an enhanced pension on redundancy. [178]

The NHS decided to retain the option of early retirement on an unreduced pension because of strong views expressed during negotiations:

> **Why have early retirement on redundancy with no actuarial reduction?**

[175] NHS Employers Briefing, *Retirement and redundancy - the right approach*, October 2006

[176] NHS Employers Briefing, *New NHS redundancy arrangements*, October 2006; See also, *NHS terms and conditions of service handbook. Amendment to Section 16: Redundancy pay*, 1 October 2006

[177] *NHS terms and conditions of service handbook. Amendment to Section 16: Redundancy pay*, 1 October 2006, para 16.25

[178] NHS Employers Briefing, *Retirement and redundancy - the right approach*, October 2006

> This provision reflected a strong view expressed to us both during and after negotiations, that staff over the minimum pension age should receive this extra option. Because it will cost employers more for people close to the minimum pension age, it will need objectively justifying. We did look at options for completely removing early retirement but as part of the negotiations we felt that we should seek to maintain this. In cost terms, it adds relatively little. We will need to keep this under review to see its impact as the new arrangements bed in.[179]

5.4 GPs

Access to the NHS Pension Scheme was originally limited to people directly employed by an NHS body. However, in recognition of the crucial role played by primary care, General Medical and Dental Practitioners were admitted to the scheme from its inception. They retained their self-employed status, albeit under contract to an NHS employer. They earn pensions benefits based on earnings in each year of their career (i.e. on a "career average" basis).

Practice staff

GP practice staff, including nurses, were not initially given access to the scheme. This was because they were not technically employed by the NHS but by GPs, who are self-employed. There was a long campaign by the BMA and organisations representing nurses to have practice staff included in the scheme.

In December 1996, the Government published a White Paper *Delivering the Future.*[180] This announced that the NHS Pension Scheme would be opened to practice staff. In the context of removing barriers to recruitment, it said:

> 6.9 The final element of the strategy is to ensure that there are as few structural barriers as possible to recruitment into primary care. A major barrier which has been identified for some time is the lack of access of practice staff to the NHS Pensions Scheme. This has been a longstanding concern for practice staff and GPs. Practice staff are a vital part of primary care teams. They make a significant contribution to the NHS. Their exclusion from the NHS Pension Scheme is now clearly anomalous. The Government therefore intends to open the NHS Pension Scheme to staff employed by GPs. The new arrangements will take effect from September 1997. The detail of how the Government intends to introduce these arrangements will be discussed with the profession's representatives. The increase in GMS cash limited fund in the Budget will help to support the costs for employers of opening the NHS Pension Scheme.

A press notice of 11 June 1997 announced that the Government would go ahead with plans to extend the scheme to GP practice staff on 1 September 1997. The scheme would be open to all staff employed by GPs to assist them in their NHS duties. This would include practice nurses, practice managers, and administrative staff. GPs would become *"employing authorities"* under the NHS Pensions Regulations and the costs to GPs of the employers' contributions would be met in the same way as the other employment costs for GMS staff, which are already provided for in the Statement of Fees and Allowances.[181] Regulation A2 of the 1995 Regulations as amended covers the definition of an employing authority for the purposes of the scheme. It lists a number of specific bodies, including GPs *"in respect of the employment of practice staff"*. For reasons of cost staff were not offered retrospective

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179 NHS Employers Briefing, *New NHS redundancy arrangements*, October 2006
180 Cm3512
181 Department of Health Press Release 97/129, 'NHS Pension Scheme Open to GP Staff', 11 June 1997

membership. However, like other scheme members they could opt to purchase added years of membership.[182]

BMA judicial review

GPs accrue pensions on a "career average" basis. Each year's pensionable earnings are revalued by reference to current earnings values using "dynamising factors", in order that they maintain their buying power. [183]

The Labour Government negotiated a new GP contract with the British Medical Association in 2004. At the time, it was agreed that the medical dynamising factors would be based on the real growth in GPs' pensionable income. However, in December 2006, the then Health Secretary, Patricia Hewitt, wrote to the BMA stating that the dynamising factors would be capped at a rate determined by the Secretary of State.[184] This was in order to control costs.[185]

In March 2007, the British Medical Association (BMA) announced its intention to apply for judicial review of this decision. It said:

> **The Secretary of State's Intervention**
>
> In December 2006 the Secretary of State intervened in the process and stated that she intended to impose dynamising factors for the years 2004 to 2008. She tried to justify this unprecedented move by arguing it was due to profits from GPs in the early years of the period appearing to be in excess of Government expectations […]
>
> **What is the BMA's position on this decision?**
>
> The BMA has responded formally to the government stating that failure to honour full dynamisation, using the original agreed method, is a very serious matter and is seen by the GPC as a breach of the original agreement by the government. The BMA is currently in the process of seeking leave from the court to pursue a Judicial Review action. The BMA understands the depth of frustration and anger felt by doctors and, as previously reported, will seek to challenge this decision using every legal, economic and political means at its disposal. [186]

In July 2007, the British Medical Journal announced that its application for judicial review had been allowed. Hamish Meldrum, chair of the BMA's GP committee, said:

> "Most GPs are self employed. They pay both the employers' and the employees' contributions into the NHS pension scheme. The pensions they have accrued are in fact delayed pay resulting from a contract agreed by the government with the profession. For the government to say they cannot have the pension they have earned and paid for is a denial of their contractual rights."
>
> The rate used to calculate GPs' pensions was linked to GPs' net profits under the new agreement. But when pensionable earnings proved to be much higher than the government had expected, ministers decided to limit the increase to 48% over five years. The BMA objected, arguing that the deal, although it might seem superficially

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[182] Source: Department of Health
[183] NHS Pensions, *Scheme Guide – NHS Pension Scheme*, June 2009, page 13 and 43
[184] *NHS Pension Scheme and NHS Compensation for Premature Retirement Scheme: Resource Accounts 2007-08*, 27 January 2009, HC 87, p 7
[185] NHS Pensions, *Changes to GP and OMP dynamising factors,* (downloaded from website 14 November 2008)
[186] http://www.bma.org.uk/ap.nsf/Content/focusdynamfactor0305 (downloaded September 2007)

attractive, would seriously disadvantage GPs who had recently retired and GPs near retirement.[187]

The High Court directed that the Secretary of State should honour the GP contract in respect of 2004-05 and 2005-06. The Government estimated the impact of the ruling to be an increase of some £600 million in the scheme's liabilities:

GP Dynamisation Factors

When the GP contract was agreed in 2004 between the British Medical Association (BMA), Department of Health (DH), and the NHS Confederation, it was determined that the medical dynamisation factors would be based on real growth in GP's pensionable income. In December 2006 the Secretary of State for Health (SoS) wrote to the BMA stating that the dynamisation factors would be 'capped' at a rate determined by the SoS.

The BMA challenged this in the High Court and in March 2008 a Judicial Review directed that the SoS should honour the GP Contact in respect of 2004-05 and 2005-06, and gave the SoS leave to revise the method of calculating factors for 2006-07 and 2007-08. Following the High Court ruling the SoS wrote to the BMA outlining the revised (final) factors. In October 2008 the BMA wrote to the SoS stating they were content with the revised factors.

As a consequence of this the Authority is required to revise up to 5,000 GP pension 'events' including retirement awards, transfers, and deaths. The processing of these pension events commenced in December 2008 with anticipated completion by 31 March 2009. It is estimated that the arrears due to be paid amount to £75 million, and this is included within the Creditors note 20a, and the movement in Scheme liability. The impact of the ruling has been an estimated increase of £600 million to the liability and is included within the valuation of Scheme liability as at 31 March 2008. From April 2008 onwards the dynamising factors will be based on RPI plus 1.5%.[188]

5.5 Public sector pension overpayments

On 16 December 2008 the Government announced incorrect payments had been made affecting some 95,000 (or 5 per cent) members of five public service pension schemes, including the NHS scheme. This was as a result of incorrect indexation of that part of the pension known as the Guaranteed Minimum Pension. The then Chancellor of the Duchy of Lancaster, Liam Byrne said:.

[...] I wish to alert the House to new checks which have uncovered a problem with payments to an estimated 5 per cent. of public service pensioners paid, by successive administrations dating back as much as 30 years, by the NHS, Teachers, Armed Forces, Judicial and Civil Service pension schemes, as a result of the incorrect indexation of an element known as the Guaranteed Minimum Pension or GMP.

The problem dates back to 1978 when public service occupational pension schemes contracted out of the State Earnings Related Pensions Scheme (SERPS). As a condition of contracting out members had a guarantee of a minimum amount of occupational pension. This GMP applied to those who were members of a contracted out scheme between 1978 and 1997 and who would otherwise have been entitled to SERPS.

[187] British Medical Journal, 7 July 2007, *'Court lets BMA challenge government decision on GP pensions'*

[188] *NHS Pension Scheme and NHS Compensation for Premature Retirement Scheme: Resource Accounts 2007-08*, 27 January 2009, HC 87, p 7; See also BMA, *Focus on...The Dynamising Factor*, May 2009

> Public service pensions are uprated in April each year in line with the retail price index. The occupational pension scheme pays for all the uprating before state pension is claimed, but thereafter part of the uprating is paid with the state pension, depending on the GMP entitlement.
>
> To enable the correct pension increases to be applied, pension scheme administrators need accurate GMP information derived from the individual's National Insurance contribution record. Our investigations have revealed that in 95 per cent. of cases this information is correctly recorded. But, in some cases it is not. In those cases schemes have paid the annual increase on the full pension each year instead of on an amount adjusted to reflect the GMP entitlement.[189]

The Government would not attempt recovery of payments already made. However, correct payments would be awarded from April 2009, with the result that some pensioners would have their payments reduced and others would see increases of less than the annual inflation uprating.[190]

In March 2009, the then Health Minister Ann Keen gave figures for the numbers affected in the NHS Scheme:

> For NHS pensioners, latest figures are that 54,079 have been told their pensions will be adjusted in April as a result of the double payment of the uplift of the guaranteed minimum pension element of the NHS pension. Of these the greatest reduction in pension is £3,070.34, a reduction of 9 per cent., and we expect around 91 per cent. of adjustments to have been determined by the start of the 2009-10 tax year. Of the remaining cases requiring adjustment we do not expect all to result in a reduction in pension.[191]

This issue is covered in more detail in Library Standard Note SN/BT 4919, *Public sector pension overpayments.*

[189] HC Deb, 16 December 2008, c111WS
[190] Ibid
[191] HC Deb, 31 March 2009, c1107