



The Pharmacists' Defence Association's response to the Department of Health and Social Care consultation on “Changes to the NHS Pension Scheme regulations”

February 2021

The Pharmacists' Defence Association, The Old Fire Station, 69 Albion Street, Birmingham. B1 3EA
General enquiries: 0121 694 7000 | Incident reporting: 0121 694 7007 | fax: 0121 694 7001 | web: www.the-pda.org | e mail: enquiries@the-pda.org

Proprietor:- The Pharmacists' Defence Association is a company limited by guarantee. Registered Company No. 4746656. Registered address as above.

Summary

- The PDA welcomes the opportunity to respond to the Department of Health and Social Care consultation on Changes to NHS Pension Scheme regulations.
- We agree that these changes should be made and welcome the further steps they take to remove all forms of discrimination from the NHS 1995 Scheme and that they should be implemented as quickly as possible once the consultation period is closed.
- We recognise the high cost of addressing all historic sex discrimination arising from the NHS Pension Scheme rules, we nevertheless feel there is a compelling case for reviewing whether an earlier date should be applied when removing this particular discrimination and any other.
- We would also question the logic of having a different date, 1 April 2019, for making back dated payments to the estates of dependent scheme members who having received a dependents pension have subsequently died themselves since 5th December 2005.
- The proposed changes do not eradicate discrimination for pensions that came into payment prior to 5th December 2005. Although we appreciate the reason for choosing this date the discrimination that lead to the Walker judgement and the related sex discrimination existed from the Schemes inception.
- By choosing the date from which civil partnership were permitted as the cut off date for equalising pensions in payment for all male dependents, the Government have chosen the least expensive option. We are therefore not confident that the approach set out in the consultation will guarantee no further legal challenges, which could not be defended by reference to the need for a proportionate response in the public interest.

About the Pharmacists' Defence Association

The Pharmacists' Defence Association (PDA) is a not-for profit defence association and trade union for pharmacists. It is the only organisation that exclusively looks after the interests of employee and locum pharmacists across all sectors of pharmacy, currently with a membership of more than 32,000, the PDA is the largest representative membership body for pharmacists in the UK and this membership continues to grow.

Delivering more than 5,000 episodes of support provided to members who have found themselves in a critical incident situation in the last year alone, provides the PDA with a rich vein of up-to-date experiences which have informed policies and future strategy.

This experience has recently been informed by the very considerable number of Covid-19 related issues being faced by members. The practical experience gained in supporting

member issues from the coal face is further enhanced by regular member surveys and focus group interactions. The information in this document is largely built upon the experience of our 32,000 members.

The primary aims of the PDA are to:

- Support pharmacists in their legal, practice and employment needs
- Represent the individual or collective concerns of pharmacists in the most appropriate manner
- Proactively seek to influence the professional, practice and employment agenda to support members
- Lead and support initiatives designed to improve the knowledge and skills of pharmacists in managing risk and safe practices, so improving patient care
- Work with like-minded organisations to further improve the membership benefits to individual pharmacists
- Arrange insurance cover for individual pharmacists to safeguard and defend their reputation.

Response to the consultation questions

Do you agree or disagree that the proposed amendments to the NHS Pension Scheme Regulations and the Injury Benefit Scheme Regulations should be made?

The PDA Union is committed to ensuring equality for all of our members in all aspects of their employment. We therefore agree these changes should be made and welcome the further steps they take to remove all forms of discrimination from the NHS 1995 Scheme. They ensure that discrimination on the grounds of sexuality, as with discrimination on the grounds of sex and age, continues to diminish but they do not eradicate discrimination completely.

We nevertheless recognise these changes are much needed and should be implemented as quickly as possible once the consultation period is closed.

Please provide details as to your answer

The changes made as a result of the Walker judgement were welcomed by the TUC and NHS trade unions. However, it was highlighted to Government officials at the time that this would open up a further discrimination on the grounds of sexuality as male dependents of women scheme members would be treated less favourably than male dependents in single sex relationships.

It is unfortunate and disappointing that these concerns were not listened to at the time, and it

took yet another legal challenge by a scheme member to bring about these final changes. As the Goodwin decision makes clear the arrangements put in place to implement the Walker judgement were directly and uncontestably discriminatory for male dependents of women scheme members.

The starting point for all of the subsequent discrimination relating to sexuality in the NHS scheme rules actually lies in the attitude prevalent in society at the time the scheme rules were written, that women would not and could not be the main or an equal breadwinner within a marriage. This attitude was confronted with the Equal Pay Act of 1970 and it remains a matter of deep disappointment that public service schemes did not change their rules at the same time to better reflect changing attitudes and realities within society.

Instead, it had taken individual scheme members enforcing the law through legal cases, pushed, like Walker himself, sometimes to the final stage of the UK legal process, for changes to be made.

This approach by successive Governments means that even with these changes historic discrimination continues for pensions resulting from the death of a scheme member prior to 5th December 2005. Whilst we recognise the high cost of addressing all historic sex discrimination arising from the NHS Pension Scheme rules, we nevertheless feel there is a compelling case for reviewing whether an earlier date should be applied when removing this particular discrimination and any other. We would also question the logic of having a different date, 1 April 2019, for making back dated payments to the estates of dependent scheme members who having received a dependents pension have subsequently died themselves since 5th December 2005.

Do you think any changes are needed to ensure the proposed amendments deliver the policy objectives set out in the consultation document?

These changes do not eradicate discrimination for pensions that came into payment prior to 5th December 2005. Although we appreciate the reason for choosing this date the discrimination that lead to the Walker judgement and the related sex discrimination existed from the Schemes inception.

Please provide details as to your answer

We recognise that unless male and female dependents pensions are based on all service, including that before 1988, some historic discrimination remains. We also recognise that to address this fully would be disproportionately expensive and that a cut off point is needed.

Nevertheless, by choosing the date from which civil partnership were permitted as the cut off date for equalising pensions in payment for all male dependents, the Government have chosen the least expensive option. We are therefore not confident that the approach set out

in the consultation will guarantee no further legal challenges, which could not be defended by reference to the need for a proportionate response in the public interest.

In relation to chapter 6, are there any further considerations and evidence that you think the department should take into account when assessing any equality issues arising as a result of the proposed changes, and in particular whether there may be any potential impact on people who share a protected characteristic (age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) or sexual orientation).

We have no comments in relation to this question.

Conclusion

We agree that the proposed changes should be made and implemented as quickly as possible once the consultation period is closed, and we encourage the Department to engage and work closely with stakeholders, including unions and those representing the NHS workforce to ensure that future policy developments do not have unintended consequences or lead to further discrimination.

The PDA would welcome an opportunity to discuss any future policy development and engage our membership and active equality, diversity and inclusion (EDI) networks to support any pre-consultation work that is being considered.

Our EDI networks currently comprise of;

- National Association of Women Pharmacists (**NAWP**)
- Black Asian and Minority Ethnic Pharmacists Network (**BAME Network**)
- Disabled Pharmacists Network (**Ability Network**)
- Lesbian, Gay, Bisexual and Transgender Pharmacists Network (**LGBT+ Network**).

Contact

Alison Jones
Director of Stakeholder Engagement
alison.jones@the-pda.org
