Frequently asked questions about the application of “New Fair Deal” in the NHS for independent providers

When is New Fair Deal commencing for the NHS?

Q1 - When will the New Fair Deal announced by Her Majesty's Treasury (HMT) on 4th July 2012 commence?
A – On 7 October 2013 HMT published: *Fair Deal for staff pensions: staff transfer from central government* which sets out the detail of how the New Fair Deal policy will operate. This guidance confirmed that commencement dates will vary across the public sector schemes.

The Department of Health (DH) has previously indicated that April 2012 is the commencement date for the application of New Fair Deal to the NHS Pension Scheme (NHSPS), i.e. New Fair Deal covers contracts to provide services to the NHS which commenced on or after 1 April 2012 and where staff transferred out of the public sector under TUPE and other compulsory transfers such as Cabinet Office guidance transfer to a public service mutual. If an individual feels they should be included, in the first instance they need to talk to their employer. The employer will need to contact the NHS BSA. Any retrospective cases are being considered individually and changes would need to be agreed with the contracting authority to ensure this is fully reflected in the contract arrangements.

Who is covered under these arrangements?

Q2 - Which staff are covered by New Fair Deal?
A – Staff covered by New Fair Deal includes people transferred out of the public sector under TUPE and other compulsory transfers, such as Cabinet Office guidance transfers to a public service mutual, or another new model of public service delivery, will have entitlement to remain in the NHSPS. This includes staff who are involved in contracts subsequently renegotiated and where protected staff are transferred to a new second employer. Eligible staff being those who are transferred as a result of sub-contracting or termination of a sub-contract, or cease work on the transferred NHS function, but move to other NHS work for that employer for which employees are eligible for NHSPS.

New Fair Deal does not apply to transfers within the public sector, such as machinery of government changes, which involve the transfer of staff from one part of Government to another. Those transfers are covered by the Cabinet Office Statement of Practice (COSOP) on staff transfers – the Government is currently reconsidering the COSOP guidance in the light of the reforms to the main public service pension schemes.
Q3 - What action should an independent provider take if they are receiving staff who are protected under the New Fair Deal?
A – Once you are aware of a TUPE/compulsory transfer situation where employment is being transferred outside the public sector (or any subsequent transfers, as a result of subcontracting or termination of a sub contract) your employees should be able to retain membership of their current pension scheme as long as they remain wholly or mainly engaged in NHS work as outlined in the HMT guidance.

In the NHS, transferring staff will be able to retain access to the NHSPS through ‘closed’ NHS Pension Directions, which are legal documents granted under Section 7(2) of the Superannuation (Miscellaneous Provisions) Act 1967. Providers apply for a direction by contacting the NHS BSA. More information, including an application pack is available at the following web link: http://www.nhsbsa.nhs.uk/2806.aspx

The cost savings generated from being able to access the NHSPS as opposed to the “broadly comparable” route should be agreed and reflected in the final contract price.

How will it be managed and what does it offer?

Q4 – How will HMT and DH know that private sector organisations are applying this to public service work only?
A – The NHSPS is managed through directions and regulations. Training and guidance from the NHS BSA will make clear the control mechanisms that will be required to be in place to ensure that the pension scheme membership entitlement is applied correctly and not used to subsidise private sector work. This will include a legal requirement for employers to declare which staff continue to be eligible for the NHSPS supported by an audit process.

Q5 - What else will I have to do as an employer in the NHSPS (admin/information requirements, etc)
A - Like other NHS employers there will be a requirement to comply with the NHSPS Regulations referred to in the Employer's Charter, available at the following web link: http://www.nhsbsa.nhs.uk/3542.aspx Consideration is being given to a programme of training that can be provided to support independent providers.

Q6 - What other restrictions will there be?
A - HMT has indicated that there will be a need for each public service pension scheme to put in place sensible control mechanisms. This may include measures such as a requirement to provide indemnities, guarantees or bonds to ensure that the taxpayer is protected from liabilities associated with an organisation becoming insolvent and being unable to pay the required contribution costs. For the NHSPS, the Department of Health will ensure this risk is properly reflected in the NHS standard contracts, general contract and direction documentation – however, NHSPS will normally only require a bond from participating independent sector employers if financial or administrative issues are encountered, e.g. late or non-payment of scheme contributions or
a prior history of such problems. Further clarity on the detail of this will be provided through scheme regulations and training.

Q7- What is the legal relationship between NHSPS membership and the contract?
A - The contractor will be covered, through regulations and supporting directions, to provide the NHSPS membership to those employed staff defined upon transfer to deliver the access to the NHSPS. This is covered in the 1995 and 2008 main scheme regulations together with Directions made by Secretary of State under sections 7(1) and 7(2) of the Miscellaneous Provisions Act 1967. In addition the NHS standard contract will provide further detail to ensure compliance with New Fair Deal and proper reflection in the contractual arrangements.

Q8 – If you do not have a "broadly comparable" pension scheme, can you bid for NHS work on the basis of the New Fair Deal now?
A – Yes. It is expected that organisations will begin to bid for NHS work on the basis of the New Fair Deal, thus the previous barrier that existed will be removed for some potential providers for transferring staff. The HMT guidance also clarifies that where broadly comparable arrangements are currently in place there will be an opportunity to use the NHSPS in the future when those contracts are retendered. This will be clarified further in the NHSPS New Fair Deal guidance from NHS BSA.

Q9 – Does New Fair Deal cover other terms and conditions other than the basic NHS pension?
A - Yes, access and payment of the standard employer and employee contributions normally confers entitlement to the full range of NHSPS personal and dependents benefits including redundancy benefits, subject to the prior payment of employer early payment charges.

Will there be training?

Q10 – Will there be training provided to inform independent providers what would be required from employers from the NHSPS administration.
A –DH are currently working with the NHS BSA and HMT on the training requirement for New Fair Deal. Certainly, the Employers Charter sets out the roles and responsibilities for both NHS BSA and any employer who has staff in the NHSPS. This is a very useful starting point. Discussion with the Independent Sector Review Group at DH will also consider the training requirement further. NHS BSA are developing a training pack to support organisations who have not previously had access to the NHSPS. This will be made available via their website.

What are the financial implications for our organisation?

Q11 - How much will the NHSPS cost the organisation?
A - Offering access to the NHSPS will actually reduce the costs for TUPE’d/compulsory transferred staff. Currently a “broadly comparable scheme” adds circa 12% to employers’ pensions contributions (over and above the employers’ contributions to the NHS pensions scheme). The
NHSPS scheme is an unfunded scheme backed by Government – which means that the liability is covered by employer and employee contribution rates. The current employer contribution rate is 14%. There should normally be no other liabilities, provided that the organisation remains within the regulatory control mechanisms being set out in regulations.

**Q12 – What are the contribution rates for employers and employees?**

A - The contribution rates will be the same as those for NHS employers. The employer contribution rate is currently 14%, while the employee contribution rates from April 2013 are based on a tiered approach as set out below -:

<table>
<thead>
<tr>
<th>Full-time equivalent pensionable pay</th>
<th>Contribution rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to £15,278</td>
<td>5.0%</td>
</tr>
<tr>
<td>£15,279 to £21,175</td>
<td>5.3%</td>
</tr>
<tr>
<td>£21,176 to £26,557</td>
<td>6.8%</td>
</tr>
<tr>
<td>£26,558 to £48,982</td>
<td>9.0%</td>
</tr>
<tr>
<td>£48,983 to £69,931</td>
<td>11.3%</td>
</tr>
<tr>
<td>£69,932 to £110,273</td>
<td>12.3%</td>
</tr>
<tr>
<td>Over £110,273</td>
<td>13.3%</td>
</tr>
</tbody>
</table>

**Q13 – How might the employer contribution change over time?**

A – The contribution rates in the NHSPS are set through an actuarial valuation process. Like other NHS employers, there will be a requirement for independent sector providers to comply with any future changes in employer and employee contribution rates based on the process. There are governance arrangements in place currently for the NHSPS – these will change over time in line with the requirements of the Public Service Pensions Act 2013.

One of the requirements of the Act, and in line with Lord Hutton's recommendation, an employer cost cap will be introduced that will provide an automatic mechanism to reduce the employer contribution rate if certain elements of scheme costs increase by more than 2 percentage points. While in practice not all employer costs will be captured by this cap – and so the employer contribution rate may rise by more than 2 percentage points - the contribution rate is still very likely to remain well below the cost of providing a "broadly comparable scheme".
Further questions stemming from the HMT Guidance

Q14 - I am a social enterprise that has access to the NHSPS via the closed direction, what does this mean in the context of the New Fair Deal?
A - Directions will remain in place as long as they are valid – however going forward where there are compulsory transfers from the NHS they will be covered through the New Fair Deal policy and will be provided access under those provisions.

Q 15 - How do the New Fair Deal and NHS pension access scheme differ?

A - The New Fair Deal arrangements replace the broad comparability and bulk transfer approach under 'old' Fair Deal, which no longer applies. The New Fair Deal applies to all members of public service pension schemes that transfer out of the public sector under TUPE, and to staff that have previously transferred out of the public sector, and who have remained eligible for the 'old' Fair Deal protection. This includes NHS staff with entitlement to contribute to the NHSPS. Staff that are subsequently transferred to a new employer are also protected under New Fair Deal.

The wider access review is NHS specific, developed in partnership with the Trades Unions, Independent Sector and NHS Employers and builds on the New Fair Deal. It covers the terms of access for non-NHS organisations providing NHS Clinical Services (IPs), where they are delivering services under an APMS contract or a NHS Standard Contract - including services procured under ‘Any Qualified Provider’ and covers both clinical and non-clinical staff delivering the clinical service.

Under the proposed approach, IPs can choose from two levels of access or maintain the default position where they comply with the New Fair Deal only as outlined above:
Level 1: Access for existing members: IPs are required to auto-enrol into the NHSPS:
- from the date of commencement as a NHSPS employing authority, all existing eligible staff who were entitled to participate in the NHSPS at any time in the previous 12 months, and
- from the date of recruitment, all new eligible staff who were entitled to participate in the NHSPS at any time in the 12 months before joining the IP. Staff should be ‘wholly or mainly’ engaged in NHS work to retain access

Level 2: Access for all eligible staff: IPs are required to offer access to all staff who are eligible to join the NHSPS and are ‘wholly or mainly’ engaged in NHS work.

Need to know more?
Who should I contact if there are key questions?
A – In the first instance we recommend you contact the DH pension policy team: Katie.Kennington@dh.gsi.gov.uk or Imogen.briers@dh.gsi.gov.uk