ICAEW
REPRESENTATION 116/19

NHS PENSION SCHEME: INCREASED FLEXIBILITY

Issued 1 November 2019

ICAEW welcomes the opportunity to comment on the NHS Pension Scheme: increased flexibility consultation published by Department of Health and Social Care on 11 September 2019, a copy of which is available from this link.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 150,000 chartered accountant members in over 160 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

ICAEW has a committee of healthcare specialists who represent clients in the healthcare sector and this response reflects their expertise in dealing with the complexities of income streams and pensions of the healthcare sector.

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KEY POINTS

1. The pension flexibilities should be available to all NHS Pension members, regardless of their employment role.

2. Whilst the proposal allows for a more tailored approach to pension accrual, being able to choose a specific level of pensionable pay would allow greater control for the NHS Pension members.

3. We would also like to see the ability for changes to the level of pensionable pay (both up and down) to be made retrospectively, subject to these being made within an agreed timescale.

4. At no point does the consultation address how added years will be treated and this will need to be considered before any measures are introduced.

5. Whilst we acknowledge that improvements have been made to the processing by PCSE, for any proposals to work for practitioner members, significant improvements still need to be made before any such measures are introduced.

6. We agree that there should be some form of phasing of pay increases, but that this should be available to both officer and practitioner members.

7. The tax rule requiring tapering of the annual allowance limit causes problems for many taxpayers in defined benefit pension schemes, including NHS Pension members. In relation to the latter category, one solution would be to allow them to disregard the 1995/2008 section growth from the tapering calculation. However, a longer term holistic review is needed of the annual allowance limit is needed so that special adaptations of the tax rules, which are already extremely complex, are not necessary.

8. We agree with the proposal to move the debit method for Scheme Pays deductions, but would like steps taken to ensure that this method is not more expensive for the pension member.

9. We would like to see the introduction of a calculator to provide a more accurate estimate of the annual deduction for Scheme Pays.

10. We would also like to see the Scheme Pays debit shown on the NHS pension members Total Reward Statement.

11. Following the McCloud judgement, consideration will be needed as to how any proposals arising therefrom will impact on the annual allowance position of NHS Pension members.

12. We would like to see a consistent treatment of pension members in England and Scotland.

ANSWERS TO SPECIFIC QUESTIONS

Question 1: Who do you think pension flexibility should be available to?

13. Institute members have seen the following NHS Pension members affected by the annual allowance tax charge in recent years:

- NHS Consultants (at all levels, including dental & maxillofacial specialists)
- GP Partners
- Single Handed GPs
- Nurse Practitioner Partners
- Practice Manager Partners
- Director of Nursing
- Non-clinical Director, including Director of Finance, Business Managers etc
- Members with MHO status
- Dentists – practice owners
- Dentists - associates

Whilst this list is not exhaustive, it clearly shows that it is not just senior clinicians who are affected by the annual allowance charges.

14. We agree with the comments made in paragraph 2.3 that "the point at which an annual allowance charge emerges will vary between individuals according to their income plus the amount and type of pension already accrued". This therefore makes it very difficult to easily identify pension members affected by the charge.

It is possible that you could have two doctors on an identical salary, but due to their career paths, one is affected by the charge whilst the other is not. This therefore means that individuals need to take their own advice, tailored to their own position and based on their own goals for workload and pension at retirement.

15. Annual allowance statements are only issued if the growth in the NHS Pension schemes exceeds the £40,000 annual allowance limit. As a result, there are two types of people who are automatically missed.

- Those with growth of less than £40,000, but who are tapered and their growth exceeds their reduced annual allowance limit.
- Those making additional pension contributions into a non-NHS scheme pension.

Many of these pension members may also have a non-medical specialist accountant and will therefore not have been advised to request an annual allowance statement each year. They could therefore be building up a problem, which won't be identified unless there is a future year where the growth exceeds £40,000 and a statement is then issued.

These pension members are unlikely to be picked up by H M Revenue & Customs (who in the experience of Institute members also do not have a detailed understanding of those who are affected by the annual allowance tax) for missing the annual allowance tax charge from their tax return. This is not fair on those members with specialist medical accountants who are declaring annual allowance tax charges on their tax return and are paying over the correct level of tax.

We do however appreciate that it is not practical for NHS Pensions to issue a statement to all pension members, but wonder whether these can be issued on line in the same way that the Total Rewards Statements currently are.

16. Due to the complex rules of the NHS Pension, it is next to impossible for the healthcare professionals to look at this for themselves and there are limited numbers of professional advisers who are able to perform these calculations and provide appropriate advice.

    Whilst the NHS Pension scheme provides annual allowance statements to those who have exceeded the annual allowance limit, these are provided after the limit has been exceeded and by then it is too late for any action to be taken by the individual. We do however, recognise that the NHS Pension scheme does not have the resources or information to be able to provide any planning assistance or to be able to notify at an earlier opportunity.

17. In addition, it is only during the 2018/19 tax year, that the impact of tapering has really been felt. Those who have been subject to a tapered annual allowance limit are likely to have no unused allowances available from the previous three tax years and are only now realising that they are subject to an annual allowance tax charge. Members of the NHS pension scheme are unlikely to be alone in experiencing this difficulty and we recommend that similarly affected sectors might work together to consider a common solution. Ultimately, this is a wider policy question that the Government needs to address and is part of the wider productivity challenge faced by the UK.

18. We agree with the comments made in paragraph 2.11, that “a one-off substantial increase in pensionable pay can lead to a large spike in pension growth for that year”. The hospital doctor pay scales have large increases in pay, in years 9, 14 and 19, over which there is no control or ability to “smooth the increase.” They are also impacted by receiving CEA levels and we have therefore seen reports of a decline in those applying for these.

19. For hospital consultants and some other officer members, the annual allowance position is more straightforward to project, due to the set remuneration levels. However, for those in practice the position is much less straight forward due to the variations in income (both up and down), which make planning for the annual allowance tax liabilities very difficult. Our members have also seen instances of pension members breaching the £110,000 income threshold by less than £200 and a £7,000 annual allowance charge arising.

20. Examples 1, 2, 3 & 4 focus on consultants. Institute members also act for a significant number of GP practices and our experience in recent years is that pension and tax matters have become a real concern, with GP partners looking to reduce workloads or take early retirement. GP practices have been finding it increasingly difficult to find new partners and annual allowance tax is making this even harder.

21. It is also difficult to comment on the examples due to the complexities of the pension scheme and the information missing to check how the growth etc has been calculated.

22. Paragraph 2.15 indicates that no evidence has yet been seen that the loss of non-clinical staff would impact on the capacity of the NHS services. We appreciate that the NHS has a shortage of clinicians, but believe that it would also cause pressures on the healthcare sector if senior managers and administration staff were to leave the sector due to not being able to mitigate their annual allowance liabilities.

    This is something that has already been experienced in the past when PCTs were replaced by CCGs and PCSE took over their processing role. Key administration staff employed at the PCTs with significant experience left/were made redundant. Their knowledge was lost to the sector and the inability for professionals and healthcare staff to be able to talk to someone who can deal with the issues arising, in a timely manner, has led to significant increases in workload from chasing matters requiring action and in some cases this has led to significant cash flow issues for GP practices. In addition GPs have experienced significant annual allowance tax charges as a result of pension payments not being processed in the correct tax year.

    We therefore believe that any measures introduced should apply to all NHS Pension members, regardless of whether they are clinical or non-clinical.

23. Whilst dentists generally have lower NHS pensionable pay (unless they are solely NHS practices) and higher personal pension contributions, Institute members have seen many instances of practices being sold due to the large annual allowance (and lifetime allowance) tax charges, where without them, the dentist would most likely have continued to practice.

24. Due to the nature of the dental contracts, it is also much harder for dentists affected by the annual allowance tax charge to mitigate their liabilities, providing further indication that the measures suggested in this consultation would also be beneficial to other taxpayers.

25. Our members are also seeing instances of dental consultants stopping their NHS hospital work to focus on their private practice and if this trend continues, we are likely to see shortages and ultimately increases to waiting lists in this area.

26. We agree that in general “lower earners are unlikely to be affected by annual allowance tax charges,” however, those who have taken out added years contracts/bought additional pension to increase their NHS Pension could still be affected.

Question 2: Do you think the proposal for a more tailored approach to pension accrual is flexible enough for senior clinicians to balance their income, pension growth and tax liability?

Question 3: If not, in what ways could the proposals be developed further?

27. We welcome the proposals to provide more flexibility over the level of income which is pensioned whilst still retaining access to the ancillary benefits. The ancillary benefits are greatly valued by those in the scheme and the annual allowance tax has forced members to forego them as they have sought to reduce their exposure.

28. To be able to choose the level of pensionable pay prior to the start of the tax year requires two factors:

    - The member to expect that they will have an annual allowance tax charge in the following tax year.
    - The member to be able to quantify the level of the annual allowance tax charge which will arise.

    As already mentioned, everyone's pension situation is different and whilst high earning members have become used to planning for annual allowance charges, there are still pension members who are unaware that they may be subject to a charge and by the time they realise, it is too late to take any action to mitigate liabilities, leaving Scheme Pays as their only option to pay the tax due.

29. It has also previously been mentioned (in paragraph 21) that planning is slightly easier for salaried clinicians, but for GPs, this is not so straight forward due to unforeseen fluctuations in income and their pensionable pay not being calculated until sometime after the end of the tax year.

30. In addition, Institute members have NHS pension member clients who have still not received 2016/17 annual allowance statements, due to processing delays by PCSE, meaning that NHS Pensions do not have the information to calculate the position for them. This is despite these certificates having been submitted over 18 months ago.

31. Whilst we appreciate that steps have been taken to process all the old certificates and clear the back log, many 2017/18 certificates that were submitted 7 months ago have also not been processed, so these annual allowance statements have also not been issued.

32. Further problems have been caused by the failure of PCSE to properly process forms for pension members to opt out and back into the scheme and Estimates of Pensionable Pay forms, which set out the contributions to be collected and any changes required during the year. These forms are incredibly important to those practitioners who have an annual allowance tax charge, because having the correct level of contributions can mean the difference between having an annual allowance tax charge and not having one.

33. We therefore urge that these matters are urgently addressed and that PCSE has the resources to deal with the processes required for any new measures introduced.

34. Paragraphs 3.12 and 3.13 talk about the level of contributions for both employees and employers. We would ask that if there is any reduction in the contribution levels that this is fair to those who work part-time, together with those who are annualised in the 2015 Scheme.

    For example, someone working part time (6 sessions) with a full-time equivalent salary of £100,000, would have actual pensionable pay of £60,000, but would pay contributions at the rate of 13.5%.

    Take the example of a member working full-time, with pensionable pay of £100,000 but due to annual allowance tax liabilities, chooses to pension only 60%, and would therefore also have actual pensionable pay of £60,000. The level of contributions needs to be at least 13.5% to be fair to the part-time member.

35. Paragraph 3.14 suggests that the pension member can "elect to increase their accrual level later in the year" by "paying arrears before the end of the scheme year." Whilst this is easy to achieve for employed clinicians, it is far from simple for self-employed members. Their contributions are initially based on an estimate and finalised when the pensionable profits are calculated on the superannuation certificates, with the balance being collected in the March after the end of the tax year (at the earliest where the practice makes a BACS payment, but could be much later depending on how long it takes PCSE to process the certificate).

36. Take the example of a GP partner who estimates that his pensionable profits for the year will be £100,000, but he anticipates an annual allowance tax charge, so chooses to pension just 40%, with contributions being taken on this amount. During the year he decides to pension 50% of his pensionable pay as he believes this will still not give an annual allowance tax charge, so submits a revised estimate of pensionable pay before the end of the tax year. This is not processed by PCSE, so contributions are only collected based on the 40%. Unless a separate BACS payment was made before the end of the tax year, under the outlined proposals the higher earnings would not be recorded.

37. As a further consideration from the example above, what would be the situation if when the superannuation certificate is processed, due to a better year than projected, the total pensionable earnings for the year turn out to be £120,000. 60% pensionable pay is £72,000, but assuming a BACS payment is made, contributions before the year end are only for earnings of £60,000. If £72,000 did not give any annual allowance issues, would the practitioner still be able to use the higher earnings as pensionable pay (not according to paragraph 3.14), or if it would cause annual allowance problems, could they be disregard it, instead using the lower £60,000?

38. Our proposal is that for practitioner and non-GP partner members balances collected via the end of year superannuation certificates are also suitable for such purposes.

39. In addition, we propose that the superannuation certificate gives the pension member the option to accept the existing or higher pensionable pay figure.

40. The consultation also does not consider pension members who may wish to reduce the amount they are pensioning. For example, where extra non-pensionable work has been undertaken resulting in a lower annual allowance limit being available.

41. We propose that pension members should be able to decrease the level of pensionable pay, with contributions being refunded accordingly.

42. The experience of Institute members is that there are NHS Pension members, who due to their circumstances, still have an annual allowance tax charge, even when pensioning just one month of their pensionable pay. As a result, they choose to come out of the scheme completely and therefore forego the other scheme benefits.

43. The scenario set out in paragraph 3.20 seems a little far fetched, because the members who are generally in this position will have existing service in either the 1995 or 2008 scheme and most certainly do not have pensionable pay anywhere close to the £340,000 level.

44. Institute members would however, like to see the proposals developed further and feel that it would be much simpler for the member to set a specific amount to be pensioned in round thousands of pounds i.e. from £1,000 upwards.

45. Our proposal is that this should also be retrospective to allow pension members to amend the level of their pensionable pay after the end of the tax year.

    We appreciate that this would not want to be open ended and would therefore suggest that the decision would need to be made by the pension member within a reasonable time scale, such as by 31 March following the end of the tax year. However, given the issues mentioned in paragraphs 32 and 33 above, this may need to be extended by 2 – 3 years to allow for delays caused by PCSE not processing information in a timely manner.

46. This would also address the problem of fluctuating earnings for GPs and dentists, subject of course to their actual pensionable pay not dropping below the level chosen (in which case we would suggest a cap to actual pensionable pay and refund of overpaid contributions).

47. Over recent years, the superannuation certificate has increased from 4 pages (32 boxes) to 14 pages (119 boxes). Such complexities increase the risk of the certificate being completed incorrectly.

    Allowing the pension member to choose a specific amount to be pensioned, would also mean that the length of the form could be cut substantially, thereby reducing the time taken to produce the form, allowing NHS Pensions to release it earlier in the year so, pension members can submit the form as soon as it becomes available.

    We understand there could be concerns over the pension member pensioning non-NHS income as a result of such a change, but the underlying calculations currently undertaken, could remain in the background, should they ever be requested for audit.

48. Consideration would still need to be given to the contribution rates to make this fair for those who are part-time or subject to annualisation in the 2015 Scheme.

49. Many pension members have added years contracts, which were taken out early in their careers to improve the level of their pension at retirement. Institute members have seen these being cancelled in recent years, due to them increasing the level of annual allowance tax due for those pension members.

50. No mention is made to how proposals to allow more flexibility on the pensioning of income will be treated for the added years contracts and whether this will be a separate decision or follow the treatment of the officer/practitioner earnings. Further clarity on this matter will need to be provided to assist pension members decide how much of their income to pension.

Question 4: We're proposing that large pay increases for high-earning staff should only be included in their pensionable income gradually. Do you agree or disagree with this proposal?

51. Institute members have seen NHS Pension members with pensionable pay of less than £90,000 affected by significant annual allowance tax charges. These include non-GP partners (due to the final salary linking), those with added years contracts and newly qualified GPs who have become partners. We therefore do not agree with setting a limit based on pensionable pay.

52. We therefore feel that a percentage based approach is best and would suggest an increase to pay of "x%" be considered.

53. Whilst we welcome the proposals to allow "the proportion of the pay increase that is pensionable to be gradually increased" this could also cause issues for the employer where an employee who is close to retirement age choses to phase their pensionable pay, then retire. This could result in a final pay control charge which is totally outside of the employers control as a result of the employee trying to reduce their annual allowance tax liability.

54. This is particularly relevant to non-GP partners who retain officer membership final salary linking, which is based on their practitioner earnings. Spikes in practice profits (usually outside their control) can result in large increases in pensionable pay and potentially significant annual allowance tax charges. Being able to phase these increases would be of benefit, however, this could also leave the practice (and ultimately the non-GP partner) exposes to a charge under final pay controls as the "employer."

55. We would therefore suggest that consideration is given to this and perhaps an exemption to the rules is introduced to cover such scenarios, for non-GP partners and other officer members where it can be demonstrated that no charge would have resulted had the pay rise been taken in full in the correct period.

56. The considerations in the consultation document are again aimed predominantly at officer members, however, the profits of GP partners are also subject to increases (as well as decreases, which unlike their officer counterparts are more difficult to project. We feel that phasing should also be available to these members (and in particular non-GP partners who as mentioned in the previous paragraph retain a final salary linking).

57. We would agree with the ability to spread this over three years and would suggest a separate box on the superannuation certificate to quantify the amount of pensionable pay spread. For simplicity, the contributions could be based on the tier rate for the year of which the increase originally arose.

58. For officer members, the large annual allowance charges are generally a result of the final salary linking on the 1995 section pension, due to its calculation being based on the highest pensionable pay of the last three years.

59. Some Institute members have reported growth in the 1995 section as a result of the final salary linking in excess of £160,000. If that member also has taxable pay of say £120,000, they would only have an annual allowance limit of £10,000. Assuming the same level of pensionable and taxable pay in the next tax year, there would be no growth in the 1995 section and an annual allowance limit of £40,000 (or just slightly below) is likely to be available. This doesn't even consider any growth in the 2015 scheme on which annual allowance tax would almost certainly be due.

60. Whilst the final salary linking is still an issue for those with a 2008 section pension, because the pension is calculated using average pay, increases are effectively smoothed out.

61. With the exception of those contributing to an added years contract, the only growth for those with a 1995/2008 section pension is as a result of the final salary linking or above inflation growth.

62. The tax rule requiring tapering of the annual allowance limit causes problems for many taxpayers in defined benefit pension schemes, including NHS Pension members. A solution for the latter would be to allow them to disregard the 1995/2008 section growth from the tapering calculation. However, a longer term holistic review is needed so that special adaptations of the tax rules, which are already extremely complex, are not necessary.

63. We agree that consideration is needed where a member leaves or draws an ill-health pension during the phasing period to protect both the employee and employer.

64. Such an option could again leave an employer potentially vulnerable to a charge under final pay controls. Say for example, if the employee leaves, all the pensionable pay falls into the last pay period, but after leaving, the employee decides to have a change of career or complete break for a couple of years, deferring the pension, before drawing. Depending on how the increase has been phased, the pensionable pay levels could exceed the permitted limits leading to a final pay control charge being levied on the employer.

65. Again, we would suggest the consideration of some form of exemption for this scenario to resolve this.

66. We also welcome the new modeller service, but trust that given the complexities of the NHS pension scheme it will be able to cope with all pension members, not just officer members.

67. Institute members have found it particularly difficult to obtain session details (particularly after the introduction of the 2015 scheme) and earnings information to calculate wholetime equivalent, so we would welcome this information being provided to Accountants and IFAs, or being included as part of the Total Reward Statements, to aid them in the calculations for their NHS Pension member clients.

Question 5: Currently, the NHS Pension Scheme has a notional defined contribution pot (NDC) approach to Scheme Pays deductions. We're proposing to replace this with the debit method. Do you agree or disagree with this?

68. The extension of the scheme pays facility by NHS Pensions to allow pension members to cover the whole of their annual allowance tax liability was welcomed by Institute members.

69. However, the biggest concern of pension members is the amount by which their pension will reduce. This is of particular concern to the younger pension members who still have many years until retirement and for whom the interest alone can be quite significant and the inflation rate is unknown and unprojectable.

70. We do however agree that replacing the NDC with a debit method would give greater clarity to those members, however, we note that this will cost them more in the future. Given the concerns raised by the younger pension members about the costs, we would like to see this addressed and steps taken to ensure that this method does not cost members more.

71. We would however ask that to allow greater clarity for pension members, any such deductions are reflected on their Total Reward Statements, therefore allowing them to see the annual impact of the scheme pays decision and giving them time to amend their election if necessary within the four year deadline.

72. The current scheme guidance on Scheme Pays ("Estimating the cost of Scheme Pays") is misleading and does not specify whether the annual allowance charge paid by the scheme includes or excludes the interest charged on the tax paid. As a result, whilst the figures are estimated, they do not allow the member to make a truly informed decision on whether to use the facility or pay the charge. The factors could also change prior to retirement, which also does not aid the decision making process.

73. It would therefore be useful if a calculator could be designed to show the debit to the members pension which can be used before they submit their formal election and which also shows the impact of subsequent variations to the amount paid by the scheme on behalf of the member.

74. The problem faced by some employed pension members of the 1995 scheme (particularly non-GP partners), is if their pensionable pay subsequently drops between the annual allowance tax charge arising and drawing their pension. The pay which has resulted in the annual allowance tax charge may not actually be used in the calculation of their pay and as a result they suffer a reduction to their pension based on earnings that will not actually benefit their pension at retirement.

75. Take for example a Nurse-Practitioner partner who becomes a partner (after having been salaried at the practice) during a year where the practice has an unusual spike in profits. The pensionable pay increases from £44,000 to £82,000, resulting in an annual tax charge of nearly £26,000. Practice profits fluctuate between this tax charge arising and eventual retirement and average out at say £60,000. The pension will be calculated based on a salary of £60,000 (assuming this is the highest in the three years prior to retirement), but the scheme pays deduction is based on a salary of £82,000.

76. This would not be a problem for the pension member if the jump occurs in the three years prior to retirement, but as previously mentioned, this would give a substantial tax charge to the employer (ultimately the Nurse-Practitioner partner) under the final pay controls regulations.

77. Any steps taken by this non-GP partner such as reducing sessions would also result in a pension at retirement being based on a lower pensionable pay figure.

78. Since the introduction of the tapering of the annual allowance limit Institute members have seen annual allowance tax charges of up to £60,000 arising (there have been isolated cases where these have been higher though). Whilst many charges are much more modest, NHS Pension members simply do not have the funds available to pay such charges, especially in situations where the annual allowance tax charge exceeds the increase in pensionable pay received, leaving scheme pays as the only option available. For one-off charges they can see this as acceptable, particularly when comparing to the increase in annual pension, but when charges of this level are occurring on an annual basis, it is easy to understand why they are taking steps to reduce their income (or opt in and out of the scheme) to reduce their exposure to the annual allowance tax.

79. The experience of Institute members is that before the introduction of tapering, around 5-10% of members were affected and around 10-20% of these used scheme pays. Those affected/likely to be affected were fairly easy for advisers to identify and were essentially those with high NHS pensionable pay (or modest earnings and added years contracts).

80. Since the introduction of tapering, around 20-30% of pension members are now affected and due to the larger liabilities being seen, around 25-30% of these are choosing to use scheme pays. However, the pension members affected are no longer just the higher earners, but those who have seen a large spike in earnings in the tax year.

81. The experience of Institute members is that the use of scheme pays is also more likely to be used where pension members suddenly find they have an annual allowance liability of which they were not aware and whilst we acknowledge that NHS Pensions have accepted late elections in many cases, removing the formal deadline would ensure that there is no uncertainty for pension members that this will be the case. We would like to see this happen in situations even where NHS Pensions have advised there may be a charge as in some situations members and their advisers (usually non-healthcare specialists) may be unaware of the implications to them.

Question 6: What impact, if any, do you think the following will have on people with one or more protected characteristics?

82. As already set out in response to question 1, it is our view that the proposal to target the flexibility and to provide flexible accrual should not be targeted to specific individuals who might be considered to "have a reasonable prospect of an annual allowance tax charge" but should be available to all.

OTHER COMMENTS

83. Due to the complex nature of the NHS Pension scheme, as a result of the multiple schemes (and their interaction) and the delays/errors of PCSE processing data, it is impossible for members and their advisers to accurately project earnings and growth, which are both a necessity for determining the individuals annual allowance tax liability. This disadvantages NHS Pension scheme members as they are unable to plan for their retirement with any degree of certainty.

84. Many pension members (with the exception of some dental practice owners who only have a very small proportion of NHS patients) contribute solely towards the NHS Pension and Institute members have seen, that those who did contribute to personal pension schemes have stopped these in order to reduce their annual allowance exposure. These measures are not promoting saving towards future retirement.

85. For those contributing to a defined contribution scheme pension, the decision to do so and by how much is their choice. If they choose to pay substantial sums into their pension, they accept they may pay an annual allowance tax charge as a result of doing so.

86. For those in the NHS Pension (and other defined benefit schemes which are not considered here), the growth which is tested against their annual allowance limit is largely outside their control, the prime example of this being inflation.

87. For example, a practitioner with annual pensionable earnings of £80,000, who started working as a practitioner on 1 April 1999 and went into the 2015 Scheme on 1 April 2015, has growth before the annual allowance limit as follows:

2013/2014	£30,123
2014/2015	£21,255
2015/2016	£24,360
2016/2017	£38,604

88. As it is clear to see from the above figures, the growth has fluctuated by over £17,000, but pay has remained constant. This is also problematic because the inflation rate used by HMRC is based on a different date to that used by NHS Pensions.

89. As it is also clear to see from this example, at a relatively modest level of income (and below the £90,000 mentioned in paragraph 3.27) the growth is not far from the £40,000 annual allowance limit, so if this member had additional taxable income, it is more than likely that an annual allowance tax charge would arise due to the impact of tapering.

90. In addition, due to the factors used for defined benefit pension schemes, it is often difficult for NHS pension members to appreciate that they have exceeded the annual allowance limit, particularly when they have not paid that amount in pension contributions, so many pension members have been ignorant to the charges.

91. One solution would be to completely remove tapering for NHS Pension members. ICAEW believes that tax rules can be judged against 10 fundamental tenets, which include that the rules are fair and reasonable (see Appendix 1). It is clear that in this case, the pension tax rules fail and the resulting complexity and uncertainty is harmful. Introducing different tax rules simply because of how a particular pension scheme benefits its members, would add to the complexity of the tax system. A more holistic review of this area is needed urgently, extending beyond NHS scheme members.

92. Due to pension growth being included in the tapering calculations our members have seen instances where having taxable income of just £100 over the £110,000 threshold limit has resulted in annual allowance tax charges in excess of £7,000.

93. Before tapering was introduced, the annual allowance limit was catching higher earners. As mentioned in paragraph 68 above, a simple option would be the complete removal of tapering for those in the NHS pension, or a much higher level of threshold income aimed solely at those whose taxable income is consistently high, with no link to pension growth in the calculation. We note that this might also need to be applied to non-NHS schemes.

94. The consultation makes no mention of the recent judgement in the McCloud case and consideration needs to be given to any steps to rectify the position for pension members, particularly for those members who have already been affected by an annual allowance tax charge in the years since 1 April 2015.

95. If a member has chosen to pension 10% of income to reduce their annual allowance tax liability to nil, but a subsequent compensation measure results in an annual allowance tax charge, it defeats the object of allowing flexibility (unless allowing retrospective changes to pensionable pay are introduced).

96. We note that whilst the consultation relates to England, it will be used by the NHS Pension Scheme (Scotland) Advisory Board to provide advice to Scottish Ministers on the subject. There are Institute members with NHS Pension scheme members in both countries and whilst the scheme legislation is predominantly the same in England and Scotland, Scotland have a very different interpretation of the rules from their English counterparts. The biggest one of these is that SPPA do not annualise the income for those in the 2015 Scheme.

    There are many NHS Pensions members who work both sides of the border and we feel that the legislation should be interpreted by both schemes in the same way so it is applied fairly to all pension members and to bring them in line with other similar schemes.

97. The Trusts benefit from employees not being in the pension scheme as they no longer need to make employer pension contributions for that member. The tax guidance issued in September 2019, gives employers the flexibility to recycle these funds back to employees, but does not make it mandatory to do so. Institute members would like to see Trusts being required to offer this (subject to pensions advice having been taken by the members and evidence thereof).

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see https://goo.gl/x6UjJ5).