Pension Restructuring Payments – Options Appraisal

1. Introduction

A briefing on the impact of the Pensions tax was presented to the Trust's Finance & Performance Committee on 23 July 2019.
A Copy of the briefing is attached at appendix1

The purpose of this paper is to provide an update to the Remuneration Committee and to set out a recommendation for UHNM to offer a pension restructuring payment (PRP) to those affected by this issue.

It is important to note that this is becoming an extremely complex issue, with a growing 'noise' across Medical staff group's nationally regarding reduction of hours and also a change in willingness to pick up extra duties.

2. Current National Position

The Department of Health & Social Care announced in early August 2019 that they would look to provide more flexibility to Senior Clinicians pensions and would expand the current consultation exercise to consider further options to allow Senior Clinicians to have more control over their pensions from the next financial year. Limited information about the options proposed is available currently.

3. Current Local Position

At the Trust's recent Medical Local Negotiation Committee, the Medical Staff representatives along with the BMA Full time Officer sought clarification from the Medical and HR Directors that the Trust would review the current position in order to give some assurance to the medical staff that we value their contribution, understand the issues and concerns and are keen to ensure that those affected do not withdraw their services, refuse to undertake additional activity or retire/leave the Trust. A commitment was made to meet with BMA representatives to consider options. The option of introducing a Pension Restructuring Payment was raised by the BMA as a potential way forward.

4. Pension Restructuring Payments

A pension restructuring payment is where a payment is made direct to an employee, equal to that which would have been paid in to the NHS Pension Scheme (employer's contribution). These payments are subject to tax deductions and are minus national insurance contributions and a small administrative fee which is usually paid to the pension agency for administration costs.

Harrogate Foundation Trust was one of the first Trusts to develop with such an alternative proposal for those staff that have chosen to opt out of the pension scheme. The Harrogate offer gives the member of staff the full employer contribution paid direct to them, subject to normal taxation treatments. The Harrogate scheme is for those staff who have breached their lifetime allowance and who have not accessed their pension.

In addition to the Harrogate scheme and after dialogue with NHS Employers, East North Herts Trust (Acute) and Oxleas NHS Foundation Trust (Community and Mental Health) have also run a restructuring scheme for two years or more and Dorset County Hospital have recently introduced their own scheme. Neighbouring Trusts of Royal Wolverhampton and University Hospital of Derby and Burton as well as University Hospitals of Coventry & Warwickshire have all now introduced pension restructuring payment schemes in the last few months.

Other feedback from NHS Employers regarding alternative payment methods to the pension scheme -

- One trust told NHS Employers they are offering payment of the employer's pension contributions for those who have exceeded the lifetime allowance. This is to try and halt the retirement of medical staff.
- Another trust offers 50% of the employer's contribution as extra salary to staff who have reached the LTA and opted out of the scheme.
- In one of NHS Employers regional HR director network meetings, some employers were offering alternative rates of pay in lieu of pension for those affected by the allowances. A variety of different offers are in place. Employers were concerned about the impact of local variations on recruitment and retention and equality issues, but feel they need to do something.
- In one trust, staff are asking if pay awards can be made non-consolidated (i.e. not pensionable).
- One trust told NHS Employers that staff are requesting extra annual leave as opposed to extra pay.
- One trust has put in place a Retention Bonus Scheme for staff who have exceeded the lifetime allowance.
- Another trust offers non pensionable responsibility allowance.

At a previous meeting of the Association of UK University Hospitals when members were asked if they were considering a re-structuring payment scheme, two-thirds of those present reported that they were. These included some of the largest teaching Trusts in the country.

It is important for the Remuneration Committee to note that the majority of our consultants are now aware that other Trusts are offering alternative options to scheme membership and certainly the BMA are leading a loud campaign on this matter.

5. Options

Option 1

Do nothing – The likely outcome is that some senior clinical staff and maybe other senior staff would choose to retire from their roles, reduce their work through hours or responsibilities. They may return to their jobs as part of a retire and return option, or they may opt to work as locums for more freedom of choice and more money or retire altogether. There would be a frustration, particularly amongst senior clinicians who are aware of what other Trusts are doing and would struggle to see why we could not make a similar option available.

Option 2

Full Equivalent Payment - For those who can evidence that they have exceeded their life time allowance and/or have left the pension scheme as a result of tax tapering impact, they will receive the employer contribution paid direct to them as a pension re-structuring payment. The payment would be subject to employer national insurance at 13.8% so should therefore be reduced by the same amount to ensure cost neutrality to the Trust. The payment would be subject to full tax treatments and would be stopped if the member of staff accessed their NHS pension or re-enrolled in the NHS pension scheme. The payment would be non-contractual and the entire scheme would be made subject to an annual review. The Trust would have the right to stop the scheme if national policy changed on pension restructuring payments. This option is clearly predicated on employees withdrawing from the pension scheme.

Very Senior Managers (VSM) who choose to receive this payment need to be mindful that changes resulting in a salary of £150k and above will need to be approved by NHSI.

Option 3

Reduced Proportional Payment – Rather than a payment representing the equivalent of the employee contribution being made, a 50% contribution is offered. There would then effectively be an equal share of the employer's contribution where the employee and the Trust both benefit.

A risk assessment for the options of doing nothing or introducing a restructuring payment is attached. Controls and mitigation will be introduced upon a decision of which option is taken.

6. Recommendation

The Remuneration Committee are recommended to consider option 2. While this is an emotive subject for many and involves the highest earners in the Trust, it also poses one of the biggest risks to retaining highly skilled, hard to recruit employees. While some Trust's have offered similar schemes for two years or more, many other Trusts across the country are developing equivalent offers, although anecdotal evidence suggests the take up of such offers has been less than anticipated. Whilst the government has indicated that it is now considering options to respond to the repeated lobbying it is not known when these changes will be introduced nor whether the extent of any proposed change will have an impact. It is suggested that this option is introduced for this financial year only pending any national change and is subject to review for the year 2020/2021.

Most senior staff believe that if it was not for the radical overhaul and lowering of taxation thresholds, they would have been more than happy to remain in the NHS pension scheme. The reality is now that it is costing senior staff in some cases thousands of pounds to remain in it. Option 2 enables these staff to receive the payment that would have been made on their behalf, subject to a 13.8% reduction to take account of national insurance, and to invest it in an alternative opportunity to prepare for retirement. The revenue will receive increased taxation as both employee and employer contributions would be liable to income tax deduction.

Supporting option 2 would not cost the Trust any more money as this is built in to the on costs of each role already. It could also demonstrate that UHNM is progressive in its thinking and recognises the negative impact these changes have made to many individuals personal financial circumstances. Option 2 would aid the retention of staff, many of whom are senior clinicians in vulnerable hard to recruit areas.

Option 3 is not recommended due to the taxation and other stoppages on a 50% payment making the actual benefit negligible after national insurance and an administration fee was also applied.

It should be noted that consideration has been given to offering this to all staff. The lowest paid staff pay a 5.6% contribution to the scheme compared with 14.5% for the highest earners. The Trust has a duty of care to not tempt members of staff with no tax liability, or any likelihood of ever reaching a liability, to come out of the pension scheme. Although tempting now for a short term gain, invariably in years from now the decision could be regretted at retirement. If offered to all staff this could have a hugely destabilising impact on neighbouring Trusts, with staff joining UHNM for a pseudo pay increase.

It is equally important UHNM is not seen to be tempting high earners to opt out of a pension scheme either, and they will need to be notified they will lose additional rights, such as death in service and ill health benefits.

7. Conclusion and Next Steps

The changes to the pension taxation rules that commenced in 2014 are now disproportionately impacting high earners in the Trust. Most of these staff occupy hard to recruit essential roles. These employees are now considering their future while recognising that many other Trusts have developed or are developing a pension re-structuring proposal. This paper recommends that UHNM adopt a similar scheme where upon receipt of proof that a member of staff has left the NHS Pension Scheme for tax reasons, a payment is made direct to the individual equivalent to the employer contribution. Such payment would be paid gross and would therefore be subject to all usual tax treatments. There would be the right to withdraw the scheme if national policy were to change on such initiatives and there would be an annual review.

It must be acknowledged that proceeding with such a scheme also carries a number of risks. These include reputation and the perception that high earners are being given an advantage. These risks do of course need to be offset by risks to delivery of patient services due to inability to recruit/retain staff.

In terms of next steps, should the recommendation be supported, a process will be developed to ensure implementation is timely and robustly managed and monitored.

8. Declaration of Interest

It is appropriate to highlight that Executive Directors could potentially be amongst those impacted by such a scheme and a declaration of interest is therefore made.

9. Appendices

Risk Assessment

Appendix 1

Options Risk Assessment

If the Trust proceeds with the **'do nothing'** option, then staff could refuse to undertake additional work/continue with their service, resulting in increased waiting times for patient, less capacity to deliver operational targets, increased levels of staff dissatisfaction and having a negative impact on the reputation of the Trust, making it a less attractive place to work.

Likelihood = 3 possible (might happen or recur occasionally) x
Impact = 4 major (very low staff morale, impact on all Divisions, uncertain delivery of key objectives/service due to lack of staff).

= High 12

If the Trust proceeds with **pension restructuring payment,** then there may be a perception from staff that high earners are being given an advantage, resulting in low staff morale/dissatisfaction, possible trade union disputes and potential for staff to leave Pension Scheme.
Likelihood = 3 Possible (might happen or recur occasionally) x
Impact = 3 Moderate (low staff morale, adverse publicity/reputation)

= High 9