

**Vaughan Gething AC/AM**  
**Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol**  
**Minister for Health and Social Services**



**Llywodraeth Cymru**  
**Welsh Government**

Ein cyf/Our ref 0031/19

Edward Argar MP  
Minister of State for Health and Social Care  
Department of Health and Social Care  
39 Victoria Street  
London  
SW1H 0EU

5 November 2019

Dear Edward,

### **NHS Pensions Scheme: pension flexibility consultation response**

Thank you for your letter dated 30 October in response to my letter of 23 September.

I wanted to send you directly a copy of our response to the Pension Flexibility Consultation since I have written to you and colleagues on a number of occasions. As you are aware from my previous correspondence to you and your colleagues, NHS Wales faces very challenging consequences directly from the pension/tax changes introduced by the UK Government. As you will be aware similar challenges are faced across the whole NHS system in each UK nation.

We are in close touch with our Health Boards and Trusts as they confront the reality of the significant adverse consequences of the pension tax changes. These are having a very negative impact upon our staff who deliver NHS care and treatment and of course upon the people who require NHS care and treatment.

Welsh Government and NHS Wales employers are keen to resolve this matter as soon as possible. In the meantime we want to ameliorate the impact on individuals and service delivery as much as possible. My officials were aware that UK Treasury were going to contact Devolved Administrations separately on their review of the taper. However as far as I am aware no one has yet been in contact. I am therefore copying this letter to Sajid Javid as Chancellor of the Exchequer.

As you are aware I have significant concerns over the application of the Lifetime and Annual Allowances which need to be urgently reviewed and in my view changed.

The impact upon the NHS is real and undeniable. The situation has been created by a UK Treasury rule change on Lifetime and Annual Allowances. The UK Treasury now need to act to resolve the problem that they have created before the purdah period. If they do not then the NHS will start winter with an entirely avoidable handicap. The impact on staff morale and patient care are already obvious as set out in my previous letter. The damage being done will only worsen at the most demanding time of the

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

year when we rely upon the extraordinary commitment of our staff to care for our most vulnerable citizens.

My officials look forward to continuing to engage with your officials on the proposed consultation response. I look forward to prompt action being taken.

I am also copying this letter to the Secretary of State for Wales, Scottish Government Cabinet Secretary for Health and Sport, Permanent Secretary at the Department for Health in Northern Ireland and the Chair of the National Assembly for Wales' Health, Social Care and Sport Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive, flowing style.

**Vaughan Gething AC/AM**

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol  
Minister for Health and Social Services

## **NHS Pension Scheme: Pension Flexibility Consultation Response from Welsh Government**

Please find below our response from Welsh Government to your consultation on NHS Pension Scheme Flexibilities. Whilst we have not answered all the consultation questions directly as we may not hold the specific evidence you are looking for we expect NHS Wales Employers to respond to the consultation with real examples and evidence for you.

### Question 1: The case for pension flexibility

We want the pension flexibility to apply to all members of the NHS Workforce regardless of their tax position.

As our Minister for Health and Social Services has outlined on a number of occasions we have strong objections regarding the justification on the grounds of equality that only senior clinicians are afforded the flexibility given the recent judgements on other public sector pension schemes not being lawful on the grounds of equality. The McCloud judgements highlights the potential risk of unlawful discrimination and the risks to open challenge.

We are also mindful that excluding other staff groups is a huge risk and does not help us in Wales in building on our Team Wales approach for a cohesive and inclusive NHS that is fit for the future. Limiting the flexibility to senior clinicians does not address the broader point that a wider group of staff may reach the lifetime allowances not just the very high earners.

We have seen in Wales that the tax implications are also having an effect on our senior managers in Wales in relation to withdrawing from leadership responsibilities and choosing not to progress further up the structures. NHS Employers in Wales will be providing real examples of this, however we do have data on those or are currently in or out of the pension scheme by pay band which we will forward in due course.

We should not at this stage be responding only to a specific staff group but in our view ensuring that any arrangement equitably applies to all those staff working in the NHS in key positions.

### Question 2, 3 & 4: Proposed pension flexibility

Yes we do think the proposals are flexible enough within the constraints of the pension scheme but it is the effect of the tax allowance taper that is contributions to the issues and needs to also be addressed by UK Government. Allowing people to choose the level of accrue rate in 10% increments rather than the previous 50:50 option is much more flexible. We are also supportive of the approach that once people know what their exact level of earning will be towards the end of the financial year then there will be an option to increase their accrual rate for the year to be able to save the most in their pension before tax implications and the modeller you propose to support people to do this, however we do have concerns if this approach is the best use of people's time against delivering vital NHS services.

We also agree with the proposal to spread the effective of pay raises over a few years so that individuals do not hit the tax allowance thresholds, if that's what individuals choose to do.

#### Question 5: Improving Scheme Pays

We would expect this is more appropriate for NHS Employers in Wales to comment on, however in general terms we are supportive in terms of increased transparency and consistency with other public sector pension schemes so the approach seems sensible.

#### Question 6 and 7: Equality Impact Assessment

As we have already highlighted we have concerns on the ground of equality and legal advice on the grounds of the proposals being lawful is critical. The data provided in your consultation if the proposal do go ahead does impact on people with one of more protected characteristics, by the nature of limiting the proposal to senior clinicians this will impact on gender and age due to the current workforce profile across the NHS.