



A report reviewing progress with access arrangements to the NHS pension scheme for independent providers delivering clinical services to NHS Patients under NHS standard contracts

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## Executive summary

Government policy seeks to develop greater patient choice through delivery of NHS services from a wider range of organisations, including Independent Providers (IPs) such as social enterprises, charities and private sector companies.

However, the 'pensions playing field' has arguably been tilted away from IPs towards NHS employers, with the latter required to join staff into the NHS defined benefit pension scheme (NHSPS) at relatively low employer cost. IPs have been unable to join the NHSPS, and faced up to double the cost to provide "broadly comparable" pensions often needed to attract the staff required to deliver high quality NHS clinical services.

The Government's Fair Deal policy, introduced in October 2013, has done much to level the pension playing field, with, since regulations came into effect from 1 April 2014, IPs being able to offer the NHSPS to eligible staff at the same cost as NHS organisations.

However, Fair Deal alone would be insufficient to encourage the greater staff mobility anticipated within a plural NHS market. For these reasons, the proposed Pension Final Agreement for the NHS (dated 2012) included a commitment and terms of reference for a partnership review of access to the NHSPS for IPs of NHS clinical services.

This Access Review was carried out by the NHS Staff Passport Group (SPG), a sub committee of the NHS Social Partnership Forum as part of the former Chief Secretary to the Treasury's requirement that reviews were carried out after 1 and 5 years post implementation. The SPG comprises representatives from the Department of Health, HM Treasury, NHS and independent sector employers, and the NHS trades unions.

This review included collecting quantitative data from NHS Business Services Authority (NHSBSA) which runs the NHSPS, qualitative data from a survey of IPs and their employees, a focus group, a review of our findings with NHS Partners (a sub committee of the NHS Confederation) and case studies. This report sets out the conclusions and recommendations of the one-year post implementation review.

We have discussed our review with HMT. We both acknowledge that as new models of care emerge, the health sector would continue to evolve which means the environment for developing access regulations is likely to remain challenging. We agreed to meet again after 6 months to review progress with the recommendations, particularly in relation to sub-contracting.

The 5 year post implementation review to be carried out in 2019-20, as set out in the terms of reference, will include:

- effectiveness of regulations;
- impact of access to the NHSPS for IPs on existing NHS access arrangements;
- effectiveness of governance and control mechanisms for IP access to the NHSPS including, where appropriate, the effectiveness of any new control mechanisms;
- instances of disputes/challenges against IP access to the NHSPS and how these were concluded;
- evidence of any additional cost to the taxpayer;
- the extent to which IP access to the NHSPS aligns with the Hutton reforms.

Our main conclusions are that:

- Partners remain committed to the extension of NHSPS access;



- our policy aims for access to the NHSPS for IPs are being delivered as described in the table on page 12. They seem to be supporting delivery of a fair playing field for access to the NHSPS for IP staff who are “wholly or mainly” delivering clinical services to the NHS. However, more needs to be done to collect full data for more meaningful evaluation and encourage increased participation thus helping maintain NHSPS membership levels.
- While improved Access currently only applies where services are supplied under the NHS Standard Contract, a growing number of clinical services are now being provided under other contractual forms including subcontracts. We should, therefore, explore how access to the NHSPS for IPs might be achieved under different contractual arrangements assuming appropriate governance and control mechanisms can be established within scheme regulations.
- There are some practical challenges and difficulties which may be preventing the full realisation of the policy aims such as:
  - a lack of knowledge about and understanding of access arrangements for IPs and what is possible;
  - a lack of local HR, procurement, finance and contracting expertise to ensure that future pension access arrangements for IPs are fully addressed at an appropriate point in the contracting cycle;
  - a resistance by some contracting parties to facilitate access to the NHSPS for IP staff due to cost and/or administration.

Our recommendations are that:

- The policy aims should remain as they are.
- Consideration should be given to how access to the NHSPS for IPs might be achieved under different contractual arrangements e.g. sub contracts assuming appropriate governance and control mechanisms can be established within scheme regulations. This recommendation should be pursued as a priority with partners, IPs and commissioners, with conclusions for potential implementation by April 2017.
- Contracting authorities should be encouraged to follow existing guidance for access to the NHSPS for IPs which might be encouraged through, for example:
  - a communications campaign through existing routes such as NHS procurement networks, NHS England’s commissioners network; NHS Improvement’s provider networks; NHS Employers workforce bulletin etc.;
  - procurement led training and development to ensure pensions issues are dealt with at the correct point in the contracting cycle;
  - ensuring access issues are reflected in other reviews e.g. progress of GP Federations in supporting delivery of *Five Year Forward View* aspirations.
- Access arrangements and guidance should be reviewed to see to what extent they can help reduce some of the administrative challenges faced by IPs to support them in effectively organising and deploying their staff
- A further partnership review should be conducted at the 5 year post implementation point in 2019/20, the terms of reference for which are in the access framework agreement. To inform this review, partners should give early consideration to improving the range and quality of data on the use of access and the impact of the policy within the sector. This should also include ongoing monitoring of the process for application and approval of access status and the information given to staff in employers with access status.



## Introduction

The access provisions agreed by Her Majesty's Treasury (HMT) included the requirement by the former Chief Secretary to the Treasury for a review of IP access to the NHSPS following the first 12 months (April 2014 – March 2015) of these new provisions being in place.

The SPG which has overseen the review agreed that the Department of Health would submit a report to HMT by 31 December 2015.

As far as has been possible at this early stage of implementing access to NHSPS for IPs, the Review provides stakeholders with:

- An executive summary including conclusions and recommendations for how the new arrangements could evolve to better meet policy objectives
- an evaluation of access to NHSPS for IPs including:
  - key findings from quantitative and qualitative data collected for the review;
  - measure of review outcomes against policy aims.
- Case Studies

The review has involved:

- Trade Unions
- NHS Employers
- Independent sector employers
- HMT
- Department of Health
- NHSBSA
- SPG
- NHS Pension Scheme Advisory Board



## An evaluation of access to NHSPs for IPs

### Key Findings

Quantitative data provided by NHSBSA as at 14 October 2015:

<b>Quantitative Data from NHS Business Services Authority (NHS BSA) as at 14 October 2015</b>	
Number of IPs with access	61
Type of access:	
Open (access available to all eligible staff)	51
Closed (access available to transferred staff or those who had access in previous 12 months)	10
Number of applications so far	103
Number of rejected applications	5
Number who have withdrawn	7
Timescales for processing (actual)	
- Quickest application processed	Within 13 days
- Longest	Ongoing since July due to inadequate evidence
- Average length of time to process an application	5 weeks
% successful applications	83.56%
% unsuccessful applications	6.85%
% withdrawn applications	9.59%
BSA resources committed to this work	2 WTE staff (Administrative and Finance)

Qualitative data from IPs and some of their staff in respect of their experience of getting access to the NHSPs including a survey, 1 focus group and a meeting with NHS Partners (part of the NHS Confederation which includes IPs working with the NHS).

#### Survey Results and analysis

**Number of IPs with access who responded: 12 out of 30**

**1. Where did you find out about the Access provisions?**

NHS Pensions Agency: 6;

Other: 6 (e-mail; social enterprise; directors/director of HR; HSJ; employees).

**Conclusion:** IPs were able to find the access provision information from the NHS Pensions Agency as well as other sources.

**2. Were the communications about the new access provisions to the NHSPs easy to find?**

**Yes: 11** (1 comment: Once they were known about);

**No: 1** (1 comment: No we had to source them ourselves).

**Conclusion:** the majority of IPs found the access provision info they needed easily.

**3. Were the communications about the new access provisions to the NHSPs useful?**

**Yes: 10;**

**No: 2** (2 comments: The information did not cover all our questions and despite sending a number of emails to the appropriate address we still have not had replies to our queries and to date, are not sure that we have processed our applications correctly; very complicated).



**Conclusion:** While the majority found the access provision info useful, because it's "generic", it may be less useful for some depending on local circumstances.

**4. Did you find the overall application process for new access provisions to the NHSPS easy to follow?**

**Yes: 8** (3 comments: However the spread sheets for completion did not always work correctly- formula's not picking up correctly; yes although I did have to phone the helpline for assistance a couple of times; much easier than we expected).

**No: 4** (4 comments: In particular in that we have not been able to get answers to specific queries about our whole set of contracts; the form is complicated especially when trying to determine the proportion of contract value in relation to qualifying staff (excluding those covered by direction etc.) and as an organisation that has several different contracts, completing a new application for each one is time consuming; again very complicated and unclear; the calculation of what part of contract is related to closed pension salaries is difficult to understand; our contract isn't set out in such a way; I'm never sure I fill this in correctly).

**Conclusion:** while the majority found the application process easy to follow, some found the technical requirements difficult and complicated which may link to whatever the local circumstances were.

**5. Before you got access to NHSPS, did your staff have access to other pensions arrangements?**

**Yes: 10** (6 comments: NHS Pension - staff TUPE'd over to new IP organisation; NHS Pension under direction status for TUPE'd staff and a private pension for new employees; A GPP and some were covered by NHS Pension Directions or LGPS Admission Agreement; 3 through an APMS contract and the others were TUPE'd from a hospital; we operated a matched cash based scheme and we have a number of TUPE'd staff on an NHS equivocal GAD certificated scheme; the staff were working for other NHS bodies so wanted to continue working for a body that provided the NHS pension scheme).

**No: 1;**

**No answer: 1.**

**Conclusion:** the majority of staff involved in these access arrangements had access to the NHSPS beforehand or other pension arrangements.

**6. Has staff recruitment/retention improved since you got access to the NHSPS?**

**Yes: 3** (1 comment: Anecdotaly);

**No: 2** (We still have contracts that under direction status and in those areas recruitment remains difficult)

**Don't know: 7** (2 comments: not applicable as closed status; it is too early to comment on retention)

**Conclusion:** Recruitment and retention may not be a key focus for IPs or it may simply be too early to say in most cases.

**7. Did you discuss access to the NHS pension scheme with staff as part of your decision to apply for access?**

**Yes: 8** (4 comments: however it was only a small amount of staff employed at the time; and with unions; our staff are involved in all aspects of our business development; discussed this with prospective staff at interview who said they would only take the job offer if there was an NHS pension scheme in place).

**No: 4** (2 comments: staff were already on it or those that had joined on the private pension had already highlighted they wished to be on the NHS scheme; part of TUPE arrangements).



**Conclusion:** most did discuss with their staff as a “matter of course”, perhaps as part of their staff engagement arrangements; some didn’t as they concluded that for affected staff, there was going to be no change to their pension arrangements.

**8. Do you think the current application process for access to NHSPS could be improved?**

**Yes: 7** (5 comments: the reason for the <sup>1</sup>70% salary restriction is explained and continues to put in place a barrier for small providers of specialist medical intervention services who may not have building and infrastructure costs to easily make up the required <sup>2</sup>20%; easier form; current NHS providers should be informed and not need to search; as we are a social enterprise, access for those who have been previous NHS employees but who have a break in service would help our recruitment; there was a time delay between application and receiving acknowledgement - but this may be for many reasons so could be unavoidable).

**No: 5.**

**Conclusion:** there is scope to improve the application process in respect of: availability of information to help with the application process; access for those who have had a break in service; reducing avoidable time lags.

**9. Are the “wholly” or “mainly” provisions being applied in your organisation?**

**Yes: 11** (3 comments: those are easy to manage; why wouldn't they? They are part of the rules. Or perhaps the question is not clearly worded; due to TUPE).

**No: 0;**

**No answer: 1** (1 comment: I not sure I know what this questions means - but I do not think so).

**Conclusion:** the vast majority are applying the “wholly or mainly” test as it is a required part of TUPE .

**10. Have any staff lost access to the NHSPS as a result of the “wholly” or “mainly” test?**

**Yes: 2;**

**No: 9** (1 comment: but it has restricted us moving staff amongst our contracts as some remain on direction status<sup>3</sup>);

**No answer: 1** (1 comment: Not sure).

**11. Have any of your staff opted out of the NHSPS?**

**Yes: 9** (2 comments: Very small numbers; a few new starters who did not wish to be auto enrolled);

**No: 2;**

**No answer: 1.**

**Conclusion:** the majority of IPs with access have staff who have opted out of the NHSPS

**12. Are there any other comments you want to make?**

**Yes: 2** (2 comments: It is divisive and unfair and would seem to be against policy aims that the following staff do not get access to the scheme: - Those who provide NHS services under a sub contract with another trust - those working under personal dental services contracts; would be good to have access to paying over pensions the same way as GP practices do, via a GP1 on the website. It is cumbersome at the moment).

**No: 9;**

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<sup>1</sup> There is a maximum amount of total NHS pensionable income that can be declared by an IP in a specific pension year. This is known as the pensionable pay ceiling or threshold. An IP must estimate its pensionable pay bill prior to the start of the pension year. The pensionable pay ceiling is 75% (not 70% as stated above) of the total value of the contract(s).

<sup>2</sup> This relates to footnote 1 and should read 25%.

<sup>3</sup> This relates to New Fair Deal not access



**No answer: 1.**

**Conclusion:** while the majority have no further comments to make which suggests the survey has covered most issues, one has said it is divisive because access is denied under sub contracts and another that the transfer of contributions to the NHS Pensions Agency is too complex.

**Employees who work for IPs with access to NHSPS (Number of respondents: 31).**

- 1. Were you compulsorily transferred under TUPE from your previous NHS employer to your current employer?** [NB If your answer to the above question is “yes”, there is no need to answer the following questions as New Fair Deal has in effect added pension scheme membership to TUPE transfers from the NHS].

**Yes: 16;**

**No: 14;**

**No answer: 1.**

**Conclusion:** Care is needed in summarising the outcome from this survey as all respondents answered all the questions not just the 14 who should have done. 16 didn't need to given NFD arrangements for access to NHSPS.

- 2. Were you previously in the NHSPS?**

**Yes: 23** (1 comment: But many years ago now);

**No: 8.**

**Conclusion:** The majority of responding staff were in NHSPS previously.

- 3. Was retaining or joining the NHSPS an important factor in deciding to work/stay with your current employer?**

**Yes: 19;**

**No: 12** (1 comment: But was an important addition).

**Conclusion:** It's likely that, for most, the NHSPS would be part of their decision to stay with the IP following transfer.

- 4. Did you receive adequate information about your options before you decided to join the NHSPS?**

**Yes: 28;**

**No: 2;**

**No answer: 1** (1 comment: already in NHSPS from start of employment).

**Conclusion:** the majority received adequate information about their options before joining the NHSPS.

- 5. Was the process for you to access the NHSPS easy to complete?**

**Yes: 29** (2 comments: Employer made it easy; I didn't have to do anything, my employer did it all.);

**No: 2.**

**Conclusion:** the process for the majority of employees was easy to complete.

- 6. Did you transfer any other pension benefits you may have had into the NHSPS?**

**Yes: 8** (1 comment: from private pension (Filtrona));

**No: 23** (3 comments: not yet; not sure how it worked - not received any information since I transferred; would have welcomed further advice with regards this).

**Conclusion:** most staff didn't transfer other pension benefits into the NHSPS



### 7. Were you happy at the speed with which you got access to the NHSPS?

**Yes: 28** (1 comment: Although it took quite some time to give me a reference number which was slightly worrying and meant you returned my death in benefits form to me because it said I wasn't a member due to this).

**No: 3.**

**Conclusion:** the majority of respondents were happy with the speed with which they got access to the NHSPS but there inevitably are likely to be challenges in specific cases.

## Key Findings from the Focus Group

### Contracts

- Access to the NHSPS for IPs needs to reflect different types of contract going forward.
- IPs should be able to access the NHSPS under subcontracting arrangements.
- Clarity is needed on how NHSPS access is affected by contract extensions.
- The policy needs to develop to accommodate provider alliances in NHS PS access arrangements for IPs.
- Consideration needs to be given to NHSPS access for IPs as services become more integrated. For example, one of the IPs provides services to prisoners, this service is evolving to cover not just healthcare in prisons but social care once prisoners are released; another example was care after discharge from hospital – blurring the boundaries between health and care provision. Clinical services (although not defined in law) are covered by access but care provision is not. Access to the NHSPS for IPs providing community services also needs consideration.
- Current rules around NHSPS access may hinder the most effective organisation of staff eg administrative staff allocated to work across a range of contracts supporting various services may not get access to the NHSPS because it could not be shown they are necessarily “wholly” or “mainly” supporting the delivery of clinical services.
- There was some concern about what happens to contracts once sent to NHSBSA who ask to see them (as part of their governance processes for enabling access) given the confidential nature of the contents and because they could be subject to the Freedom of Information Act (FoIA). NHSBSA file these contracts in accordance with the Data Protection Act storing them electronically on a secure drive. Some contracts predating NHSBSA’s move to electronic storage are still on paper files. In response to FoIA concerns, NHSBSA will create a declaration form and process to return the contracts for future applications.

### Administration

- The application process should be made easier, for example, reducing duplication when more than one contract is involved. NHSBSA are looking at changing the application form to ask the right questions to identify the type of applicant, IP, APMS etc.
- There should be clearer instructions to support completion of the Compliance Assurance Statement (NHSBSA acknowledged that, and indicated the problem had been addressed).
- There was a suggestion that IPs should be granted access to NHSPS for all their staff given the difficulty/administration in assessing who was in, who not creating major administrative challenges in ensuring the right staff had the right pension contributions deducted.
- Timescales for getting access to the NHSPS was variable and IPs were unclear about how long the process should take.
- Timescales are often lengthened due to local issues e.g. lack of understanding/expertise in managing the process; difficulty getting staff details from former providers of services who have lost the contract etc. The process was managed in different ways – some internally, some using external expertise.



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- Some organisations have problems identifying numbers of staff eligible for IP access and/or NFD. As part of the application process for IP status each applicant is asked to provide an estimate regarding the relevant number of staff and estimated amount of pensionable pay because of the 75% pensionable pay threshold of the total contract value. The information supplied indicates whether the threshold is likely to be breached.
- The end of year certificate provides confirmation as to whether the 75% threshold was exceeded in the scheme year. If this is the case, the IP will be required to pay a surcharge, 12% of pensionable pay in excess of the threshold.

### Commissioners

- There is a need for improved understanding by commissioners, that the situation facing IPs is different to that facing NHS Foundation Trusts/NHS Trusts and whether more needs to be done to put IPs on a “fairer playing field” alongside trusts/FTs e.g. IPs getting the same EA status as FTs/Trusts
- Future Commissioning arrangements – the need to ensure NHSPS access arrangements for IPs are reflected in future commissioning discussions for e.g. provider alliances, different forms of contracting, new models of care, integration of health and care.

### Communication

- Communication issues including commissioners not confirming a contract is in place and contracts not being signed on time which prevents access for eligible IP staff to NHSPS.
- The need for staff to have access to better advice and guidance so they know what options they have.
- There needs to be improved dialogue with staff on terms and conditions.

### Other

- The cost of accessing the NHSPS for IPs may be an issue for some.
- Access to the NHSPS for dental staff needs to be considered as new forms of contracting evolve.
- IPs emphasise the importance of access to the NHSPS as important for recruitment and retention of staff.
- Not having access may stop some staff taking promotions and developing their careers if access to the NHSPS is a key issue for them irrespective of better pay.
- The next review needs to be more bespoke and include discussion with NHS England to ensure IP access is reflected in their future development of the NHS Standard contract.

### Key Findings from NHS Partners

- Getting access was straightforward once they were through the administrative burden, some of which was considered to be of little use/value and often poorly done.
- Access to the NHSPS is crucial to recruiting and retaining clinical staff e.g. young doctors with young families.
- Access to the NHSPS is not such an issue for some e.g. retired NHS Clinicians looking for a new challenge post retirement.
- Working with the NHS is challenging and slower than some wanted.
- The use of electronically signed contracts would be really helpful and stop delays.
- IPs say they are not in competition with the NHS and accept they offer a different package.
- They want to work in partnership with the NHS to complement what trusts provide e.g. efficient delivery of diagnostic services etc.



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- Communications can be poor between different parties including duplication of effort.
- Professional support is fine.
- There were concerns about governance, particularly issues around difficulties with payroll – who is in scheme, who is not.
- Some are looking at "reward" as an option including use of flexible benefits but there are issues with who to give that option to e.g. just clinicians. Very few clinicians use flexible benefits options e.g. buying/selling leave etc. This approach is unlikely to replace the benefit of access to the NHSPS.
- IPs put a lot of emphasis on staff engagement, partnership working and collaboration to offset that they are not offering the same pay/benefits package as the NHS. Staff TUPE'd across often feel that the transfer has been "done to them" and they had no choice. This is made worse if they have to wait for the contract being in place before getting access to the NHSPS.
- Some wanted better support from NHS BSA e.g. a named contact to help getting access arrangements in place.
- Simplifying the whole process is very important.
- They find the advice available from NHS Employers helpful.

### Measure of review outcomes against policy aims

<b>Policy Aim</b>	<b>Comment</b>
Support delivery of a fair playing field in pension access between different providers of NHS services by increasing access to the NHSPS among staff delivering NHS services in IPs.	While the new provisions have enabled IPs to gain access for their staff to the NHSPS for those wholly or mainly involved in the delivery of clinical services under NHS standard contracts (or APMS, or local authority public health contracts), it is too early to say whether they are delivering a truly "fair playing field". It is unclear, for example, the extent to which IPs have staff wholly or mainly providing NHS clinical work who don't have access to the NHSPS when they could have.
Avoid a "flight to the bottom" in pensions in the NHS by maintaining NHSPS access as an established part of the reward package for most staff delivering NHS services (i.e. those meeting the 'wholly or mainly' test).	Our review suggests that, increasingly, access to the NHSPS is part of the reward package for most staff delivering NHS services in IPs.
To ensure the continued viability of the NHSPS by encouraging increased participation by IPs, thus maintaining scheme membership levels.	The survey suggests that more needs to be done to increase the profile and understanding of access arrangements so more IPs seek access.
To deliver continued access to the NHSPS for staff delivering NHS clinical services, enabling portability of pension provision on movement of staff through different providers of NHS clinical services.	We have not got a detailed breakdown of the types of staff who have access to the NHSPS following voluntary transfer to an IP so we do not know the extent to which this policy aim is being fulfilled.
Support and build on the HMT led New Fair Deal policy for providers of NHS clinical services.	The access to the NHSPS for eligible staff in IPs appears to support and build on NFD for providers of clinical services.



## Case Studies

### **Medway Community Healthcare Case Study about NHSPS Access for Independent Providers** **Our organisation**

Medway Community Healthcare Community Interest Company (MCH) is a social enterprise with a turnover of £57m, 1,400 staff, 50% of whom are qualified healthcare professionals; nurses, health visitors, therapists, consultants and GPs. We provide 46 NHS services in and around Medway; serving a population of some 280,000 people.

Our services ranging from community nursing and health visiting, to occupational therapists and specialist cardiology, stroke and respiratory teams who provide some 850,800 appointments every year, in local settings such as healthy living centres, inpatient units and people's homes.

#### **Why we decided to apply for NHSPS access**

When we became a social enterprise, NHS pensions were not available for any new staff although staff who transferred to us under TUPE retained access to the scheme. This caused real concern for the organisation, unions and staff at a time of significant change in the NHS.

Due to our requirement for high numbers of autonomous clinical specialists, who needed NHS experience, we were concerned about our ability to recruit high calibre staff without access to the NHS pension scheme. The impact on recruitment and retention was one of our top three business risks for a considerable period.

We were also concerned about the potential costs and complexity of setting up and maintaining a group personal pension (GPP) scheme as an alternative to the NHS pension scheme for our new staff.

In reality, the impact on our ability to recruit has been variable, and many applicants were, and still are, attracted by the opportunity of working in a new kind of NHS provider and being a co-owner of our organisation with our strong emphasis on staff involvement and engagement. We were able to sell positively the benefits, and lower costs to staff, of the GPP we had put in place. However, there have been pockets of staff groups where both recruitment and retention have been extremely difficult and we had direct evidence that this was due to our inability to offer the NHS pension. These pockets included experienced health visitors, specialist nurses and therapists.

Our staff have consistently asked us if and when we would have access to the NHS pension scheme and, in partnership with our staffside, we made representations about this to the Department of Health through the Fair Playing Field Review.

Given this context, naturally we responded very positively to the consultation on giving independent providers access to the NHS pension scheme and were keen to know the detail on how this might work and how to make an application.

Once the detailed documents were released, we quickly undertook a cost-benefit analysis to enable our Board to make a decision about whether to apply for access and whether we should apply for closed or open access.

Although our analysis was that our area of risk was access to the scheme for our **clinically qualified staff**, the access scheme does not allow employers to differentiate between staff groups. Open access gives access to all eligible staff and closed access to those who have transferred or had access



to the scheme in the previous 12 months. This meant that at the time we felt our only option was to apply for open access.

### How we found the application and transition process

We have found the application process and rules to be complex. Access is not given automatically to independent providers, as the NHS pension scheme is for NHS Trusts. The rules around access are complicated and successfully evidencing them is a significant task for providers who have many different types of contract for provision. The key rules are around which provision contracts are **eligible** and the proportion of time a member of staff works on eligible contracts.

A contract for provision is only allowable if it is a signed standard NHS contract. At MCH, all of our contracts were properly documented. However we understand that other providers have not been allowed access for staff who work in a service which is commissioned but where the contract has been formalised by way of an extension letter to a previous contract rather than a full contract.

Certain contracts are ineligible for NHSPS access; sub contracts with NHS trusts do not give you access and neither do PDS contracts. This continues to cause us problems as our therapists who undertake work at our local acute hospital through a sub contract cannot have access to the scheme and neither can any of our dental staff.

Due to certain contracts being ineligible we needed our workforce information systems to be able to identify which staff were eligible for access and which weren't but ESR (Electronic Staff Record) is not set up in such a way that enables capture of this information. Therefore, we have had to develop new systems and processes very quickly to determine which staff fall within this category and which do not, both for current staff and new staff, ensuring that we market the pensions proposition accurately to potential staff.

Due to the complexity and data issues we had to make a number of revised applications to the NHSBSA. These errors also meant that we needed to delay the date we wanted access to the scheme. Once we had got through the application process we then had a lot of planning and work to do to transition our current staff into the NHS pension scheme.

Although our staff had gone through a process of pensions auto-enrolment from November 2013, the rules of access to the scheme meant that we were required to give every member of eligible staff access to the NHS pension scheme from the date it opened up to us again. The requirement was that each member of eligible staff automatically moved into the scheme unless they explicitly opted out.

This involved a lot of planning and comprehensive communications to staff to ensure that they knew that **no action** on their part would mean they moved into the NHS pension scheme. Whilst this would be a positive move for most staff, we knew that there were staff who would not be able to afford membership of the NHS pension scheme.

We decided to ensure that our communications made clear that staff had a **choice** and needed to assess for themselves what they wanted and could afford and we gave them comprehensive information about the two schemes we were running.

In addition to this, because of the way ESR is set up we incurred additional payroll costs because of manual work which needed to be undertaken by our payroll provider.

We didn't get our communications and systems completely right and certainly for the first few months we had staff who were unaware that they had moved into the NHS pension scheme and



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some who, once in it for a couple of months, decided they couldn't afford it. This resulted in staff moving out of the GPP into the NHSPS and then back out again into the GPP.

A few months on and we have sorted out the issues with transition and we are beginning to see a positive impact on our ability to recruit clinically experienced staff although we remain concerned about staff who are providing services to NHS patients but are not allowed access to the scheme.

### **Lessons Learned**

There are a few lessons we have learned from the process:-

- Ensure that you understand the scheme rules thoroughly and how these apply to your workforce
- Undertake a thorough cost-benefit analysis to help you determine whether access to the scheme is right for you and which type of access. Include additional payroll service costs and opportunity costs of the HR function
- Think about how your systems and processes will cope with the change and put these in place
- Get your paperwork sorted out in advance – e.g. contracts signed
- Communicate with staff thoroughly and repeatedly to reinforce the message
- Lastly, ensure you plan for the workload involved in making the application and the transition for staff



### **Social Adventures**

#### **How the organisation came to the decision to apply for access to the Scheme as an Independent Provider**

Social Adventures 'spun out' of the NHS with a five year contract in April 2011 with the TUPE'd employees having immediate access to the scheme under an existing direction. A Board decision was taken in 2014 to seek to gain independent provider status for the following reasons:

- to provide parity to those employees who joined the organisation post 'spin out' and were working on NHS Contracts
- to attract new talent with the appropriate skills and experience.

#### **How you found the process.**

The process was straightforward.

#### **What Scheme administration you have done so far.**

As a 'spin out' we still have access to NHS services including NHS Northumbria payroll who have, as you would imagine, been excellent in administering the scheme.

#### **Issues with Independent Provider status.**

The following issues we would request feedback on, as this has detracted from uptake of the scheme:

- Inability to enrol employees that are working on NHS contracts that are subcontracted. This has not enabled us to achieve the desired parity through the NHS and has resulted in us having to open a second pension scheme for those employees.
- Our current contract is with the CCG, but may at the end of this financial year be transferred to the local authority. This has resulted in limited take up until the certainty around the contract is resolved.
- Long- term security of access to the NHS pension scheme, as a result of service redesign by commissioners often with a reduced budget envelope and award length of contracts diminishing, social enterprises are having to be more innovative than ever and diversify the services they provide. This has increasingly resulted in multi-faceted roles that require work on NHS and non NHS contracts to ensure roles are financially viable. For example, employee X used to work 100% of his time on the contract until service redesign, he now only works 50% due to the reduced contract size, it is likely in the future that this will reduce further. Employee X is unsure whether accessing the NHS or an alternative pension scheme is the best option.
- We know from SEUK which works with many social enterprises that have spun-out of the NHS that these are three key areas of challenge. As commissioning of health and social care becomes increasingly cross-agency and integrated, areas like access to the NHS Pension Scheme are going to have to evolve and adapt to keep pace.



### Lakeside+

- The company previously had NHS pension employer status when it had an APMS contract for an 8 to 8 walk in centre.
- When this contract finished, the company won a new one from Corby CCG to run the new Corby Urgent Care Centre.
- This contract did not allow for employer pension status and so the company was given a closed direction for the existing staff who transferred to work under the new contract.
- Not being able to offer the NHS pension to new staff joining the company had an effect on recruitment and so negotiations started with NHS pensions to see what could be done.
- As soon as the possibility of becoming an IP was made available we completed the application and sent it in.
- The process to join was quite simple and we heard back relatively quickly that we had been granted IP status.
- We commenced with this from 1 June 2014.
- This has most certainly made a difference to existing staff that had not had membership since they joined the company but also recruitment since.
- There do seem to be extra forms and annual returns required with IP status - some being understandable and quite easy/quick to complete but others seeming like a duplication of pensions online submissions.
- For example, the annual declaration where every staff member has to be listed - this information is all on pensions online, so seems like a laborious task for little gain to anyone.
- We would recommend obtaining IP status if that suits a suitable organisation, especially if you want to be able to attract good quality NHS staff to work in your business.



### **Provide Community Interest Company**

Provide Community Interest Company (Provide) is a social enterprise with a turnover of approximately £57m and has 1,250 staff, including allied healthcare professionals; nurses, consultants and GPs. The organisation was formed in 2011 and around 1100 staff from the provider arm of an NHS Primary Care Trust transferred into it.

### **Drivers for our decision to apply for IP NHSPS access**

Provide was initially unable to offer NHSPS membership to new employees, although staff who had transferred from the predecessor Primary Care Trust retained access to the NHSPS under a closed Direction. Provide established a Group Personal Pension for new employees. This created an inequality in the benefits staff received and staff working alongside each other in the same teams and the same roles had different benefits.

Provide have a strong growth strategy and recruitment and retention was a key consideration. Provide run a number of highly specialised community services, which require clinical staff with extensive experience in addition to qualifications, to operate effectively. To attract and retain these people it is imperative to be able to offer the NHSPS as many potential applicants have long NHS service and are unlikely to give up their NHSPS membership to join us.

### **The Application Process**

We have found the application process and rules to be complex.

Provide has several different contracts and at the point of our IP application we were unable to evidence signed contractual documents for all of them. In some cases we were able to forward letters from our commissioners confirming we were providing the services, but these were not sufficient for access to be granted.

This resulted in us being approved as an IP for some contracts, but not others that we considered to be eligible contracts and therefore undermined one of our key objectives to deliver equity in respect of benefits. It has also acted as an inhibitor to career progression in some instances, as NHSPS members are reluctant to move to posts where the NHSPS is not offered. This may also impact on innovation, as it limits exposure to different services, teams, experiences and ways of working.

The calculations required to complete the application form are also quite onerous when there are large numbers of staff involved in delivering a contract and we have found it difficult to separate the staff who are eligible members of the NHSPS under a Direction, in order to calculate the proportion of the total contract value that is relevant for IP access.

### **Eligibility for NHSPS access under IP regulations**

The requirement for staff to spend at least 50% of their time working on NHS Standard contracts is complicated to monitor, especially set against the other complexities of eligibility.

Sub contracts are ineligible under the IP regulations. One of our Community Hospitals is run by the local acute hospital under an NHS Standard Contract. Some services delivered in this hospital are commissioned from us directly through an NHS Standard Contract for community services, but others are delivered under a sub-contract to the hospital. This also causes inequity and the future Lead Provider contracting model will continue to cause these challenges for us if we are not the Lead.



## Department of Health

Dental Service contracts are also ineligible for NHSPS access. In our Dental Service we have staff who are covered by a Direction working alongside staff who cannot access the NHSPS.

Auto-enrolment is complicated as there are multiple assessments we have to make to ensure people are enrolled into the correct Scheme.

### **Summary**

Provide support the widening of access to the NHSPS to non NHS employers providing NHS services and appreciate the changes to access regulations that have been agreed to date. We would however like there to be consideration given to simplifying the application process for IP access and developing criteria under which those working on sub contracts and Dental Services contracts could access the NHSPS.