

## **Information for GPs about the decision by the Secretary of State for Health to cap pension dynamising factors**

January 2007

Most GPs will now be aware that the Secretary of State has announced her intention to limit the dynamising factor (DF), used to uprate GPs' pensionable earnings for the period 2003-2006. She has declared that the figure will be set at 48% and, additionally, that this increase will be spread over a five-year period (2003-2008) instead of the 3 years (2003-2006) that GPs have earned the income and paid the equivalent contributions for their pensions..

Her proposed increases are as follows:

Year (April to April)	DF	Compound DF
2003/04	12.9%	12.9%
2004/05	6.9%	20.7%
2005/06	7.3%	29.5%
2006/07	6.9%	38.4%
2007/08	6.9%	48.0%

Scotland and Northern Ireland have separate pension schemes and GPC is clarifying the position there but it is likely those governments will follow the lead of the Secretary of State in England.

The BMA has understandably received a large volume of queries from concerned members, on both technical and more general points. Answers to some of the more common queries are listed below.

### **Q: What is the BMA's position on this decision?**

A: The BMA understands the depth of frustration and anger felt doctors and, as previously reported, will seek to challenge this decision using every legal, economic and political means at our disposal. The BMA has responded formally to the government stating that failure to honour full dynamisation, using the original agreed method, is a very serious matter and is seen by the GPC as a breach of the original contract agreement by the government. The application, retrospectively, of a cap and phasing is unfair, particularly to those who have already made a decision about their retirement. The BMA is currently in the process of seeking detailed legal advice on our wish to pursue Judicial Review.

### **Q: What exactly is the dynamisation factor?**

A: General Practitioners' pensions are calculated by recording the pensionable earnings that are received throughout the whole of their NHS career as a doctor and uprating (dynamising) these recorded earnings annually by a factor in order to maintain their value. The calculation of the dynamising factor should ensure that the pension scheme for GPs is based on the earnings related to its members. It was agreed, under the current contract, that the dynamising factors would be based on the change in actual pensionable profit year on year.

Further information on how the dynamisation factor is calculated and applied can be found in the GPC guidance note 'focus on the dynamisation factor' available here: [www.bma.org.uk/ap.nsf/Content/focusdynamfactor0305](http://www.bma.org.uk/ap.nsf/Content/focusdynamfactor0305)

Appendix 1 of this document details the original agreement of how the dynamising factor would be calculated as set out in the "*New GMS contract 2003: Investing in General Practice*" (the blue book)

### **Q: I have already retired. Will the government seek to claw back any of the pension that I am currently receiving?**

A: No. The figures shown in the table above indicate that for GPs who retired on or after 2 April 2003 their pensions will be recalculated and increased by the final dynamising factor for 2003/04 (if not already included) and the proposed figures for 2004/05 and 2005/06, if applicable. As the proposed figures are equal to or in excess of the interim dynamising figures, no pensions or lump sums that have already been determined, will be reduced.

**Q: I retired after 2003/04 but so far have only received the interim increase of 7.2%. Will I still get the extra 5.7% so that I receive the full factor of 12.9% for this year?**

A: Yes. The NHS Pensions Agency is currently working through this backlog and backdated increases will be paid when that process is complete. We are trying to establish from them what the timescale is for completing these. If this process of revaluation is delayed it is expected that interest will be paid to those doctors affected.

**Q: I expected to receive the full dynamising factor increases under the new contract by working up to March 2006. Am I going to lose out?**

A: Under the government's proposals it is GPs who have already retired, or drawn their pension, or are in the process of doing so that have the most to lose. Not only will GPs not get the DFs paid in the years appropriate to the earnings that produced those DFs but the overall, cumulative DF is also limited to 48%. The BMA does not agree that the calculation of the proposed 48% limit represents the expected increases in GP profits and feels that this amount could be substantially higher, particularly in the earlier years.

**Q: I haven't retired yet and won't be doing so until after 2007/08, what are the implications for me?**

A: The implications for GPs in this situation are that they will receive a 48% increase for the period 2003-2008 but that this increase might have been higher had the government not capped it. Additionally, as the dynamising factor is applied to annual earnings and is a cumulative factor, all GPs will be affected to a greater or lesser extent. This is obviously a very complex calculation process and will be different for every doctor.

**Q: How do I know if I will be affected and by how much?**

A: It is not possible to do any precise calculations until we know what the 2004-05 dynamising factor should have been, nor is it possible to do the final calculations, as calculated under the original arrangements in place, until the final dynamising figures up to 2007-08 are calculated. We hope that the 2004-05 figure will be available in early 2007, provided that accurate data from HM Revenue and Customs (HMRC) is available by that date. Until we know what this figure is, we cannot say what GPs will have 'lost' in terms of the difference between what the dynamising factor is and the one that the governments intends to impose.

**Q: As the government has now decided on capped figures, how will we know what these dynamising factors should have been?**

A: The calculation is done annually by the Technical Steering Committee (TSC) which is a joint committee with representatives from the GPC, the four Departments of Health and NHS Employers. It makes calculations assessed retrospectively and based on actual profits made by GPs from the total funding available to them via the different funding streams of the contract. Because this method is necessarily retrospective, it causes a delay to the process while actual data are prepared, made available and then analysed. We will seek to ensure that the TSC continues to undertake this work so that the final figures will be made available.

**Q: What is the worst case scenario for GPs?**

A: The worst case scenario is that the government cannot be persuaded to change this decision and the dynamising factors are implemented as outlined above.

**Q: Can I take legal action myself against the government for loss of pension earnings?**

A: The BMA has received offers from GPs who have already drawn their pensions, to act as test cases for individual legal actions to claim against loss of pension earnings. The BMA considers this as one potential option but is awaiting further, detailed legal advice before proceeding with this. However, it is unlikely that this action could be taken until the extent of the loss of earnings under the agreed original arrangements is known – i.e. once the final pension dynamisation factors have been calculated – and the result of any national legal action has been determined. The BMA would then be able to consider supporting a possible test case or, potentially, some kind of class action. If you believe you would be significantly affected by the government's imposed dynamisation factor, the GPC would be interested to receive your contact details to allow us to contact you if we decide to support a test case on an individual level.

**Q: I have read that, according to the NHS pension scheme regulations, the Secretary of State can impose a DF. Is this true and, if so, why wasn't this apparent get out clause addressed in the contract?**

A: That particular regulation has been part of the scheme since 1995 and prior to this a very similar clause existed. The GPC did seek to change or, preferably, remove this clause altogether at the time of the new GMS contract negotiations but were not successful in doing so. However, the GPC believes that the process of

determining how dynamising would work, as part of the contract negotiations, satisfied the requirements of the regulation and this is part of our considerations for discussion with the lawyers. The Regulation allows the way that pensionable earnings are revalued to be changed and whilst we consider that it may, in exceptional circumstances, be appropriate to do this prospectively, we do not consider it can or should be used to do so retrospectively.

**Q: Hasn't the BMA already agreed to major changes in the NHS Pension Scheme?**

A: The review of the NHS pension schemes is underway in all three schemes (Scotland; Northern Ireland; England and Wales). The BMA has responded to the consultation, the outcome of which is expected to be published in early 2007. Whilst this may result in some changes to the NHS pension scheme in future, this is a separate issue to the current action that the government has taken of imposing a cap on dynamisation.

**Q: Isn't an increase of 48% over five years quite generous given the problems many other occupations have with their pensions?**

A: It might seem so but it isn't acceptable as it is a breach of the original agreement that the dynamising factor would be based on year-on-year percentage changes in all pensionable earnings from NHS work. Additionally the government were well aware during initial negotiations that, over time, the total percentage increase in pensions was likely to exceed the percentage increase in net income so the level of change was not unexpected. Furthermore, many GPs voted for the implementation of the new contract based on the strength of the improved system for calculating pensions and the benefits that would result. Making a retrospective change to a negotiated agreement is wholly unacceptable.

**Q: What else is the BMA doing about this issue?**

A: The GPC continues to maintain dialogue with the government and, as stated, has made it clear that we do not accept this decision. The GPC has decided that, at this stage, it would not be in the best interests of any intended legal action to take any direct action against the Secretary of State's imposition of the dynamising factor by, for example, withdrawing from any enhanced services. This does not mean that the door has been closed to consideration of any further action in the future. The BMA is also adopting a joint approach to work with other health unions to emphasise that we consider that the government has made a retrospective change and breached a negotiated agreement.

## Appendix 1

Extract from “New GMS Contract 2003: Investing in General Practice (the blue book)”. This was joint publication by the BMA and the NHS Confederation, which negotiated on behalf of the government.

- 5.50 As a result of the increased investment guaranteed under the new contract, average practice income will rise. It is not possible to state how much that rise is likely to be, given that the future ratio of profit to expenses is unknown and the concept of IANI will disappear. The pensions changes that will be made will mean that, over time, the total percentage increase in pensions should exceed the percentage increase in net income, because of the change in the definition of pensionable earnings. The additional spend on pensions is in addition to the Gross Investment Guarantee

### Definition of pensionable pay

- 5.51 If the profession accepts the new contract, the definition of pensionable pay will be broadened. Under the new GMS contract, it will include net profits derived from the payments made to GPs in the respect of NHS work in the following circumstances:
- (i) delivering services as a GMS or PMS provider, excluding work delegated to others
  - (ii) delivering services under delegation directly from GMS or PMS providers, including locum work
  - (iii) board, advisory or other work including delivering services carried out under employment with PCOs or other NHS bodies
  - (iv) work carried out as NHS services under the collaborative arrangements with Local Authorities
  - (v) practice-based work carried out in educating or in organising the education of medical students, undergraduate, vocational and postgraduate training funded through national levies or otherwise
  - (vi) certification under the requirements of Schedule 9 of the NHS (General Medical Services) Regulation 1992 as amended and the Scotland and Northern Ireland equivalents.

This definition will be kept under review. This will ensure that it can be expanded to cater for unforeseen future developments.

- 5.52 The change will provide new incentives for GPs to engage in delivering a wider range of NHS services. It will also enable certain GP co-operatives to become NHS bodies for the purposes of pensions regulations. NHS work undertaken by GPs for commercial organisations will not be pensionable, in line with wider Government policy.
- 5.53 In response to concerns raised by the GPC, regulations will also shortly be laid to enable GP locum earnings to become pensionable retrospectively back to 2002/03.

### Calculating superannuate profits

- 5.54 GPs will make monthly payments on account to the Pensions Agency for their employer and employee superannuation contributions. When the practice accounts have been finalised, the practice accountants will produce a certificate of NHS profits in specified form to be forwarded to the Pensions Agency with any balance in payment.
- 5.55 From 1 April 2004, we expect that all practice employers' and employees' contributions will be allocated to practices when responsibility for the full costs of employers' contributions, including pensions indexation costs, is devolved to NHS employers.

### Uprating (dynamisation) factor

- 5.56 It is essential that practitioners have certainty about the factor that will be applied at the point in time when they are contemplating retirement, and yet the abolition of IANI necessarily means that the actual year-on-year change in earnings cannot be known in advance. Equally, practitioners reasonably expect

that increases in earnings that accrue under the new contract will be fully reflected in the uprating factor as soon as is feasible.

- 5.57 The uprating factor is currently based on the year on year percentage increase in IANI. IANI will disappear as a concept and a new method will be needed. We intend that the uprating factor, moving forward, should be based on the year on year percentage change in all pensionable earnings from NHS work (the aggregate of net NHS pensionable income, divided by the number of practitioners}, adjusted by the TSC annually to allow for the shift towards less than full-time working. The TSC will also rebase the uprating factor on 1 April 2004 to ensure that the transfer of out-of-hours work does not depress the uprating factor.