



Department
of Health &
Social Care

*From the Rt Hon Matt Hancock MP
Secretary of State for Health and Social Care*

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Dr Sarah Wollaston MP
Chair, Health and Social Care Committee
House of Commons
Westminster
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23 July 2019

Dear Sarah,

Thank you for your questions at the Health Select Committee on 8th July. I committed to write to the committee on a number of issues, including the concerns you expressed regarding Capita's administration of GP pensions in the NHS Pension Scheme (NHSPS) and Sleep-in shifts. In addition, I committed to write to you with details guidance regarding National Minimum Wage and Sleep In shifts.

GP pensions administration:

On pensions, I was also concerned to read the issues raised by you constituent about how [their] pension record has been administered. My officials have contacted NHS England for more information on this issue. NHS England hold a contract with Capita, who are responsible for the administration of GP pension records. As GPs are self-employed, Capita act as the employer in relation to their NHSPS.

NHSPS members should receive a Pension Saving Statement (PSS) by 5th October if they have breached the annual allowance in relation to their NHSPS growth in the previous year. PSS show members how much their benefits have grown by in a scheme year, and if they have incurred an annual allowance charge.

PSS are sent out by the NHS Business Services Authority (NHSBSA), who rely on receiving timely and accurate information from employers to ensure they can issue statements on time. In order to ensure statements are sent out by 5th October, the NHSBSA require accurate pay and employment information from employers by 6th July. I am aware of issues regarding NHS England's contract with Capita which are leading to delays in information being submitted to the NHSBSA, and consequently

delaying in members receiving their PSS. I agree with your view that these delays are unacceptable.

In August 2018, NHS England and Capita jointly appointed PricewaterhouseCoopers (PwC) to undertake a complete review of the pension service. They are working together with the scheme administrator to address the issues as quickly and efficiently as possible. In the meantime, NHS England have a comprehensive action plan in place and a joint project underway with Primary Care Support England (PCSE), supported by an independent expert, to address the current and historical issues with GP pensions.

NHS England's action plan has involved running a series of workshops in collaboration with the scheme administrator, PCSE and key stakeholder groups such as the BMA to improve processes across specific areas.

In your letter you provided the example of a constituent, [...] who has experienced delays in receiving [their] Pension Savings Statement. NHS England have provided an update on this case and have confirmed Capita have an open record with a missing 2011/12 Certificate which is still to be submitted containing information on [their] earnings. In order to produce an updated PSS, up to date information needs to be provided to Capita. Schedule 2, Paragraph 23 of The National Health Service Pension Scheme Regulations 1995 requires GPs to ensure relevant information on pensionable earnings is submitted within 11 months of the end of the scheme year.

Individuals who believe they are at risk of an annual allowance charge can choose to make a Scheme Pays election and retrospectively adjust it. The Scheme Pays facility allows NHSPS members to pay tax charges from the value of their pension without needing to find the funds upfront. Scheme members can elect to pay £1 following the end of a scheme year, and retrospectively amend this amount up to four years after the end of the scheme year.

Sleep-ins:

I agreed to write to you with full details of the guidance relating to National Minimum Wage and Sleep In shifts.

National Minimum Wage is the policy responsibility of the Department for Business Energy and Industrial Strategy – the relevant section of the guidance was updated in November and constitutes the authoritative interpretation of the law as it currently stands. The guidance states that employers are not required to pay the National Minimum Wage for sleep-in shifts in specific circumstances, as defined by the Court

of Appeal, that is where a worker is expected to sleep for all or most of the shift, except for time when the worker is required to be awake for the purpose of working, and provided that the worker has access to suitable sleeping facilities. However, the guidance also notes that the Supreme Court “might issue a judgment which changes the circumstances in which national minimum wage is due for sleep-in shifts”. The full guidance is available at:

<https://www.gov.uk/government/publications/calculating-the-minimum-wage/calculating-the-minimum-wage#sleep-in-shifts>

Providers must comply with the law but my Department has been clear that it is vitally important workers are fairly remunerated for the work they do; the Government encourages employers to pay more than the minimum wage wherever possible. However, it is for employers to consider how much legal risk they should bear.

We will await the Supreme Court’s judgment with interest but seeking to resolve this issue by making legislative changes ahead of this would be premature – the subsequent judgment might bear in unforeseen ways upon the interpretation of the amended legislation.

It is in everyone’s interest to have a stable, functioning care sector but I recognise this situation has been the cause of significant uncertainty for providers.

I hope these responses have been helpful.

Yours ever,

A handwritten signature in blue ink that reads "Matt". The signature is written in a cursive, slightly stylized font.

MATT HANCOCK