

## Focus on... The Dynamising Factor

### May 2008

This guidance note has been produced by the General Practitioners Committee and the BMA's Pensions Department to help GPs and Local Medical Committees to understand the arrangements for the dynamising factor (DF), which is applied to GPs' pensions. This has been updated in May 2008 following the BMA's success in the Judicial Review.

The guidance applies to all four UK countries. Where there are differences in approach or detail, this is indicated in the text of the guidance.

#### Introduction

**Since 1 April 2008 there have been two pension schemes in operation for GPs; the *amended NHS Pension Scheme* applies to those who joined prior to that date and the *new scheme* to those who joined after that date.**

The amended NHS Pension Scheme regulations provide for GPs pensions to be based on 1.4% of their total career dynamised earnings. The new NHS Pension Scheme regulations provide for GPs pensions to be based on 1.87% of their total career dynamised earnings. These earnings are dynamised (uprated) to maintain their value.

#### What is the dynamising factor?

The dynamising factor is calculated in each financial year and is compounded with previous year's factors, dependant on years actually worked with the NHS. The result is used to calculate a GP's pension at retirement. The dynamising factor was previously based on the average increase of all GPs' profits but after 1 April 2008 it will be calculated as the Retail Prices Index plus 1.5%.

The dynamising factor could technically be based on any index or, indeed, be a fixed amount. It has in the past been calculated as the change in intended average net income (IANI) for practitioners, year on year. Thus, the profession had its pension based on the earnings relevant to its members and it was not influenced by external changes in, for example, retail prices or national average earnings.

During the new GMS contract negotiations, it was agreed to continue with the process of basing changes in relation to the sectors' earnings but as there would be no longer a **figure** for IANI the dynamising factor would be based on the actual increase in average pensionable profit year on year. This is because, as a result of the new GMS agreement, a **figure** for intended average net income (IANI) was no longer made available. Under the previous arrangements, a precise **figure** for GP pay increases could be estimated prospectively based on the increase in gross fees and allowances that were announced to deliver the intended increase to average net income. Under the new GMS agreement, GP pay is assessed retrospectively based on the profits made by GPs from the total funding available to them via the different funding streams of their contracts.

This new calculation required new methods to capture the relevant data, new definitions of pensionable profit and, because it was necessarily retrospective, it caused a delay to the process while data was prepared, made available and then analysed. This means that the **final figure** for any particular year would not be known until about **fifteen months** after the end of the relevant year. Due to this delay, it was therefore necessary to estimate an interim **figure** to ensure that those who retire in a particular year had their pensionable earnings uprated to some degree before the **final figure** was known. This is known as the interim dynamising factor.

This factor was intended to provide doctors who retired with a more accurate level of pensionable earnings and prevented them having to wait for a long period before benefiting from the total growth in their pensionable earnings. It was expected that when the final data became available, a **final dynamising factor** would be determined and this **figure** would be the one that would apply. Any

adjustment to pensionable earnings resulting from a difference between the interim and final dynamising factors would then be made.

The interim dynamising factor was set at a level that was expected to be exceeded, thus when benefits were recalculated they would be higher and arrears would be paid. This was deemed to be preferable to recovering overpayments should the final factor be smaller.

### **How is the dynamising factor calculated?**

From 1 April 2008 the dynamising factor will be calculated as the Retail Prices Index plus 1.5%.

### **The Secretary of State's Intervention.**

In December 2006 Patricia Hewitt, the Secretary of State for health at that time, intervened in the process and stated that she intended to impose dynamising factors for the years 2004 to 2008. She tried to justify this unprecedented move by arguing it was due to profits from GPs in the early years of the period appearing to be in excess of Government expectations.

This intervention potentially changed the basis of the dynamising factor calculation and removed any link to the actual earnings of the profession.

The intended, imposed factors for the years in question were:

2004/5	6.9%
2005/6	7.3%
2006/7	6.9%
2007/8	6.9%

These figures, when combined with the agreed DF for 2003/4 (calculated on the method described above) of 12.9%, provided a cumulative DF for the five year period of 48%.

### **Judicial Review**

The BMA were granted permission to challenge the government's decision in court on the grounds that GPs were being denied their contractual rights.

In March 2008, the BMA was successful in the judicial review against the government's attempts to alter how GPs pensions would be calculated from the years 2004 - 06. The Department of Health were given the opportunity to appeal but ultimately declined to do so. The deadline for this has now passed.

The ruling applies to England and Wales. It has been confirmed that Scotland will also adhere to the ruling and it is expected that a similar affirmation from Northern Ireland will ensue.

### **What happens now?**

The rates for the dynamising factor for the years 2004-05 and 2005-06 are now to be calculated by the Technical Steering Committee and GPs will be advised as soon as this has been determined.

Additionally, under the judgement, the Secretary of State is free to re-determine the calculation of dynamising factors for the two years 2006/08. It is understood that the Secretary of State intends to replace the previous determination made for 2006/07 and 2007/08, which will be likely to result in a DF for both years of 1. It is expected that confirmation of the details of this method and its implications will be clarified during any consultation process.

GPs will be informed as soon as further information is available.