

Firefighters' Pension Scheme Advisory Board for Wales

27 April 2016, Mid and West Wales Fire and Rescue Service, Llandrindod Wells

Minutes

Members

Michael Prior (MP)	Independent Chair
Cllr Tudor Owen (TO)	North Wales Fire and Rescue Authority
Cllr Sylvia Jones (SJ)	South Wales Fire and Rescue Authority
Sean Starbuck (SS)	Fire Brigades Union
Grant Mayos (GM)	Fire Brigades Union, Executive Council Member for Wales
Paul Scott (PS)	Fire Officers' Association

Officers in attendance

Dawn Docx (DD)	North Wales Fire and Rescue Service
Liz Aitken (LA)	Mid and West Wales Fire and Rescue Service

Welsh Government Officials (Secretariat)

Steve Pomeroy (SP)	Fire Services Branch
Kerry Citric (KC)	Fire Services Branch
Cerys Myers (CM)	Fire Services Branch

Apologies

Phil Haynes	South Wales Fire and Rescue Service
Cllr Wynne Evans	Mid and West Wales Fire and Rescue Authority
Huw Jakeway	Association of Principal Fire Officers
Adrian Hughes	Retained Firefighters Union

AGENDA ITEM 1 – WELCOME AND INTRODUCTIONS

1. MP welcomed everyone to the meeting and extended a welcome to Sean Starbuck who was attending for the first time. MP noted apologies had been received from Phil Haynes, Huw Jakeway and Cllr Wynne Evans.
2. MP informed the Board that Helen Griffiths had left the Fire Services Branch and introduced Kerry Citric, who has taken over the role, supported by Cerys Myers and Natalie Spiller who has also joined the team. Liz Aitken advised that she would be representing Mid and West Wales Fire and Rescue Authority in the absence of Cllr Wynne Evans, and the Association of Principal Fire Officers in the absence of Huw Jakeway. Round the table introductions were provided.
3. Members confirmed they had no conflicts of interest to declare.

AGENDA ITEM 2 – MINUTES FROM LAST MEETING

4. MP referred to the minutes of the previous meeting held on 27 November and invited members to agree the minutes for accuracy. LA identified that the word 'partnership' had been omitted from Paragraph 20. No further comments were made and the minutes were agreed as a true record.

AGENDA ITEM 3 – MATTERS ARISING

5. KC referred to FPSABW(16)01 and explained an update on the actions against the proposed scheme amendments and feedback from the Local Pension Boards would be covered by the agenda.

6. KC advised that the Welsh Government had considered the query relating to members' expenses and confirmed that the costs should be met by the Fire and Rescue Authorities. LA explained that the initial query was in respect of the administration costs and governance costs attached to both the Scheme Advisory Board and Local Pension Boards, not just expenses of members. SS referred to the Scheme Advisory Boards established in England and advised that travel reimbursement had been factored into the costs of the Board as members were attending to represent scheme members and not individual organisations. LA queried whether UK Government could reimburse the costs through the pension top up fund and questioned whether the 2015 Regulations should include reference to the costs as is the case with the legislation for the Local Government Pension Scheme. MP recognised the importance of using a consistent approach and asked the Welsh Government to seek further clarity on how the costs should be met.

ACTION: Welsh Government to clarify the position with the Home Office.

7. The Terms of Reference of the Board were revisited as requested by SS. SS suggested the following amendments:-

- Distinguish between those in attendance as members and those in attendance as observers, noting that Welsh Government officials are not Board Members.
- Apply changes to the wording of the 'purpose of the Board' section to accurately reflect the 2015 Regulations.
- Terms of Reference to clarify that the Chair will appoint persons of the Board with the agreement of members of the Board as set out in the Regulations.

SS raised concern about LA representing a number of organisations as it could be deemed a conflict of interest; particularly when required to vote on issues such as cost ceiling implications. LA explained that this should not be an issue as any advice provided to the Minister would reflect the full views of board members. MP supported LA's view and confirmed that it had been agreed at the last meeting that all advice from the Board would include any diverging views among members, rather than there being a voting system. The terms of reference needed to reflect this

position. SJ requested name plates be provided at future meetings so members were aware of the organisations represented.

ACTION: Welsh Government to amend the Terms of Reference.

ACTION: Welsh Government to produce name plates for use at future meetings.

8. SS queried the replacement of board members. SP confirmed that members of the Board were representatives of the organisations concerned. SS and GM stated they had received personal letters of appointment from the Minister for Public Services. Board members discussed the level of expertise required in order to represent their organisations and referred to the decision that a member of a local pension board could not sit on the Scheme Advisory Board. SS queried this position and suggested that elsewhere a member was able to represent an organisation on both boards.

ACTION: Welsh Government to check the appointment letters issued to board members.

ACTION: Welsh Government to clarify position of members' representation on the scheme advisory board and local pension board.

AGENDA ITEM 4 – FIREFIGHTER PENSION SCHEME – TRANSITIONAL ARRANGEMENTS (FPSABW (16)02)

9. MP explained the agenda item had been submitted by the Fire Brigades Union and invited SS to introduce the paper. SS explained that members of the 2015 Scheme had the option to partially retire allowing them to draw down part of their pension benefits from age 55 and continue in employment. By contrast, members of the New Firefighters Pension Scheme (2007) had to fully retire from the scheme before they could draw any of their benefits. There were some members of the 2007 scheme who wished to transfer their pension into the 2015 scheme but the 2015 scheme did not provide for them to do so. SS indicated that the Government Actuary's Department (GAD) had advised the FBU that the process would be cost neutral through using Cash Equivalent Transfer Value. SS advised that the Home Office initially agreed to consider the option but had since rejected the proposal, whilst the Scottish Government has suggested an easier option might be to re-write part of their New Firefighters' Pension Scheme to allow members to partly retire. MP queried the number of 2007 Scheme firefighters that wished to transfer into the 2015 Scheme. SS believed the number would be relatively low but agreed to explore further. SS also agreed to share any information on costings with officials.

ACTION: SS to provide information on the number of 2007 Scheme firefighters interested in transferring to the 2015 Scheme, and GAD advice on costs.

10. DD expressed concern about the additional burden such a change could place on scheme administrators. SS explained that the change would make things easier in the long term as more firefighters would be in the same scheme.

11. LA questioned the decision made by the Home Office. SS believed that the Home Office had approached HM Treasury but HM Treasury disagreed that the change should be made.

ACTION: Welsh Government to consider whether to include the proposal within the wider scheme amendments exercise.

12. SS introduced the second element of FPSABW (16)02) which related to the Modified Pension Scheme. This scheme modified the 2007 Order to allow Retained Duty System firefighters, employed between 1 July 2000 and 5 April 2006 access to a pension scheme. It was introduced in 2014 and provided similar pension benefits as those provided under the 1992 Pension Scheme.

13. SS explained that the FBU had won a court case to enable Retained Firefighters to join the Modified Scheme retrospectively back to 1 July 2000. This resulted in Retained Firefighters' having to back pay contributions into the Modified Scheme. When the 2007 Scheme was introduced Retained Firefighters were given the option to transfer their previous occupational pension into the 2007 Scheme but some opted not to. Because of the more favourable terms of the Modified Scheme, some Retained Firefighters now wish to transfer their previous occupational pension into the Modified Scheme yet they are unable to do so as they previously declined the opportunity to transfer into the 2007 Scheme. SS explained that this issue affected more Firefighters than the first issue introduced at point 9.

14. MP queried the costs to Fire and Rescue Authorities. SS explained that this would also be a Cash Equivalent Transfer Value process; however it would show as a past service cost. The Government Actuary's Department would identify it as a past service cost as it was a change that could not have been predicted at the time of the valuation. Unlike the proposal regarding the 2015 Scheme, this would have cost implications.

15. DD queried whether this would apply to a retained firefighter's current employer or previous employer. SS clarified this would refer to the current employer as the firefighter could only transfer their pension within the first year of joining the scheme. SP said it was likely that this would predominantly affect North Wales FRA and Mid and West Wales FRA as the majority of Retained Firefighters were situated within those areas; however it would be useful to know the scale of who would be affected. SS indicated that the FBU would write to the Minister on this aspect.

AGENDA ITEM 5 – NORMAN VS CHESHIRE (FPSABW (16) 03)

16. MP explained this agenda item had been submitted by North Wales Fire and Rescue Service and invited DD to introduce the paper. DD explained the issue was in relation to the legal case of *Norman vs Cheshire* which dealt with the issue of pensionable pay and the interpretation of Rule G1 of the 1992 Firefighters Pension Scheme. The full time firefighter, who also worked as a retained firefighter, had argued that part of his payments (retaining fee, disturbance fee and public holiday pay) were pensionable. The judgment ruled in favour of the claimant concluding that

the pay package (based on a collective agreement made between Cheshire FRS and the FBU) was pensionable under the Firefighters' Pension Scheme (1992).

17. DD referred to the advice provided by Christopher Jeans QC following the judgment in *Norman* which confirmed that a premium would constitute pensionable pay under the Firefighters Pension Scheme if it:

- is regular
- is pay to which the firefighter is entitled (under the contract of employment)
- is payable at the rate applicable to the role
- is paid in the ordinary course of fulfilling his duties
- has something of a permanent nature.

18. DD explained that North Wales FRA were reviewing their arrangements as a result of the ruling. South Wales FRA had stated that they did not have any employees who would be impacted by this ruling. North Wales FRA had approximately 84 employees who would be impacted by the change. Employer superannuation costs would be in the region of £312,000 based on applying the change retrospectively from 1 July 2006 and treating retaining fees, disturbance fees and bank holiday payments as pensionable. Mid and West Wales FRA was currently determining which allowances would be pensionable. This was being discussed at negotiating meetings.

19. DD said she had brought the issue to the Board to ensure a consistent approach was used in respect of the definitions of pensionable pay. As the interpretation was currently being contested, it was proposed that no action was undertaken by any FRA in Wales until clarity was provided as to what should be considered pensionable pay elements.

20. DD was reluctant to commit to a particular interpretation without an assurance from the Welsh Government that it would not challenge the FRA's decision. SP confirmed that these were matters for FRAs as employers; and while the Welsh Government would support moves towards a common position, it could not and would not form its own view on what that position might be.

21. SS further explained that Cheshire Fire Service had introduced a day crew plus system which provided an allowance for self rostering through the night. At the time, the FRA had advised the Firefighter that the earnings were pensionable however on retirement; the Department for Communities and Local Government intervened and had said this was not the case. The FBU had acted on behalf of the firefighter and challenged it. SS believed that it was irrelevant what agreement was made locally; if the earnings were pensionable then they were pensionable. SS referred to the definitions as listed at point 17 and queried NWFRA intentions to focus on retaining fees, disturbance fees and bank holiday payments. SS indicated that the payments did not have to be permanent to be deemed pensionable the ruling confirmed that they should be regular payments and not 'one-off' in nature. GM added that a training allowance was classed as a regular payment and the FRA

could be challenged if they did not include this aspect. SS advised that this would have an impact on past service costs of the scheme.

22. DD raised concern that some firefighters would not want elements of their pay to be pensionable. SS agreed; some firefighters would be concerned about the increase in their contributions to pay back into the scheme. However, firefighters had to adhere to the judgment just as FRAs did. LA added that the issue, including costs and timings, would be discussed at negotiation meetings.

ACTION: LA to provide an update at the next Scheme Advisory Board meeting as part of the 'Update from Local Pension Boards' agenda item.

23. SJ confirmed that employees in South Wales FRA were not affected by the ruling, as all its retained firefighters were paid a salary. SS advised that the position may change if training allowances were incorporated. SJ requested information of interest to be circulated to Board members in between meetings.

AGENDA ITEM 6 – UPDATES FROM LOCAL PENSION BOARDS

24. MP thanked Board Members for submitting updates from each of their respective Local Pension Boards. MP highlighted that SWFRA Local Pension Board had looked at the administration and functions of all the Firefighters' Pension Schemes and recommended other FRA's to use the same approach. LA stated that MWFRA could have provided more information in line with the update submitted by SWFRA. DD agreed that the same applied to the update for North Wales. For consistency purposes, LA suggested a joint planning session take place between the FRA's prior to submitting the updates to Welsh Government.

ACTION: FRAs to discuss a joint approach to submitting updates at future Scheme Advisory Board meetings.

AGENDA ITEM 7 – GENERIC LEARNING

25. MP invited members to highlight any information they had to share. LA advised that MWFRA had completed a training analysis for members of the Local Pension Board and Scheme Advisory Board and were jointly undertaking the toolkit training. LA suggested that elements of the training could be completed using a tri-service approach. MP agreed and stated that it may be necessary to hold a training session post local elections in the event of a change of members.

AGENDA ITEM 8 – POTENTIAL SCHEME AMENDMENTS

26. KC introduced the item and took each of the proposed amendments in turn.

27. **Age Discrimination (Pension Contributions Holidays)** – this related to firefighters who had started to pay contributions at the age of 18 and were required to pay those contributions until age 50. However, the 1992 Firefighters pension scheme had an accrual cap of 30 years, so some firefighters had contributed two years extra for nothing in return. KC explained that the Department for Communities and Local Government, now the Home Office, had decided in December 2015 to

look at compensating members affected by the anomaly. The Welsh Government was currently awaiting an update from the Home Office on how they proposed dealing with this issue. SS informed the board that he had recently met with the Home Office and they had indicated an update would be issued to FBU shortly. SS added that the payments would be retrospective as at 1 December 2006.

28. **Amendments to the 2015 Scheme Regulations** – Since the introduction of the 2015 Scheme, a number of minor issues had been identified which would need amendment. It was likely that the Welsh Government would consult on similar amendments as listed within the recent Home Office consultation, as well as some minor typographical amendments identified by Welsh Assembly lawyers. The consultation would probably be undertaken in the autumn with the amendments coming into effect in 2017.

29. KC explained there were a number of amendments which related to transitional members. They included :-

- Adding an inadvertently omitted regulation to give “transition members” who were granted ill-health pension in respect of their final-salary scheme, the discretion to commute part of that pension into a lump sum (Reg 80A).
- Addressing timing complications arising when transition members reached their transition state at the time of being considered for ill-health retirement. Members who were refused ill-health had been dealt with, but a provision was needed to deal with members who were granted ill-health retirement (Schedule 2, paragraphs 37 & 38).
- Correcting the formula for the double-accrual calculation in the Transitional and Consequential Provisions Regulations 2015 (Schedule 2 of the 1992 Order, Part 2A).
- Ensuring that “qualification” was set at three months (rather than “more than three months”) (Reg 87).

30. **Change in Regulation regarding surviving partners’ entitlement to death benefit on re-marriage** – this issue related to the 1992 Scheme where a surviving partner would lose their death benefit entitlement on remarrying or forming a new civil partnership. KC advised that since the last Scheme Advisory Board meeting, the Scottish Government had amended the 1992 Order and Compensation Scheme Order, with effect from 1 October 2015. The Scottish Government intended to reinstate pension benefits previously withdrawn. The Home Office was currently consulting on the proposal to correct the position. Unlike Scotland, the Home Office proposed to backdate the payments to April 2015 in line with the Chancellor’s announcement but did not propose reinstating survivor benefits that had already been withdrawn. The Welsh Government was likely to include a variety of options within the consultation to obtain an overall view prior to implementing any changes.

31. SS advised the Board that the FBU were currently seeking legal advice on this issue as there was an element of age discrimination – a younger person might be more likely to re-marry. DD and LA queried the definition of ‘in the line of duty’. SP explained that there were various definitions with many grey areas; and the issue was not whether someone was killed in the line of duty, but what happened to the benefits payable to their then spouse or partner. SS suggested that a potential solution could be not to withdraw a pension from any surviving partner regardless of the person dying in the line of duty. SJ queried whether this included surviving partners co-habiting. SP clarified that the issue related to surviving partners who had remarried or formed a new civil partnership; those who cohabited would be unaffected. The timings of the consultation would be the same as for the 2015 Scheme Amendments.

32. **Modified Pension Scheme (Death Grant)** – KC explained that the Modified Pension Scheme covered the period 1 July 2000 to 5 April 2006. The Scheme came into force in Wales in April 2007 but was applied retrospectively to have effect from April 2006, in line with the English Scheme. The Welsh Government has become aware of an issue in relation to the retrospection of the Scheme regarding eligibility of the death grant. It was likely that the anomaly only affected one person in Wales, however the Welsh Government were considering whether the death grant limited period should be amended to 6th April 2007 for Wales.

33. KC explained to the Board that early discussions had taken place with the Welsh Government Legal Department and advice would be submitted to the Minister following the election. KC advised that prior indication would be given to Board Members in advance of the consultation taking place.

AGENDA ITEM 9 – ANY OTHER BUSINESS AND DATE OF NEXT MEETING

34. SP noted that the Welsh Government sometimes circulated information on behalf of the UK Government where it directly affected the Firefighters’ Pension Schemes and the rights of scheme members. There had recently been a number of generic updates from the UK Government, for example in relation to taxation and benefits. As these were not devolved matters, the Welsh Government could not provide information or advice about them. SP advised members to ensure they received communications from other organisations such as the Department of Work and Pensions and HM Treasury.

35. KC shared a more detailed 2016 valuation timetable which had been provided by the Government Actuary’s Department. KC referred to the minutes of the meeting held on 27 November 2015 where the Welsh Government had advised a report on the Prior Value Cost Cap Fund would be provided by October 2015. The Welsh Government has clarified with GAD and as this would be an associated report to the 2016 Actuarial Valuation Report, it would not be finalised or circulated until 2017. MP noted that GAD would be invited to a meeting of the Board in 2017.

36. KC reminded members of the SCAPE Discount Rate which had been reduced from 3% above CPI per annum to 2.8% above CPI per annum as part of budget announcements. A number of commutation factors were affected by the change.

The Welsh Government had issued some guidance and revised factors under circular W-FRSC(2016)04. A further circular was expected to issue in May 2016.

37. MP thanked members for a useful meeting and suggested the Board meet again in September.

ACTION: Welsh Government to seek members' availability and confirm date of next meeting.