

Firefighters' Pension Scheme Advisory Board for Wales

4 July 2019, Welsh Government Office, Cathays Park, CF10 3NQ

Minutes

Members

Michael Prior (MP) Independent Chair

Employer Representatives

Cllr Claire Mills (CM) Mid and West Wales FRA
Cllr Sue Pickering (SP) South Wales FRA

Employee Representatives

Sean Starbuck (SS) Fire Brigades Union
Ade Robinson (AR) Fire Officers Association

Officers in attendance

Kevin Jones (KJ) Mid and West Wales FRA

Observers

Mark Miles (MM) Mid and West Wales FRA
Chris Barton (CB) South Wales FRA
Cerith Griffiths (CG) Fire Brigades Union

Welsh Government Officials (Secretariat)

Kerry Citric (KC) Welsh Government
Cerys Myers (CLM) Welsh Government
Natalie Spiller (NS) Welsh Government

Via Video Link

Richie Fairhead Fire Leaders' Association
Helen MacArthur North Wales FRA
Clair Alcock Local Government Association

Apologies

Cllr Bryan Apsley North Wales FRA
Alison Reed South Wales FRA
Adrian Hughes Fire and Rescue Services Association

1. AGENDA ITEM 1 – WELCOME AND INTRODUCTIONS

1.1 MP welcomed everyone to the meeting and provided apologies for Alison Reed and Adrian Hughes. Cerith Griffiths was welcomed as a new FBU member

(subject to Welsh Minister's appointment) replacing Grant Mayos. MP wished to express his gratitude to Grant Mayos on his contribution to the SABW. Fire and Rescue Authority (FRA) member representation had not been affected by the FRA Annual General Meetings.

1.2 MP spoke about the consistency of members' attendance and acknowledged the lack of representation from the Fire and Rescue Services Association. MP said that he would discuss the matter with Adrian Hughes.

1.3 Helen MacArthur, Richard Fairhead and Clair Alcock were unable to join the meeting via teleconference due to issues with technology.

1.4 Members confirmed that they had no conflicts of interest to declare.

2. AGENDA ITEM 2 – MINUTES FROM LAST MEETING

2.1 MP referred to the minutes of the previous meeting held on 3 April and invited members to agree the minutes for accuracy. It was noted that a number of apologies had been omitted from the list of attendees. No further comments were made and the minutes were agreed as a true record, subject to this minor amendment.

MATTERS ARISING

2.2 An update was provided on actions from the last meeting :-

- a) Members had raised concerns that the level of HM Treasury grant funding for 2019-20 had not met the full cost of employer contribution rate increases. Whilst they recognised that the level of funding had been confirmed and would not now be changed, they had requested further details on the calculation of the average increase in employer contribution rates compared to the individual contribution rate for each scheme to improve their understanding of the figures. Officials had asked GAD for this clarification based on questions raised by the FRAs and had shared GAD's response with the employer representatives. The update would be circulated to the wider SABW for their information.

ACTION : Secretariat to circulate to the SABW, GAD's response on the calculation of the average increase in employer contribution rates compared to the individual contribution rate.

The reason that the average employer rate was lower than the individual rates was that the average covered the four year valuation period 2019-23. By 2020-23 using the average contribution rate would likely result in a higher calculation of costs than the individual scheme rates, rather than it being lower as it was for 2019-20. If funding for future years was secured from HM Treasury it was anticipated the grant calculation would continue to be based on average employer rates thereby cancelling out any 2019-20 initial shortfall.

- b) Members had also raised concerns regarding funding to cover the increase in employer contributions for 2020-21 onwards which the secretariat had raised with Welsh Government Finance colleagues. These concerns had also been raised at a meeting between the Deputy Minister for Housing and Local Government and the Chief Fire Officers and FRA Chairs.

The secretariat reported that there had been a general shortfall in SCAPE funding provision for Wales. The Welsh Government had issued a [Written Statement](#) which referred to a joint letter from Welsh and Scottish Finance Ministers and the Permanent Secretary Department of Finance Northern Ireland to the Chief Secretary to HM Treasury. This expressed concern about the whole valuation process, including that 2019-20 funding did not meet the full costs of SCAPE for the devolved administrations, the need for early certainty about funding for future years, and called for an urgent meeting to discuss these matters, using formal mechanisms if required.

It was noted that FRAs were already developing their budget plans for 2020-21, and clarity on funding was needed as soon as possible to avoid a repetition of the significant budget setting problems that had occurred because of the late notification of funding for 2019-20. The employee representatives expressed their support of the frustration felt by the FRAs. Nevertheless the secretariat were not in a position to allay these concerns.

- c) A further update on Scheme Data as well as updates on Pensionable Pay and Local Pension Boards were covered by the agenda.

3. AGENDA ITEM 3 – PENSIONABLE PAY

- 3.1 MP explained that following the High Court [judgment](#) on Firefighters' pensionable pay, the Local Government Association had prepared guidance on the judgement in the form of a [factsheet](#) for FRAs. Each FRA would now need to consider how the judgement applied to their local arrangements.
- 3.2 Mid and West Wales FRA had implemented the rulings as set out by the judgment. The FRA was now in discussion with the FBU on how the judgment on the individual cases should be applied to the other fire pension schemes. South Wales FRA was considering the impact of the judgement, particularly in respect of Urban Search and Rescue (USAR).
- 3.3 Pensionable pay had been included on the SAB agenda by the FRAs with a view to discussing a consistent approach across Wales. Following the judgment and LGA factsheet, members were content for it to now be removed from future agendas.
- 3.4 Members noted that a pensionable pay workshop had been scheduled for 18 July 2019.

4. AGENDA ITEM 4 – SCHEME DATA (FPSABW(19)04)

4.1 FPSABW had provided members with three sets of figures, FRA pension fund scheme income and expenditure figures, the employee contribution rate yield and latest scheme opt out data.

Scheme Costs

4.2 The table had been updated to include income and expenditure data for 2018-19. Expenditure figures varied year on year dependant on the number of retirements from the scheme and the number of lump sums paid within a particular year.

4.3 Members noted that the difference in income and expenditure was provided to FRAs by a Welsh Government top up grant, funded by HM Treasury annually managed expenditure. The difference between income and expenditure was likely to decrease from 2019-20 onwards as a result of the increase in employer contribution rates, implemented in 2019.

Employee Contribution Rates: Yield

4.4 The full yield data for the four year valuation period from April 2015 had been calculated as 13.16% of pensionable pay against a required yield of 13.2%.

4.5 Members noted that GAD had used an assumed yield of 13% for 2019-23 for the 2016 valuation. This had been accepted by HM Treasury even though the original scheme design required a yield of 13.2%. The yield would continue to be monitored by the SAB annually.

Opt Out Data

4.6 The data presented to members covered complete opt out data for financial years 2017-18 and 2018-19. Based on the information collected, it appeared that the majority had opted out within the first 3 months, earned between £20k and £30k and were aged between 25 and 35. It was noted that a small number of opt outs related to older members and/or members on a higher salary. Data on reasons for opt out were limited but where a reason had been disclosed, it appeared that a small number of members had chosen to opt out due to financial reasons or due to the position being temporary.

4.7 Welsh Government was aware of ongoing discussions in respect of the wider public service pension schemes, where members were choosing to retire or opt out of schemes to avoid tax implications with annual allowances. This was a particular issue for the NHS scheme; NHS pension colleagues was in discussion with HM Treasury regarding a solution for high end earners (consultants and GPs). Considerations included an option to reduce pension contributions similar to the LGPS scheme. It was noted that HM Treasury had previously advised, as part of the Valuation process, that schemes would be required to fund such an option themselves and it would not be supplemented by the top up grant.

4.8 The following points were made by members :-

- Consideration of a solution for high end earners should not be the only priority. Low paid earners may not be affected by annual allowances but they may struggle to meet the contributions;
- Both the FRAs and Unions confirmed that regular conversations took place with members to encourage them to stay within the pension scheme;
- FRAs provided Voluntary Scheme Pays as an option for members;
- The removal of 'other' as an option for opting out might persuade members to provide a more accurate reason for leaving the schemes however it was recognised that they did not have to do so. Rather than remove "other", FRAs should continue to encourage staff to complete the return honestly including additional comments under "other" where possible;
- The category showing leavers within the first three months, captured both new starters and existing employees being re-enrolled under auto-enrolment rules – it would be useful to differentiate between these. FRAs confirmed that this was possible.
- Mid and West Wales FRA provided a number of temporary whole-time contracts to on-call members. The temporary position appeared to be a contributory factor for members choosing to opt out of the scheme.

ACTION POINT: Secretariat to commission FRAs to provide a breakdown in opt outs to differentiate between new starters and existing employees.

5. AGENDA ITEM 5 – GUARANTEED MINIMUM PENSION

5.1 Members had been provided with HM Treasury's [response](#) to the consultation undertaken in 2017 on guaranteed minimum pension indexation and equalisation arrangements. The consultation response dated January 2018, indicated that interim arrangements for those who had reached state pension age between 5 April 2016 and 6 December 2018 were extended until April 2021. It also set out that HM Treasury would further consider the option of conversion for the longer term.

5.2 HM Treasury had contacted all pension schemes to seek initial views from scheme managers and administrators on the implications of conversion, in terms of financial, administrative and legislative burden. Welsh Government officials were collating information from the FRAs to share with HM Treasury. Feedback so far had been limited though, because of the lack of detailed information from HM Treasury on the model they were considering.

5.3 Whilst this was a non-devolved matter, it was likely that Welsh Government would have to amend scheme regulations to reflect the final decision made by HM Treasury. It was noted that implementation was likely to place an administrative burden on scheme administrators at the same time as implementation of other significant scheme changes.

6. AGENDA ITEM 6 – UPDATES FROM PENSION BOARDS (FPSABW(19)05)

6.1 MP referred to the All Wales Local Pension Board training session delivered by LGA on 25 June. The session had emphasised the importance of record keeping, measuring data and data scoring as required by the Pensions Regulator.

Mid and West Wales FRA

6.2 Mid and West Wales FRA advised that the scheme administrator had provided an update on data at the last LPB. The update would continue to be provided at future meetings. The next LPB was to take place on 8 July 2019.

South Wales FRA

6.3 Reference was made to the difficulty in obtaining both employer and employee representation on the LPB. This had caused a particular concern in terms of quorum, should the need to vote arise.

6.4 MP thanked the FRAs for their updates and suggested that information on data scoring be provided as part of the feedback at future SABW meetings. FRAs were also asked to provide the terms of reference of their individual LPBs.

ACTION POINT: FRAs to include information on data scoring and provide the terms of reference of individual LPBs as part of future updates to the SABW.

6.5 Members were asked to consider whether there was benefit in holding a joint meeting of the individual LPBs; the joint Leicestershire, Nottinghamshire, and Derbyshire LPBs was provided as an example. It was suggested that this could take place on an annual basis in addition to the individual LPB meetings or as a separate combined meeting of the SABW and LPBs to incorporate a meeting and training session. It was noted that concerns had been raised about joint LPBs being used to mask underperformance.

Exit Payments

6.6 In the absence of Clair Alcock, Kerry Citric provided an update on the implications of the government consultation to introduce a cap on exit payments. Members were advised that this was a wider public service issue and was not necessarily a matter for the SABW.

6.7 The exit payment cap had been set at £95,000. The draft HM Treasury regulations exempted two employer payments which related to firefighter pension schemes – Regulation 7 exempted 1992 scheme enhanced commutation and 2006 and 2015 scheme authority initiated early retirement. The exemption in respect of authority initiated retirements within the English schemes was limited to fitness grounds by reference to their National Framework but the same limitation could not be added to the regulations for the Welsh schemes as the National Framework for Wales did not include the same information. Officials had though spoken to CFOs to make clear that the intention was the same, and consideration would be given to providing guidance for Welsh FRAs to clarify this once the regulations were finalised.

6.8 Not a matter for the SAB, but members were advised that reference to FRA powers of relaxation of exit payment restrictions at regulation 11 should clearly reflect that this applies only to FRAs in England. FRAs in Wales were covered by 11 (a) which set out that exemptions for devolved Welsh Authorities were exercisable by Welsh Ministers.

6.9 The consultation had closed on 3 July.

III- health retirements

6.10 SS advised that the SABE had raised an issue in relation to ill-health retirement within the schemes. The 2015 regulations stated that they should be dealt with as a 'One-pot' ill-health payment and as such a member who had been moved into the 2015 scheme from either the 1992 or 2006 scheme would be considered for ill-health under the rules of the 2015 scheme only. This had caused complications due to the difference in Normal Pension Age between the schemes. The SABE was undertaking work to tackle a number of issues that had been identified with the certificates used for each of the schemes.

ACTION POINT: Secretariat to follow up issues relating to ill-health retirement with Clair Alcock.

7. AGENDA ITEM 7 – FIREFIGHTERS PENSION SCHEME AMENDMENTS

7.1 The Secretariat provided an update on scheme amendments. Drafting was now underway and consultation on changes in relation to Walker, McLaughlin and other scheme amendments was scheduled to take place in the Autumn :

- **Walker (entitlement of bereaved same-sex partners to full survivor benefits)** -The Welsh Government had started drafting the relevant amendments in relation to Walker. It was assumed that the numbers affected by the ruling would be very small. Home Office had already introduced the amendments in respect of the English Schemes.
- **McLaughlin (discrimination between children of married and unmarried parents in eligibility for benefits)** - The case predominantly related to social security benefits rather than pension benefits. However

Welsh Government believed that there was a case for read across to the 2007 Compensation Scheme and as such were drafting amendments for consultation.

- **Other amendments** - The Welsh Government had completed a comparison exercise of recent amendments introduced by Home Office and Scottish Government to identify whether any such changes needed to be reflected in the Welsh Schemes. These too would be included in the Autumn consultation.

7.2 At the last meeting, the SABW was informed that the Court of Justice of the European Union judgement on pre-2000 pension entitlement had been referred back to the Supreme Court. Welsh Government was awaiting the final judgement before taking further action. Officials had though discussed the implications of [O'Brien](#) with Welsh Government Legal Services and an early discussion had taken place with the Home Office. Given the potential complexity of a solution and FRAs own data limitations, any action to implement the judgment for RDS firefighters was likely to place a significant burden on scheme managers and administrators.

7.3 MP raised concerns that amendments were often implemented more quickly to the English schemes. SABW noted that limited Welsh Government legal resources meant prioritising amendments to the schemes against other wider legislative drafting requirements. Consideration was given to the impact and risks of any delays to implementing any changes. In this case the low number of, if any, people affected by the Walker and McLaughlin cases were a contributing factor in the Welsh Governments deliberations.

8. AGENDA ITEM 8 – ANY OTHER BUSINESS

Firefighters' Pension Scheme: Internal Dispute Resolution Procedure

8.1 The item had been placed on the agenda following a number of discussions that had taken place in Scotland and England in respect of the IDRPs appeals process. Members were advised that Scottish Government had implemented a change in April 2018, to move to a one stage process.

8.2 Discussions from the SABE had indicated that they wished to retain the existing IDRPs process and timings. Issues had though been raised regarding elected members having the required level of expertise and knowledge of the pension regulations in order to appropriately hear the second stage of the process. A working group was to be established to consider the process further and to review the current guidance on IDRPs.

8.3 There was a strong view amongst SABW members to maintain the existing IDRPs process and timings. Members noted that the current IDRPs process provided sufficient time for retired members to recognise something as an issue and to initiate procedures. The timeframes also allowed sufficient time for complex

cases to be considered and limited the number of cases being referred to the Pensions Ombudsman.

- 8.4 South Wales FRA advised that they had an ongoing IDRPs case in relation to the B5C Ruling in respect of the treatment of temporary promotion pay as Additional Pension Benefits. There were not any ongoing cases in Mid and West Wales FRA.
- 8.5 The Welsh Government was to monitor the work of the SABE in respect of the IDRPs process and provide any revised guidance to the SABW for members' consideration and agreement.

ACTION POINT: Secretariat to monitor the work of the SABE in respect of the IDRPs process and provide any revised guidance to the SABW for members' consideration and agreement.

Pensions Dashboard

- 8.6 Members had received a copy of the UK Governments [response](#) to the consultation on the development of the pensions' dashboard. The secretariat advised that an Industry Delivery Group had been set up to focus on the Dashboard Delivery. The Group would engage with schemes to inform data standard settings. It was expected that information requirements would not be more than already included in Annual Benefit Statements.
- 8.7 Members were advised that the dashboard would be a statutory requirement. It was expected that the majority of schemes would be fully included within a 3 – 4 year period.

Pension Transitional Arrangements

- 8.8 Members were advised that the Supreme Court had refused permission to appeal the Court of Appeal judgment on firefighters' pensions' transitional protection ([McCloud](#) and [Sargeant](#)) and as such the case was to be referred back to the Employment Tribunal for remedy. The process to be undertaken was now a matter for the parties involved in the case and the timings were not yet clear.
- 8.9 The FBU was to meet with their legal representatives to discuss a potential remedy. There was an opportunity for the parties involved to reach agreement on a remedy before an Employment Tribunal hearing.
- 8.10 A contingent liability had been identified in the Welsh Government Accounts in respect of a remedy for firefighters. Chris Barton advised that external auditors of South Wales FRA had indicated that a contingent liability would not suffice for FRAs and discussions were ongoing regarding the necessary disclosure.

8.11 The SABW noted that the judgment had led to the suspension of the public sector pensions cost cap earlier this year and recognised that it may have wider implications for other public sector pension schemes.

8.12 No further issues were raised.

Future Meetings

8.13 Due to the difficulties with the technology preventing attendance by all members, MP suggested that future meetings should be held in Newtown Fire Station or Llandrindod Wells to allow representatives from North Wales to attend in person. Members agreed with this approach. The next meeting was to take place in October.

ACTION POINT: Secretariat to seek members' availability and confirm date of next meeting.