

**Firefighters' Pension Scheme Advisory Board for Wales**

**3 April 2019, Welsh Government Office, Cathays Park, CF10 3NQ**

**Minutes**

**Members**

Michael Prior (MP) Independent Chair

**Employer Representatives**

Cllr Sue Pickering (SP) South Wales Fire and Rescue Authority

**Employee Representatives**

Ade Robinson (AR) Fire Officers' Association  
Grant Mayos (GM) Fire Brigades Union, Executive Council Member for Wales

**Officers in attendance**

Kevin Jones (KJ) Mid and West Wales Fire and Rescue Service  
Alison Reed (AR) South Wales Fire and Rescue Service  
Helen MacArthur (HM) North Wales fire and Rescue Service

**Observers**

Sarah Tillman (ST) Mid and West Wales Fire and Rescue Service  
Chris Barton (CB) South Wales Fire and Rescue Service

**Welsh Government Officials (Secretariat)**

Kerry Citric (KC) Fire Services Branch  
Cerys Myers (CLM) Fire Services Branch

**Apologies**

Cllr Claire Mills Mid and West Wales Fire and Rescue Authority  
Cllr Bryan Apsley North Wales Fire and Rescue Authority  
Sean Starbuck Fire Brigades Union  
Adrian Hughes Fire and Rescue Services Association  
Richard Fairhead Fire Leaders Association  
Clair Alcock Local Government Association  
Mark Miles Mid and West Wales Fire and Rescue Service.

**1. AGENDA ITEM 1 – WELCOME AND INTRODUCTIONS**

1.1 MP welcomed everyone to the meeting and extended a welcome to Alison Reed who had replaced Mark Malson as the officer in attendance for South Wales FRA. Apologies were provided for Cllr Claire Mills, Cllr Bryan Apsley, Mark Miles, Sean Starbuck, Adrian Hughes, Clair Alcock, and Richard Fairhead.

1.2 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 27 November and invited members to agree the minutes for accuracy. No comments were made and the minutes were agreed as a true record.

### MATTERS ARISING (FPSABW(19)01)

2.2 MP referred to the update on actions from the meeting held on 27 November 2018 which had been completed, and requested an update on the outstanding issues from earlier meetings. A further update on Scheme Data as well as updates on Pensionable Pay and Local Pension Boards were covered by the agenda.

- **Protected Pension Age** - MP stated that the action point had been on the agenda for some time and proposed that it be removed with the option to raise the matter again at a future meeting, if it would be relevant to do so. GM agreed with this approach.
- **Inform HM Treasury of SABWs views on survivor benefits** – The Welsh Government had delayed making progress on this action predominantly due to Treasury's focus on the Valuation process. Members noted however that judgement had since been made in a couple of other cases in respect of survivor benefits and these would be referred to under the item regarding scheme amendments. The Welsh Government would revisit the action to express the SABW's concerns in respect of equalisation of all survivor benefits.

## 3. AGENDA ITEM 3 – 2016 VALUATION

3.1 MP referred to HM Treasury's decision to suspend the cost cap element of the Valuation process. The decision had followed the judgment of the Court of Appeal in a case concerning the transition to the 2015 scheme and the protection provided to older firefighters in England and Wales. Members had been provided with a copy of the response from Julie James, Minister for Housing and Local Government, which had stated the suspension of the cost cap element of the Valuation was a HM Treasury decision over which the Welsh Government had no control.

- 3.2 KC further explained that the Welsh Government and the Government Actuary's Department had been required to follow the Public Service Pensions (Valuations and Employer Cost Cap) (Amendment) Directions 2018 as set out by HM Treasury. The revised Directions, had removed and replaced references to cost cap breach identification, but had continued to include the change to the SCAPE ("superannuation contributions adjusted for past experience") discount rate. As a result, the final valuation reports did not reflect a cost cap breach and as such no action could be taken by the Welsh Government to improve member benefits. In contrast, the change in the SCAPE rate had significantly increased the overall employer contribution rate from 18.7% to 27.3%.
- 3.3 The cost cap suspension affected all public sector pension schemes.
- 3.4 Members were given the opportunity to express their views on the process given the extensive work that the SAB had undertaken in the Autumn to develop recommendations for Welsh Ministers to fix the breach. Whilst disappointed with the HM Treasury decision overall, the SAB agreed that the process had aided members understanding of the pension scheme and impact of changes to benefits. The support provided by GAD and LGA had been particularly beneficial. Members felt that this work, and resultant increase in knowledge and understanding of the valuation process, would be valuable in the future, either at the next timetabled valuation, or revaluation work resulting from the transitional protection case outcome.
- 3.5 All three FRAs confirmed that they had implemented the new employer contribution rates which had come into effect from 1 April 2019. Concerns were raised about the grant funding provided to FRAs for 2019-20 to cover the SCAPE element which had left a shortfall in FRA funds. The FRAs also raised concerns that funding had only been confirmed for 2019-20 and that there would be significant pressure on public sector finances, if provision was not made for future years.
- 3.6 KC advised that the calculations for grant funding for 2019-20 had been based on GAD's calculation of the average increase in employer rates from April 2019 to 2023 of 9.6% of pensionable pay. This was because the specific rates for each scheme had not been available at that time. Whilst officials appreciated that this created some complications for FRAs, the calculations had to be made using the information available at a specific point in time to feed into the wider funding picture, as the funding received from HM Treasury was not specific to FRA's and covered the whole of the public sector in Wales.
- 3.7 KC had shared a copy of the letter from GAD which had provided some explanation of the calculation of the employer contribution rates. However employer representatives felt that it would be useful if GAD could provide a more detailed explanation of the differences between the average employer rate and the individual scheme rates, and also some of the assumptions about future scheme membership that GAD had used. It was agreed that employer members would provide Welsh Government with any specific queries that they wanted to raise with GAD regarding the calculations.

**ACTION POINT: Employer representatives to e-mail Welsh Government to outline queries with the employer contributions rates.**

**ACTION POINT: Welsh Government to raise these queries with GAD.**

3.8 Funding for future years would form part of the comprehensive spending review (CSR). The Welsh Government's Strategic Budgeting team would be leading on CSR discussions with HM Treasury and as such the secretariat would raise the SABs concerns with that team.

**ACTION POINT: Secretariat to advise Welsh Government's Strategic Budgeting Team about SABs concerns regarding future SCAPE funding provision.**

3.9 The SAB was advised that the 2016 valuation process was now complete. However GAD was likely to start making data requests from FRAs for the 2020 Valuation later in the coming year. This was unlikely to involve the SAB.

#### **4. AGENDA ITEM 4 – PENSIONABLE PAY**

4.1 MP referred to the High Court judgement regarding Pensionable Pay in respect of Mid and West Wales FRA. Mid and West Wales FRA was considering the impact the decision had on the claimants and was undertaking the necessary calculations to implement the judgment. The FRA had sought further clarification on the limitations and timings regarding retrospection.

4.2 Similarly, the FBU was considering the implementation of the decision and the impact it had on members. The advice provided by the FBU in respect of the ruling would initially be aimed at its members in Wales.

4.3 The issue had a national impact on firefighters and it was hoped that a consistent approach could be taken across all three FRAs. KC referred to the information circulated by the Local Government Association and provided an update on behalf of Clair Alcock who was unable to attend the meeting. The LGA was examining the judgment and further guidance would be provided to all FRAs.

**ACTION POINT: Welsh Government to seek clarity from Clair Alcock on timings for guidance.**

#### **5. AGENDA ITEM 5 – SCHEME DATA (FPSABW(19)02)**

##### **Scheme Costs**

5.1 Members had been provided with details of expenditure and income data relating to the Firefighters' Pension Fund for the period 2011-19. The table did not contain any new data from the earlier paper provided to members in October, other than some adjustments to existing figures based on audited data now

available for previous years. Actual data for period 2018-19 would be provided at the next meeting.

### **Employee Contribution Rates: Yield**

- 5.2 The contribution yields applicable for each scheme had been calculated individually and totalled to give an overall yield for 2015-16, 2016-17 and 2017-18. The total yield across the three years was 13.17%. The full yield for the four year period from 1 April 2015 would be calculated and provided to members at the next meeting, once 2018-19 data had been received. Although the schemes were now in a new valuation cycle, the Welsh Government, via SAB, still needed to undertake this exercise.
- 5.3 During the valuation process, GAD had used an estimated yield for the period covered by the 2016 valuation (April 2019-March 2023) of 13% even though the scheme design required a yield of 13.2%. KC indicated that Welsh Government had agreed this position with HM Treasury which meant that no adjustments had been needed to employee contribution rates. It was noted that the yield would continue to be monitored by the SAB, as required.

### **Opt Out Data**

- 5.4 Members had previously requested a more detailed breakdown of information, to improve analysis and enable emerging trends to be identified. In particular, members indicated that it would be helpful to understand the reason why individuals chose to leave the scheme.
- 5.5 The data provided for 2017-18 had been updated to reflect the quarter 4 returns as submitted by the FRAs. It was noted that this had been an exceptional year as the majority of opt outs related to withdrawal following auto-enrolment in Mid and West Wales FRA.
- 5.6 The data presented for 2018-19 covered opt out data for the period April – December 2018 (Quarter 1-3). Based on the information collected, and where a reason had been disclosed, it appeared that a small number of members had chosen to opt out of the scheme due to financial reasons; either members could not afford the scheme contributions or members were paying into an existing pension scheme. (Of the 91 opt outs in 2017/18, six could not afford scheme contributions and three were paying into an existing pension scheme. Of the 31 opt outs in 2018/19, four could not afford scheme contributions and eight were paying into an existing pension scheme.) It was noted that a small number of opt outs related to older members and / or members on a higher salary.
- 5.7 North Wales FRA was looking at its opt out information in more detail but this work was still at an early stage.
- 5.8 Mid and West Wales FRA had noticed an increase in the number of opt outs, particularly in relation to the retained duty system. This was potentially due to RDS firefighters being self-employed or working within a SME causing their income to fluctuate. This led to some discussion regarding RDS pay generally

and the impact this had on recruitment and retention. South Wales FRA confirmed that RDS retention was a problem in South Wales despite the FRA providing a salary scheme. AR added that RDS retention was also an issue in England. The NFCC On-call Steering Group were examining issues of concern. Welsh Government was aware of the issues around RDS recruitment and retention in Wales and discussions were ongoing with the Chief Fire Officers and FBU as part of the Consultative Forum meetings.

## **6. AGENDA ITEM 6 – UPDATES FROM PENSION BOARDS (FPSABW(19)03)**

### **North Wales FRA**

6.1 North Wales FRA had increased the number of meetings from three to four times per year. Training had been provided to new members. It had been identified that the 'My Pension Online' was not being used in a comprehensible way. Further training sessions would be delivered to members to help them to update their pension details and perform benefit calculations.

### **Mid and West Wales FRA**

6.2 Mid and West Wales FRA had appointed three new members and they would complete the necessary induction process as required by the Pensions Regulator. The LPB had received an update on Rule B5C which related to the treatment of temporary promotion pay as Additional Pension Benefits.

### **South Wales FRA**

6.3 South Wales FRA was to recruit a new member to the LPB. The LPB had received an update on rule B5C and would receive further information on the appeals process in due course.

6.4 MP thanked the FRAs for their updates and said that he would be happy to provide feedback from the SAB at future meetings of the individual Local Pension Boards if it was felt this would be useful.

## **7. AGENDA ITEM 7 – FIREFIGHTERS PENSION SCHEME AMENDMENTS**

### **Survivor benefits on re-marriage and Brewster**

7.1 KC confirmed that the Welsh Government had introduced two orders relating to survivor benefits on remarriage and Brewster. The changes, along with some other minor amendments, came into force on 1 June 2018.

### **Walker (entitlement of bereaved same-sex partners to survivor benefits)**

7.2 The Welsh Government had sought legal advice on the implications of the [Walker](#) judgment. The timing of the introduction of the amendments was

dependent on Welsh Government Legal Services' capacity to draft the necessary provisions. Home Office had introduced the amendments in respect of the English Schemes. There was a potential risk if an eligible member was to transfer from the English Scheme to the Welsh scheme. It was assumed that the numbers affected by the ruling would be relatively low.

7.3 It was unclear whether the amendments would be introduced in isolation as they could form part of a wider amendments exercise. Welsh Government would make this clear in any communications provided.

### **McLaughlin (discrimination between children of married and unmarried parents in eligibility for benefits)**

7.4 The Supreme Court judgment in the case of [McLaughlin](#), concerned eligibility of the children of unmarried partners to survivor benefits. The case predominantly related to social security benefits rather than pension benefits but Welsh Government were considering whether the ruling would affect firefighter pension schemes, namely the 1992 Scheme and 2007 Compensation Scheme.

### **O'Brien**

7.5 The SABW was informed of the Court of Justice of the European Union (CJEU) ruling in the case of [Mr O'Brien](#) in November 2018, and in particular elements of the judgement that were likely to impact on RDS firefighters. Mr O'Brien was a self-employed barrister who also worked on a daily fee paid basis as a part time Judge between 1978 and 2005. The CJEU had concluded that periods of service prior to the transposition date of the Part Time Workers Directive in 2000 were to be taken into account when calculating pensionable service for fee paid judges.

7.6 KC indicated that Welsh Government was seeking advice from its legal services on the potentially significant implications for the Modified part of the 2007 scheme which had only provided the option for RDS firefighters to buy back pension rights from 2000 onwards. Any action to implement the judgement for firefighters would place a significant burden on FRAs and scheme administrators.

### **Other amendments**

7.7 The Welsh Government was completing 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.

## **8. AGENDA ITEM 8 – ANY OTHER BUSINESS**

8.1 MP asked if members had any issues they would like to raise that had not already been covered by the agenda. HM spoke about the location of the meetings and explained that a Cardiff based venue was not ideal for all members, particularly those attending from North Wales. It was agreed that future meetings would be held in the Welsh Government Office in Cathays Park

with a video link to the Welsh Government Office in Llandudno Junction. The location would alternate every three meetings and would take place in Llandrindod Wells.

8.2 The next meeting had been scheduled to take place on 4 July at the Welsh Government Building, Cathays Park, Cardiff.

8.3 KC highlighted that the agenda items were often led by Welsh Government as secretariat to the SAB, and that this might lead to the issues being covered by the SAB being focussed on mainly Welsh Government interests. Members were encouraged to put forward agenda items and to use the opportunity to seek advice from Clair Alcock, as the FRAs bought into the expert resource provided by LGA.