

Firefighters' Pension Scheme Advisory Board for Wales**30 September 2020****Virtual Meeting via Microsoft Teams****Note of Meeting****Present**

Michael Prior	Independent Chair
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Employee Members

Sean Starbuck	Fire Brigades Union
Richie Fairhead	Fire Leaders' Association
Glyn Morgan	Fire Officers' Association
Tristan Ashby	Fire and Rescue Services Association

Officers in attendance

Kevin Jones	Mid and West Wales FRA
Helen MacArthur	North Wales FRA
Alison Reed	South Wales FRA

Observers

Mark Miles	Mid and West Wales FRA
Sarah Tilman	Mid and West Wales FRA
Chris Barton	South Wales FRA

Others in attendance

Clair Alcock	Local Government Association
Sam Watts	Government Actuary's Department
Oscar Castro Lado	Government Actuary's Department
Neil Hawthorne	Government Actuary's Department

WG Officials

Steve Pomeroy	Welsh Government
Kerry Citric	Welsh Government
Cerys Myers	Welsh Government
Natalie Spiller	Welsh Government

Apologies

Cllr Edward Thomas	Mid and West Wales FRA
Cllr Bryan Apsley	North Wales FRA
Cerith Griffiths	Fire Brigades Union
Ade Robinson	Fire Officers' Association

1. AGENDA ITEM 1 – WELCOME AND INTRODUCTIONS

1.1 Michael Prior welcomed everyone to the meeting which had been set up to specifically focus on HM Treasury's working proposals for transitional arrangements to the 2015 pension schemes and Immediate Detriment.

1.2 The Chair extended a welcome to Glyn Morgan, who had attended to represent Fire Officers' Association and Tristan Ashby who had been appointed as the employee representative for the Fire and Rescue Services Association. The Chair also welcomed Clair Alcock (Local Government Association), Sam Watts, Oscar Castro Lado and Neil Hawthorne (Government Actuary's Department) and Steve Pomeroy (Welsh Government).

1.3 Apologies for absence were received from Cllr Bryan Apsley (North Wales FRA), Cllr Edward Thomas (Mid and West Wales FRA), Cerith Griffiths (FBU) and Ade Robinson (FOA).

1.4 Members noted that Cllr Sue Pickering was no longer a member of South Wales FRA and that a replacement member to the SABW, had not been appointed.

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

2. AGENDA ITEM 2 – NOTES FROM LAST MEETING AND MATTERS ARISING

2.1 The Chair referred to the minutes of the previous meeting held on 24 July and invited members to agree the minutes for accuracy. Amendments had been submitted by Sean Starbuck and Mark Miles in advance of the meeting and they had been accepted and included in the minutes circulated as part of the papers. No further comments were made and the minutes were agreed as a true record.

2.2 The majority of action points from the last meeting had either been completed or were covered by the agenda. Outstanding actions from earlier meetings had been deferred until the next routine meeting of the Board.

3. AGENDA ITEM 3 – HM TREASURY'S PUBLIC SERVICE PENSIONS CONSULTATION: RESPONSE TO THE MCCLOUD JUDGEMENT

3.1 At the July meeting, members discussed the Welsh Government's approach to the consultation regarding proposals for the remedy period 2015-2022. Members agreed the Welsh Government's proposals for handling the consultation and subsequent remedy for firefighters in the Welsh schemes as follows :-

- the Welsh Government would not undertake a separate consultation on remedy options;
- instead members would share their individual organisation's response to Treasury with Welsh Government officials;

- members would also provide a separate response from their organisation directly to Welsh Government officials, if they felt there was an issue of direct relevance to the Welsh schemes that did not apply more broadly across the UK;
- the Welsh Government would consider :
 - the responses to the Treasury consultation that it received;
 - Treasury's overall response to these,
 - and any feedback from SABW meetingsbefore deciding on its final approach to amending scheme rules.
- Following these actions, the Welsh Government would carry out a full public consultation, via the Board and relevant organisations, on the regulations required to implement the above final remedy.

Presentation from GAD

3.2 To support discussions, and as agreed at the last meeting, GAD had produced revised examples to illustrate the difference between pension benefits in the 1992, 2007 and 2015 scheme.

3.3 Sam Watts explained that the presentation, provided to members in February, had been updated to reflect the remedy period up to March 2022 instead of March 2023. They now included normal retirement benefits, benefits with full commutation taken into account, and ill-health retirements. The presentation covered a number of scenarios by age, career path and commutation to illustrate the difference between the pension amounts across the schemes. Members were asked to note though that these were just illustrative examples and should not be used as an indicator of pension benefits for members with different retirement ages and different lengths of service.

3.4 Oscar Castro Lado and Neil Hawthorne guided members through a number of spreadsheet models which provided a far broader indicative comparison between the potential active retirement and ill-health benefits accrued during the remedy period across the fire pension schemes, based on members' age and service. The spreadsheets provided various parameters such as future salary increases, CARE revaluation and retirement age to determine which scheme was more beneficial, based on individual members' characteristics. The models did not however make any consideration of the tax position of members.

3.5 Members made the following initial observations:-

- The models demonstrated a variance in results dependent on parameters applied, and age and length of service of a member. This highlighted the uncertainty associated with the Immediate Choice option (inability to take into account future circumstances such as members' health, pensionable pay and career progression).
- The spreadsheet for ill-health retirement looked at the value of the enhancement that members would receive for the remedy period under each of the schemes. But the key factor for some members retiring on ill-health grounds was the link to incapacity until normal pension age under the 2015 scheme regulations which

meant in some cases members would be eligible to ill-health retirement under the 1992 but not the 2015 scheme.

- The Treasury proposed closing the legacy schemes on 31 March 2022 to all members. This effectively meant that unless past and current ill-health cases were processed and assessed as immediate detriment cases prior to the 2022 transfer date, they would be assessed under 2015 scheme criteria.
- Employee representatives indicated that they would challenge this position in their responses to the consultation.

Scheme Advisory Board in England (SABE)

3.6 Clair Alcock (CA) provided feedback on the approach taken by the Scheme Advisory Board in England (SABE). The SABE considered the Deferred Choice Underpin (DCU) to be their preferred option. This option would enable members to base their choice on actual information and would mitigate the risk of further legal challenge. The SABE was though concerned about the administrative burden that would be placed on FRAs to meet the deadline to implement the changes by April 2022. It was noted that under DCU, two sets of annual benefit statements and pension savings statements would be provided to the member each year, to reflect both legacy and reformed scheme benefits. To minimise complication, the SABE would suggest that the information be made available only on request or via online channels.

Position in other SABs

3.7 The Scottish SAB had indicated the Deferred Choice Underpin was its preferred option. The remedy consultation in Northern Ireland had a much later response date. Nevertheless, discussions at meetings between the SAB Chairs had indicated that deferred choice would also be the preferred choice of the Northern Ireland SAB.

Detailed Response from SABW

3.8 The Board agreed that it should send a collective consultation response to include its position on the lead proposals for a remedy and views on the individual questions set out in the consultation.

3.9 Due to time constraints, the SABW was not able to consider all of the questions as set out within the consultation document. Members agreed to share their individual organisations consultation response with the secretariat which, along with issues raised at this meeting and any relevant comments from SABWs earlier technical response, would be used to identify common themes to include in the response to Treasury. Copies of the responses from North Wales FRA and the FOA had already been received.

3.10 Kerry Citric set out a timeframe for drafting and submitting the response to Treasury which provided a short window of 2 days for members' clearance.

3.11 The issues that were raised at the meeting were:-

Equalities impacts

3.12 The Board was concerned that younger firefighters would be adversely affected by Immediate Choice. Members would be required to make a judgment based on a series of assumptions on their future career and personal circumstances. Younger firefighters would have much less clarity on their future circumstances and therefore much greater risk of making a less beneficial choice. The Board acknowledged that the consultation had been accompanied by an Equalities Impact Assessment, but felt that an EIA that specifically focussed on the unique impacts on firefighters was required. It was noted that the Scottish Government had already commissioned an EIA for the firefighter scheme in Scotland.

3.13 Employee representatives believed the approach to tapered protection was too simplistic and problematic and proposed tapered members be allowed to retain the choice of having a combination of legacy and reformed scheme benefits where this had already occurred.

Immediate choice

3.14 The Board did not support Immediate Choice for a number of reasons :-

- risk that immediate choice could create further discrimination against younger members,
- concerns regarding timeframes to amend scheme rules and implement changes with very few resources,
- the need to provide appropriate and detailed advice to members in such a short timeframe.

3.15 Employee representatives opposed the proposal to default members who did not respond to the immediate choice exercise into their legacy scheme.

Deferred choice underpin (DCU)

3.16 The Board agreed that DCU was the most effective option to remove age discrimination for members. Members did though raise concerns regarding the overall complexity of DCU, and particularly complexity around :-

- Significant tax issues;
- greater administrative burdens for a far longer period than immediate choice;
- Long term financial planning.

3.17 Employee representatives proposed that the DCU should include an indicative choice instead of a fixed default of legacy scheme, as legacy scheme benefits may not be the better option for some 2007 scheme members.

Closing the legacy schemes for all members and equalising future treatment

3.18 The Board raised concerns regarding the timeframe for implementation. They did not believe that the April 2022 deadline was realistic. Employee representatives did not support the proposal to move all members into the 2015 scheme from 2022. Whilst this would mean all members were treated the same it did not take into account that such an approach would impact on members differently

Revisiting past cases

3.19 Employee representatives felt strongly that past cases should be treated as immediate detriment cases, and be dealt with in advance of the 2022 implementation date.

Member contributions

3.20 The Board was comfortable that the approach for repayment of contributions was consistent with that applied to special members of the 2007 modified scheme introduced in 2014. Employee representatives did though wish to reiterate the need to apply an indicative choice within the DCU option in order to avoid unnecessary tax challenges in the future.

Voluntary member contributions

3.21 The Board did not express a view on this question.

Annual benefit statements

3.22 The Board was concerned about the amount of detail to be included within members' annual benefit statements which would place significant burden on scheme administrators and cause confusion to members. The Board did not support the proposal that ABSs should set out both legacy scheme and 2015 scheme, suggesting that annual benefit statements should only include benefits that related to members default scheme. However the Board agreed that members should be given the option to access the additional information on request or via on-line channels.

Contingent decisions

3.23 The majority of members were content to revisit cases on a case by case basis with members providing evidence regarding their choices and decisions. However, employee representatives felt that a blanket approach should be applied, on receipt of application to buy back legacy scheme benefits.

General views

3.24 The following general points were made :-

- The Board had major concerns regarding the availability of independent financial advice. The firefighters' pension schemes were particularly complex and

independent financial advisors were unlikely to have sufficient knowledge to provide accurate advice. It was recognised that administrators may require further training to ensure that they had the knowledge and skills to assist members.

- More clarity on Tax issues was needed. The Board felt that HM Treasury and HMRC would need to be available to provide more detailed advice and guidance in the lead up to and following implementation.

4. AGENDA ITEM 4 – IMMEDIATE DETRIMENT GUIDANCE FOR FIRE PENSION SCHEMES

4.1 At the last meeting, members raised the issue of immediate detriment cases. Both employees and employers indicated that they needed advice and direction from Welsh Government. It was agreed that Welsh Government would provide a position statement in respect of guidance on immediate detriment cases.

4.2 The Chair invited Steve Pomeroy to provide an update. Members were reminded that as the Welsh Ministers were not the scheme manager, the Welsh Government had no functions which would allow it to implement the Tribunal declaration before the scheme rules were changed. Those powers rested with FRAs as the employers, however processing immediate detriment cases for non-claimants could be dependent on the outcome of the FRAs' Equality Act 2010 Schedule 22 appeal. It was noted that the LGA had sought legal advice on the matter on behalf of the FRAs.

4.3 The Welsh Government had met with the 3 FRAs and LGA (Clair Alcock) on 18 September to try to achieve an agreed and consistent approach to handling immediate detriment across Wales. At that meeting, it was agreed that Immediate Detriment was to be available to any scheme member in service on or before 31 March 2012 and on or after 1 April 2015. This included those with a qualifying break in service of less than 5 years, and who had not benefitted from full protection and were moved into the 2015 Scheme on or after 1 April 2015. Dependent on the issues set out above Immediate Detriment would apply to claimants and non-claimants who fell into the categories outlined above. It would not apply to scheme members who had already retired and were in receipt of pension payments.

4.4 It was agreed that FRAs should contact those eligible and who had expressed an interest in retiring (or who were obliged to retire on health grounds, or were eligible survivors) with the relevant information to help them make a decision. The position on some of the detailed issues such as contribution holidays, split pensions and purchase of additional pension had been agreed, however, it was recognised that a number of cases would not be able to be processed because there were still too many unknowns, and it was made clear that all calculations would need to be revisited in due course to ensure that final legislation was taken into account.

4.5 The FRAs said they had found the meeting beneficial as there was a small number of scheme members in scope of immediate detriment by the end of the calendar year. CA added that the SABE had asked English FRAs to undertake a

review of their data profile to ascertain eligible members of Immediate Detriment up until the end of the remedy period.

4.6 The Welsh Government extended an invitation to meet organisations representing employee members if that would be useful. Members were advised that the note of the meeting had been used to produce a document setting out the collective agreed position. Once agreed with attendees, the document would be circulated to the wider SABW for their information.

AGENDA ITEM 5 - ANY OTHER BUSINESS

4.7 **Public Sector Equality Duty** – At a recent MOCOP meeting, HM Treasury had referenced “schemes” collecting data on protected characteristics for pension scheme members. Welsh Government was aware that FRAs collected data on staff members as part of their employer duties under the Equality Act but asked FRAs to clarify whether this was able to be broken down by scheme membership. It was noted that this was a general enquiry and not a data request from the Welsh Government. If specific data was needed centrally then this would be requested on an adhoc basis as required.

4.8 **Firefighters’ Pension Scheme Amendments** – members were reminded of the closing date of the Welsh Government [Consultation](#) which covered proposed amendments following the Supreme Court rulings in the cases of Walker and McLaughlin as well as other minor amendments. The consultation was to close on 2 October.

4.9 **Date of Next Meeting** – The Chair thanked members for attending and suggested the Board meet again in the New Year.