

Firefighters' Pension Scheme Advisory Board for Wales

22 July 2022

Virtual Meeting via Microsoft Teams Note of Meeting

Present

Michael Prior Independent Chair

Employee Members

Mark Rowe	Fire Brigades Union
Cerith Griffiths	Fire Brigades Union
Ade Robinson	Fire Officers' Association
Tristan Ashby	Fire and Rescue Services Association
Richard Fairhead	Fire Leaders' Association

Employer Members

Cllr Kim Broom	Mid and West Wales FRA
Cllr John Brynmor Hughes	North Wales FRA
Cllr Aurfron Roberts	South Wales FRA

In attendance

Helen MacArthur	North Wales FRA
Alison Reed	South Wales FRA
Chris Barton	South Wales FRA
Mydrian Harries	Mid and West Wales FRA
Mark Miles	Mid and West Wales FRA
Linda Miller	Mid and West Wales FRA
Claire Hey	Local Government Association
Elena Johnson	Local Government Association

WG Officials

Steve Pomeroy	Welsh Government
Kerry Citric	Welsh Government
Natalie Spiller	Welsh Government
Steffan Herdman	Welsh Government

1. AGENDA ITEM 1 – WELCOME AND INTRODUCTIONS

1.1 The Chair welcomed everyone to the meeting.

1.2 The Chair welcomed Cllr Aurfron Roberts, Cllr John Brynmor Hughes and Cllr Kim Broom to the meeting, following their recent appointment to the SABW. MP also extended a warm welcome to Linda Miller who joined the meeting from Mid and

West Wales FRA and Elena Johnson who had recently joined the Blue Light Team at the LGA.

1.3 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 notes of the previous meeting held on 23 February and invited members to agree them for accuracy. No comments were made and the notes were agreed as a true record.

2.2 An update on the actions from the previous meeting, and outstanding actions from earlier meetings was provided as a front page to the notes. The Chair advised that all outstanding items under Matters Arising would be discussed in detail under the corresponding agenda items.

3. AGENDA ITEM 3 – GROUP GOVERNANCE

3.1 KC advised Members that, following a change in SABW membership as a result of the Local Government Elections, the Secretariat had taken the opportunity to review all appointment documentation currently held on file. As the appointment documentation had changed over the lifetime of the Board, it was felt that for consistency, and to ensure best practice guidelines were adhered to, all Members (new and existing) should be issued with updated appointment documentation. New Appointment Letters, together with Terms and Conditions of Appointment, Conflicts of Interest Declaration and Welsh Language Preference forms had therefore been issued to Members for completion. KC requested that Members sign and return the documentation to the Secretariat as soon as possible, if they hadn't already done so.

3.2 The Secretariat had also reviewed and updated the Terms of Reference. to include the following:-

- Section added to clarify that Welsh Ministers' would consult with the SABW on proposed amendments to Scheme Rules in addition to a formal consultation exercise.
- The 'purpose' section had also been updated to include the role of the SABW in advising Welsh Ministers on the valuation process and assumptions.
- Reference to the need for more regular and potentially unscheduled meetings in order to discuss the valuation had been included.
- The 'Frequency / Structure of Meetings' section referred to meetings being undertaken remotely via MS Teams, with the requirement to meet on a face to face basis when required.
- A new section relating to training had also been added.

A copy of the revised Terms of Reference with tracked changes had been circulated to Members prior to the meeting. No further comments were made and Members agreed the revised document as presented.

Action: Members to return signed appointment documentation to the Secretariat as soon as possible.

4. AGENDA ITEM 4 – SARGEANT / MCLOUD AGE DISCRIMINATION RETROSPECTIVE REMEDY

Progress on Retrospective Regulations

4.1 SP provided an update on progress with the scheme changes that were being introduced as a result of age discrimination identified in the case of Sargeant and others v London Fire Commissioner and others.

4.2 Following the passing of the Public Sector Pensions and Judicial Offices Act in March, scheme regulations had also been introduced in March transferring all remaining members of legacy schemes into the 2015 Scheme on 1 April 2022.

4.3 Work was now underway to develop the regulations that would retrospectively revert affected members into their legacy schemes for the remedy period, including (if they wished) affected members who had opted out of scheme membership. Welsh Government officials had instructed lawyers on the broad proposals to be included in regulations which would cover establishing the immediate and deferred choice mechanisms for existing pensioners, and active and deferred members respectively. The regulations would also deal with the consequences of reversion and member choices. Some of the key approaches were set out in the paper presented to members. Members were invited to note the scope of the changes and offer any initial comments on the proposals. Members were also asked how they would like to be kept informed of developments.

4.4 SP raised some of the specific details referred to in the paper:-

4.4.1 Secondary Contracts - Officials were currently considering whether remedy should apply to all of an affected member's employment, or only those contracts which met the qualifying criteria. SP confirmed that it was the Welsh Governments' belief that the approach should be based on an individuals' eligibility rather than separate eligibility for each contract. However, a definitive decision had not yet been adopted on this issue.

4.4.2 Opt Outs - SP advised that flexibility would also be considered for those Scheme Members who had opted out of the 2015 Scheme to opt back into their legacy scheme for the remedy period should they wish.

4.4.3 Immediate Choice - SP clarified that affected members who had already retired or, in the case of deceased members, their eligible survivors would be able to make an “immediate” choice. Should a member not make an immediate choice themselves, service would be treated within their legacy scheme as it would generally be more beneficial.

4.4.4 Cllr Broom queried how long retired members would have to make this decision as they had not received their updated pension illustrations and the tax implications were not yet known. SP clarified that Members would have a year from receipt of a Remedial Service Statement in which to decide how their remedy period service should be treated.

4.4.5 **Survivor Benefits** - SP noted that under the new regulations, the survivor would be treated as the Scheme Member and would be able to decide how service should be treated for the remedy period.

4.4.6 Cllr Hughes advised that his son who had been a scheme member had sadly passed away in 2011, and as a result queried whether this could be classed as a potential conflict of interest. SP confirmed that this would not be an issue unless Cllr Hughes was in receipt of a survivors’ pension, Cllr Hughes confirmed that this was not the case.

4.4.7 **Tax Issues** - SP confirmed that as taxation was non devolved, the Welsh Government did not have the powers required to amend scheme rules to amend emerging tax issues. However, these would be addressed in regulations made under the forthcoming Finance Act. Going forward there may be a requirement for consequential changes to scheme regulations. HM Treasury directions would be important in understanding whether any changes would be required. KC confirmed that it was unlikely that clarity on interest rates, which would be included in HM Treasury Directions, would be available before the Autumn.

4.5 KC reminded members that all of the generic Provision Definition Documents coordinated by HM Treasury had now been shared with SABW, and scheme administrators (apart from the Annual Allowance and Tax PDD which was still being developed). As previously indicated the generic PDDs were helpful to an extent, (both for Welsh Government to support drafting the regulations, and for scheme managers and administrators to help with clarity on the underpinning policy to support preparation for implementation) but they did not cover firefighter scheme specific positions and scenarios. For some PDDs that wasn’t a significant issue (eg for tax, interest, RSS, IC/DCU the position would be pretty consistent across schemes) but for some other issues Welsh Government officials had to explore the differences in scheme regulations and firefighter circumstances more closely. This was being undertaken in discussion with the Home Office and the other devolved Governments and meeting had been taking place and were continuing. However, there were still details to be resolved with lawyers, and HM Treasury Directions to consider before any regulations could be finalised.

4.6 KC confirmed that the Welsh Government would be publishing a 3 month consultation on the retrospective regulations. This was planned to issue at the end of January which was consistent with the Home Office timeline. However, this timing was dependent on other factors such as the publication of HM Treasury Directions and was therefore subject to adjustment. Following the consultation, Officials would review the regulations to determine whether any further amendments were required.

4.7 KC reported that a SABW Sub Group meeting had taken place on the 12 July to discuss the remedy outlined in the paper presented to SABW. That had been constructive and the sub group had agreed to have further ad-hoc meetings when required, the next one likely to be in the Autumn once officials had clarity and detail on some of the overarching issues covered in the paper.

4.8 Members of the SABW were asked to discuss what type of engagement they would like following the sub group meetings. SP reiterated that any issues identified would be raised at future SABW meetings and Members would have the opportunity to raise any issues or concerns prior to the formal consultation exercise. Members noted and agreed this approach and confirmed that they were content with the current arrangements and the level of involvement in shaping developments.

4.9 CH advised that the LGA Myth Busting Fact Checker document and Member Illustrations had now been produced for firefighters in Wales and had been published on the LGA's website.

5. AGENDA ITEM 5 – O'Brien – RDS Firefighters Option to Purchase Pension Entitlements for pre-2000 Service

5.1 KC presented SABW(22)09 which set out the Welsh Governments proposals for introducing changes to the modified element of the 2007 pension scheme to respond to the judgement in O'Brien v Ministry of Justice. This held that applying a 2000 cut-off to the pensionability of past service of part-time workers, and their rights to buy back service was unlawful, any and all of a RDS firefighters service was pensionable if they were employed on or after 6 April 2000. KC advised Members that there were two groups of retained firefighters who would be eligible for remedy. Firstly, firefighters whose service straddles the operative date of 6 April 2000 would be entitled to purchase some or all of that service. Secondly, retained firefighters who did not have service straddling the operative date, but who had not yet received the full opportunity to purchase past service to which they are entitled. This included individuals who should have been entitled to participate in the 2014 exercise but were overlooked, and those who joined between 6 April 2000 and the previous cut-off date of 1 July. Regulations would allow eligible individuals to purchase past pension rights up until April 2022. Affected members would be required to pay contributions for the required period.

5.2 FRAs would be required to undertake a further exercise which included contacting all eligible firefighters and providing the mechanism for them to purchase retrospective membership of the scheme. KC indicated that early discussions with the FRAs had highlighted the challenges in doing so, given the timeframe that was

covered. Challenges included being able to identify firefighters with 2000 and pre 2000 service where records may no longer exist or where contact details were out of date. This was particularly the case where members had since retired, or had died. In addition, there were also likely to be problems in calculating historic pensionable pay, and thus entitlement to pension. KC indicated that, in the event that there were no payroll records for the period prior to 2000, provision would have to be made to enable the FRAs to make assumptions about individuals' pensionable pay using other evidence, e.g. bank statements or records of incident volumes at the stations where individuals were based.

5.3 KC advised that the Local Government Association and the FBU had agreed a Memorandum of Understanding (MoU) with the Home Office covering how these changes would be made in England. Although the MoU did not extend to Wales, the eligibility criteria was the same and therefore due to the complexity of the issue there was value in taking a UK wide approach. The Welsh Government had initially thought that work on the O'Brien remedy should be undertaken following implementation of Sargeant/McCloud remedy. This was to avoid the pressure of FRAs and administrators having to implement 2 major sets of changes at the same time and potentially therefor increasing the risk of error for members. However, on reflection, it was felt that this would result in further delay in providing remedy to those firefighters affected by the O'Brien judgement and would be inconsistent with the approach taken in England under the MoU. KC confirmed that the Welsh Government would therefore aim to introduce scheme amendments in October 2023. KC advised that the SABW would be updated as and when progress was made.

5.4 Members agreed with this approach and suggested that the FRAs may be able to obtain contact details for affected scheme members from HMRC, Department for Work and Pensions and potentially the Pensions Ombudsman. Members agreed to contact the Secretariat should they have any further suggestions or comments. SP added that it would be helpful to have discussions with the Scheme Managers regarding how to calculate payments.

Action: Members to provide further comments or suggestions of how to ascertain contact details for eligible firefighters to the Secretariat.

6. AGENDA ITEM 6 – 2020 Valuation Timetable

6.1 Members were advised that the Government Actuary's Department (GAD) had provided an updated 2020 Valuation Timetable, which indicated that draft assumptions were now likely to be published between January – March 2022, with the Valuation Report expected between April – June 2023. However, these timings were still under review and GAD had advised that they might change. KC advised that the slippage in timescales was likely a direct result of HM Treasury's delay in publishing their response to the SCAPE Methodology Consultation, and the resultant delay therefore in HM Treasury publishing their valuation directions. It was

anticipated that a consultation response would be published during Autumn 2022 with a change in employer contribution rates expected in April 2024.

6.2 HM Treasury had made its regulations to broaden the cost cap window from 2% to 3% above or below the cost cap for each scheme as set out in scheme regulations. Therefore, the cost cap cost in the 2020 valuation would have to be more than 3% above or below the 17.1% cost cap for the firefighter scheme in Wales before there would be a requirement for Welsh Ministers to take action to bring the cost cap cost back to its correct level.

6.3 KC further advised that the 2020 Valuation and SCAPE rate change would likely trigger a scheme factor review in the coming months. As a result, CETVs in particular might need to be suspended, whilst GAD worked to produce new factors. The remaining factors would be reviewed throughout 2023. The Secretariat would contact Scheme Administrators in due course to provide them with advance notice, and a further update would be provided to the SABW once factors had been revisited.

Action: Secretariat to contact Scheme Administrators to provide advance warning of a potential factor review and CETV suspension.

7. AGENDA ITEM 7 – Scheme Data

7.1 Members were advised that the FRA Pension Fund Income and Expenditure and associated Employee Yield papers were last provided to members at the meeting held on 4 November 2021. KC advised that the information provided in Annex 1 showed the Scheme Costs for 2021-22, which were calculated following receipt of FPF Returns from FRAs. KC advised that following the transfer of all remaining members into the 2015 scheme in April 2022 implementation of the Sargeant / McCloud remedy, income within the 1992 Scheme 2007 Scheme had significantly reduced, the only income paid into these Schemes now related to past payment contributions. As expected, income within the 2015 Scheme had increased.

7.2 KC referred to Annex 2 which provided details of the employee contribution rate yield for 2021-22. In 2018 HM Treasury agreed an employer yield of 13% for the 2019-2023 period. The yield achieved for the third year (2021-22) of the four year valuation period was 12.93%, giving an overall yield of 13.04% for the valuation period to date which met the yield rate required by HM Treasury. However, the yield had reduced each year of the valuation period. The Welsh Government would bring this to the attention of GAD and HM Treasury colleagues.

7.3 The Secretariat were also continuing to monitor pension scheme opt out data, an update would be provided at the next SABW meeting.

8. AGENDA ITEM 8 – Updates from Pension Board

8.1 The Chair invited Claire Hey to provide an update on LGA and SABE discussions. CH advised that the SABE had set up a working group in order to discuss the implications of Matthews / O' Brien in greater detail. They were in the process of reviewing the PDDs relating to Sargeant / McCloud with Home Office. In addition, the SABE had also reviewed their Board Membership and discussed training requirements.

8.2 CH also advised Members that the commutation provisions had been amended for FPS 1992 Scotland from 1 April 2022. In an update to SABE, SPPA had reported that there had been a significant rise in expected retirements following the change. Due to timing, it was not clear whether this was a result of the change in provision or due to the move of all members back into the FPS 2015 from 1 April 2022. It was also not clear how this would impact on workforce planning. CH advised that the SABE would continue to monitor the impact of the change. Should Members decide to pursue a change to the commutation provisions in England, a business case to HM Treasury would be required for the UK Government to take forward.

8.3 **North Wales FRA** - At the meeting on the 15 March, the LPB had discussed scheme activity during 2021/22, focusing on a number of key areas including retirements and opt out data. An update on IDRPs had also been provided, together with an update on the remedy proposals in relation to age discrimination and cases involving immediate detriment. It was agreed that training would be provided to LPB members at the next meeting following the Local Government Elections.

8.4 **South Wales FRA** – Key Performance Data has been discussed during the LPB meeting on 31 January 2021. In addition, the LPB had also discussed the Fire Authority decision to provide pension benefits statements to those individuals who were considered to be in scope for Immediate Detriment. Members had been provided with completed Public Service Pension Schemes Returns that had been submitted to The Pensions Regulator. Information and bulletins on a range of pension related matters had also been discussed.

8.5 **Mid and West Wales FRA** – At the LPB meeting on the 4 April, Members had been provided with a scheme administrator and Training Needs Analysis and Training Programme update. An update had also been provided on the outcomes of the Pensions Payroll Audit Report which had received full assurance. Training had been provided to LPB members on the 18 July on the background to pension schemes and the role of the Local Pension Board.

9. AGENDA ITEM 9 - ANY OTHER BUSINESS

Training

9.1 The Secretariat were in the process of arranging a blended pensions training session which was scheduled to take place on 27 September. As good transport links to London were imperative to the attendance of guest speakers from GAD and the LGA, the session would take place in a central location at the Welsh Government Building, Cathays Park, Cardiff. KC acknowledged that this was particularly inconvenient for Members based in North Wales, however, it was anticipated that the training could be blended with the option for colleagues to attend remotely via MS Teams if more convenient. The Welsh Government were currently in the process of purchasing the IT equipment required and so confirmation would be provided to Members as soon as possible. KC urged Members to make every effort to attend the training session in person to ensure they received the more effective training possible. At present, social distancing restrictions were still being enforced within Welsh Government Offices which would restrict the number of participants that could attend the event in person to 40, however, there would be no limit on the number of attendees that could join the session online. In the event that a blended event could not be facilitated, training would be conducted online via MS Teams. KC advised that the Secretariat would email Members with the further details and provide an update on arrangements as soon as possible.

Pensions Dashboard

9.2 CH confirmed that that the staging deadline for all public service schemes had been extended by five months from 30 April 2024 to 30 September 2024. The requirement to provide value data had also been pushed back to 1 April 2025 at the latest and would only be earlier where a Remediable Service Statement had been issued.

9.3 In addition, the Department for Work and Pensions (DWP) had also published a further consultation which closed on the 19 July. The consultation sought views on 2 specific issues that were not included in the January consultation:

1. The Dashboards Available Point (DAP)
2. Proposals to support the Disclosure of Information between the Money and Pensions Service (MaPS) and The Pensions Regulator (TPR)

A link to the Consultation had been sent to SABW Members on the 7 July to enable individual the individual organisations represented to respond if they so wished. It was noted that a joint SABW response had though not been submitted.

Date of next meeting

9.4 The Secretariat would be in touch to ascertain suitable dates for the next SABW meeting which would take place during the Autumn.

Action: Secretariat to email Members with further details of the Pensions Training Session on the 27 September.

Action: Secretariat to arrange forthcoming SABW meetings to align with the 2020 Valuation process.