



## **Actions and agreements**

**23 January 2023**

**Location: MS Teams**

### **PRESENT**

Joanne Livingstone	SAB Chair
Philip Hayes	Scheme Member Representative (FRSA)
Pete Smith	Scheme Member Representative (FBU)
Tony Curry	Scheme Member Representative (FBU)
Andrew Scattergood	Scheme Member Representative (FBU)
Glyn Morgan	Scheme Member Representative (FOA)
Janet Perry	Scheme Employer Representative (LGA)
Cllr Roger Price	Scheme Employer Representative (LGA)
Cllr Frank Biederman	Scheme Employer Representative (LGA) – nomination
awaiting approval	
Cllr Nikki Hennessy	Scheme Employer Representative (LGA)
Helen Scargill	Technical Adviser
Craig Moran	First Actuarial
James Allen	First Actuarial
Mark Poulston	Legal Adviser
Claire Hey	LGA – Board secretariat
Elena Johnson	LGA – Firefighter Pension Advisor (Minutes)
Frances Clark	Home Office
Anthony Mooney	Home Office
Tantara Fox-Stilwell	Home Office
Karen Gilchrist	SPPA (observer)

Angela Bell

The Pension Regulator (Item 5)

Lucy Stone

The Pension Dashboard Programme (Item 5)

## **1. Introductions, apologies, and conflict of interest**

- 1.1 Alan Wilkinson, Des Prichard, Mark Rowe, Cllr Nick Chard, Cllr Roger Phillips, and Roger Hirst sent their apologies. Roger Hirst was substituted by Janet Perry (JP).
- 1.2 Joanne Livingstone (JL) advised that Cllr Frank Biederman (FB) will be replacing Cllr Stephens as the Independent Group scheme employer representative once the nomination has been approved.
- 1.3 JL advised that the meeting would not be quorate again due to the number of apologies received.
- 1.4 JL welcomed Mark Poulston (MP) who replaces Jane Marshall from Weightmans as Legal Advisor to the SAB.
- 1.5 JL reminded members of the Board to declare if any new conflict has arisen. It was confirmed that there is no requirement for forms to be completed. No conflicts were declared.

## **2. Actions arising (8 September 2022) and Chair's update**

- 2.1 Claire Hey (CH) asked the group for any comments on the minutes from the meeting of 8 September 2022. These could be submitted either now or by email after the meeting.
- 2.2 CH went through actions arising. Action 4.13 from 8 September 2022 relating to added pension contracts has been completed by Helen Scargill (HS) based on information held at WYPF and the figures fed back to the Home Office (HO) to aid policy decision. JL asked for the numbers affected. HS confirmed that they have 25 added pension contracts recorded at WYPF for the 23 fire authorities that they administer.

2.3 CH confirmed that action 4.45 from 8 September 2022, for CH to email HO to ask if a member who has no FPS 2015 service post-remedy would be compensated if they had a transfer-in, has been completed and the issue has been clarified during one of the PDD engagement sessions.

2.4 CH confirmed that the LGA has done some analysis on the FPS/ LGPS regulations for action 6.1 from 11 June 2020, relating to temporary contracts versus casual contracts. Temporary contracts create challenges for the FPS where eligibility is concerned. Further actions were noted later in the meeting.

2.5 CH advised that Jane Marshall had taken an action to create a note on pensionable pay, particularly relating to the correction of retrospective contributions. This will be covered under item eight.

2.6 CH advised that action 9.11 from 8 September 2022, for the Chair to write to Scheme Managers highlighting the importance of being dashboard ready, had been completed and the letter issued on 27 October 2022.

2.7 CH confirmed that all actions arising from the September meeting had been closed.

2.8 JL provided the Board with a Chair's update:

2.8.1 JL highlighted that the collaboration sessions for remedy had featured strongly since the last meeting.

2.8.2 JL informed the Board that the subject of quoracy needed to be discussed as the current and previous meetings were not quorate, despite the December meeting being rescheduled. Point 31 of the [Terms of Reference](#) requires the Board to have ten members present with at least three employee and three employer representatives present plus the Chair. JL said that consideration could be given for reducing the number of members which were required to fulfil quoracy rules. JL asked the Board for views on this subject.

- 2.8.3 Glyn Morgan (GM) felt that if the Board cannot function then from a practical point of view, the Terms of Reference need to be looked at.
- 2.8.4 Cllr Roger Price (RP) agreed that he had no problem in the numbers being reduced as long as there is equal representation from each side: employee and employer representatives.
- 2.8.5 JL agreed that it should be equal on each side, and it was for the Board to agree on the numbers for each. JL asked the other representatives from the members side to provide a view.
- 2.8.6 Craig Moran (CM) asked if the Board should look at how other SABs are set up for comparison purposes, to see if this is a Fire SAB issue or a broader issue. JL felt that the Fire SAB had a different make up because of the different union representation which made up the Board. JL asked HO how many members are on the Police SAB. Frances Clarke (FC) advised that it is difficult to compare to the Police SAB as Fire has the local government element to it. There are other schemes which could provide a better comparison, FC will have a look at this as Teachers may be more similar.
- 2.8.7 Andrew Scattergood (AS) indicated that the FBU would not have an issue in exploring it as the functioning of the Board is vital to conduct business. They would need to look at the detail of what is being proposed but are happy to explore this. AS said that it was a question of whether it was possible to change the Terms of Reference but noted that this point would also be looked at. JL confirmed that the SAB will explore whether this can be legally changed.
- 2.8.8 Philip Hayes (PH) confirmed that the FRSA does not have a problem in the Terms of Reference of the Board being looked at. He also noted that the use of MS Teams should make attending meetings easier.

2.8.9 JL agreed that the Chair and secretariat should investigate whether the Terms of Reference can be changed, and the Board would be consulted on any amendments.

2.8.10 JL advised that a chair is still needed for the Local Pension Board effectiveness committee which should be on the employee side and the planned Matthews Working Group still requires two employer representatives. However, JL advised that the Matthews Technical Working Group which already exists could be used as a way forward. CH explained that a Matthews Working Group containing representatives from the SAB was originally to be formed to ensure the governance of the project; however, as there have been difficulties in obtaining the representation for this group, CH suggested that the SAB feed into the Matthews Technical Working Group as an alternative way to provide oversight for this project. CH suggested that one employer representative and one employee representative could be involved in the group. JL asked the Board to put forward names for these two groups.

**ACTION: 23.01.2023 (2.8.6): Home Office to look at how other SABs are constituted to provide a comparison when looking at whether the terms of reference of the FPS SAB (England) can be amended.**

**ACTION: 23.01.2023 (2.8.9): SAB Chair and secretariat to investigate whether the Terms of Reference can be changed, and the Board to be consulted accordingly.**

**ACTION: 23.01.2023 (2.8.10): SAB members to volunteer for the Matthews Technical Working Group**

### **3. Home Office update**

3.1 FC provided an update on the McCloud timeline, advising that there will be a delay in the publication of the retrospective regulations from January 2023 to

February 2023. This has been due to delays in receiving the relevant tax material from HM Treasury needed to produce draft regulations.

3.2 FC confirmed that HO is working closely with the LGA, NPCC, administrators, and software suppliers to try to minimise the impact of this delay and is making their policy thinking known as early as possible to encourage incremental working processes.

3.3 FC confirmed that there is an engagement session on tax on 24 January 2023 and the final session on tax will be held during February 2023. Following this the formal consultation stage will begin.

3.4 In respect of the valuation timeline, FC does not anticipate any delays to the implementation of the valuation timeline but a response to the SCAPE rate consultation is still awaited.

3.5 In respect of the Matthews remedy, FC confirmed that work is going well on this and thanked all those involved in the Technical Working Group for their valuable input.

3.6 FC said that HO will facilitate an informal briefing session on Matthews ahead of formal consultation where members of the SAB can be informed of the current policy thinking. FC advised that HO would contact SAB members to invite them to this session.

3.7 Craig Moran (CM) advised that the SAB had a session with GAD six months ago on their initial thinking on the scheme specific assumptions and asked if any further engagement sessions would be arranged with GAD or whether this would happen when the initial results are made known. CM also asked if the SAB would have first sight of a valuation data report to review, as they had in 2016, before the final results are made known. CM asked if there was a timetable showing what would happen when. FC will find this information out for the SAB.

3.8 CH asked whether training with GAD about assumptions can be considered for SAB England, as the devolved administrations have arranged for their

respective Boards. CH also asked if there was any further information available regarding financing for remedy.

3.9 FC confirmed that HO are aware of the significant costs of remedy and conversations around funding are currently on-going. JL expressed the need for clarity on who is paying for which elements of remedy and the need for details of the mechanisms for reclaiming money. FC advised that it is always useful for HM Treasury to be made aware of the different way in which FPS is funded and that discussions continue to take place on funding.

**ACTION 23.01.2023 (3.6): Home Office to invite SAB members to a Matthews informal briefing session ahead of consultation.**

**ACTION 23.01.2023 (3.7): Home Office to liaise with GAD on information which will be released on the 2020 valuation and the relevant timetable for this.**

#### **4. SPPA Update**

4.1 Karen Gilchrist (KG) shared SPPA's experiences of the removal of the commutation cap. From December 2021 to February 2022 they sent out a consultation on behalf of the Scottish Government to gauge views on removing the commutation cap and the commutation underpin, which does not apply in England.

4.2 KG advised that during the consultation, concern was raised over workforce planning because at the same time that this change was due to come into force, all members of the Firefighters' Pension Schemes were moved into the FPS 2015.

4.3 KG advised that three responses were received to the consultation. Two were from the unions. The FBU and FOA had no objections to the proposals. One pension scheme member also responded to the consultation with concerns as to whether the scheme would remain stable.

4.4 KG confirmed that it was highlighted that the changes were not going to be retrospective and that they would be actuarially neutral.

- 4.5 KG confirmed that workforce planning concerns were raised by members of the SAB. KG said that there was a peak in retirements from April-June 2022 but that the number of retirements had stabilised after that point. KG confirmed that this is being monitored by Scottish Fire and Rescue Service to ensure that this remains the case.
- 4.6 JL asked the Board what the next steps should be following SPPA's update.
- 4.7 GM indicated that FOA would like this to be taken forward in England, particularly as it does not seem to be making a significant impact on the scheme. GM made the point that it would be difficult to agree a way forward with the meeting not being quorate.
- 4.8 CM asked the member representatives if they could explain how much of a factor the restricted commutation is in deciding when a member retires and if there are other areas which are also considered. GM advised that from members he has spoken to, there is a small percentage of members who are deterred from retiring due to commutation constraints.
- 4.9 Philip Hayes (PH) said that for retained firefighters, it is not a significant influence as their retained contract is more of a working pension which is nice to have.
- 4.10 HS confirmed that West Yorkshire Pension Fund (WYPF) is seeing an increase in members retiring with a restricted commutation amount for a variety of reasons and added that it would be beneficial for them to have the choice of taking the unrestricted lump sum; however, it may not necessarily increase the retirement numbers because that trend is already occurring.
- 4.11 PH asked HS if the data shows how many firefighters are retiring on that basis who are on-call, compared to wholetime firefighters. HS confirmed that on-call firefighters are not affected by a commutation cap as they are members of the FPS 2006.
- 4.12 JL asked the Board how it wished to proceed; either to take no further action or to submit a proposal to the Home Office for regulatory change. CH advised

that HO had previously made it clear that the SAB would need a very robust business case for this to be considered because commutation is a central government policy area. Evidence would be required which shows the benefits of removing the commutation cap.

4.13 CM advised that, in terms of the overall funding of the scheme, the factors in the design of the FPS 1992 are essentially cost neutral; however, the cost implication arises because employers have to pay the cost which relates to the excess over the commutation cap themselves.

4.14 JL asked CH if a business case would need to evidence that members are being prevented from making a choice due to these restrictions. CH confirmed this was the case.

4.15 HS advised that she had done some basis estimates for members which compared the different benefit options that a member can take, with the result being that the member would receive fairly equal amounts over the whole retirement period. So it is just a different way of taking the benefits. HS advised that financially the scheme does not appear to have additional costs in using that option. HS added that these calculations were for specific cases and further investigation would be needed should the proposal go forward.

4.16 JL concluded that pursuing a business case was likely to be difficult. JL felt that cashflow was an area where things may change, particularly with remedy and the payment of extra lump sum amounts. JL asked the Board if they were content to keep this item on the agenda and review it periodically.

4.17 GM confirmed that he was in agreement with this and would consider what a business case could look at. GM said that it would be useful to hear other member's views. JL suggested that Board members could consider what a business case could look like and acknowledged that other views would be required due to the meeting not being quorate.

**ACTION 23.01.2023 (4.17): SAB members to consider whether to pursue a change in commutation rules for FPS 1992 in England and what needs to be included in a business case if this is to be pursued.**

## 5. The Pension Regulator (TPR) – Pensions Dashboards

5.1 Angela Bell (AB) and Lucy Stone (LS) joined the meeting to provide an update on pensions dashboards. AB explained that she is the key point of contact for dashboards and that she leads the industry engagement workstream and the focus of that is to understand industry challenges and concerns with complying with the regulations and to develop solutions. There are also workstreams for communication, operational design, and policy. The project as a whole is led by Lucy Stone as the Business Lead. The dashboard team is ringfenced and so is 100 per cent dashboard focussed.

5.2 AB shared [slides](#) on:

- Pensions dashboards - current challenges and opportunities
- How pensions dashboards will work
- Consultations and regulations
- Preparing for pensions dashboards
- Commonly asked questions
- Compliance and enforcement policy

5.3 In relation to compliance, JL understood that previously TPR had been unable to directly deal with maladministration issues and asked AB to explain further about this area. AB explained that a precedent had been set by auto-enrolment whereby action could be taken against those assisting the implementation of auto-enrolment, for example accountants. LS confirmed that TPR already has third party notices and can fine third parties. The dashboard programme also has these powers to operate at scale. TPR are aware that scheme managers will have an increased dependency on third parties to implement the dashboard programme and so TPR will be more willing to use these powers.

- 5.4 AB added that it is important for schemes to keep a good audit trail of who is doing what in terms of roles and responsibilities. JL confirmed that it will be the individual scheme managers rather than the SAB who will be doing this.
- 5.5 JL asked the Board if there were any other questions for TPR. AB advised that TPR are happy to take any additional questions after the meeting by email should any arise later.
- 5.6 JL asked if any feedback was being received by scheme managers or local pension boards about pension dashboards. CH confirmed that there had not been a lot of feedback so far. The LGA has been trying to engage with the sector through coffee mornings on dashboards and LS and Richard James from Pensions Dashboard Programme provided a session at the AGM in October 2022. The problem currently is that other pressing issues such as McCloud and Matthews are being treated as higher priority.
- 5.7 CH advised that funding for dashboards was a concern for the fire sector and that the LGA was liaising with HO on this area.
- 5.8 CH also advised that it is expected that most fire authorities will connect through their administrator and existing software supplier if they are offering an Integrated Service Provider service. CH's concern is around the stand-alone administrators and the challenges that this poses for them.
- 5.9 CH highlighted that good data is key and confirmed that the LGA data scoring guidance will be updated to include dashboard value data fields. CH asked TPR if this document could be sense checked by TPR before publication. LS agreed.
- 5.10 CH advised that initial plans are in place to hold a joint LGA/ NPCC conference on data during May 2023. Further details will be provided in due course.
- 5.11 Cllr Nikki Hennessy (NH) advised that she was due to attend a meeting with her Chief Fire Officer and administrator and that she would raise pension

dashboards and ask for confirmation of the progress made to date. NH also asked that if she should be asking any particular questions.

5.12 HS advised that since the pension dashboard letter was sent by the Chair of the SAB, WYPF has received a number of enquiries from fire authorities asking on progress and anything which scheme managers need to do. WYPF is going to be using its monthly client report updates to feedback information on dashboards. HS also advised that WYPF has sent information out to fire authorities to highlight the importance of the month twelve data return being as accurate as possible, because month twelve contains the information needed to feed into the annual benefit statements, remediable service statements (RSSs) and the dashboard. WYPF is going to be setting up some training sessions with its payroll providers to ensure they understand the importance of accurate data for this purpose. HS confirmed that WYPF has also done work with fire authorities to update absence and service details so as to cleanse the data for remedy purposes.

5.13 HS advised that address checks will also be done for deferred members before the dashboard programme goes live. LS asked if HS could share those communications with TPR.

5.14 LS advised that there will be a public sector survey issued and TPR can come and talk to the SAB regarding the results and delve deeper into them, discussing any areas of concern.

5.15 AB said that TPR are working on a content toolkit, and she would like to issue this to the Firefighters' Pension Schemes before the initial nudge letters go out in June 2023. The key messages can then be used in fire sector communications to scheme managers.

5.16 AB also said that questions for fire authorities could centre around connection, find, and view. This concerns how are they going to connect and what their 'find' policies are going to be. AB highlighted that the Pensions Administration Standards Association (PASA) will be issuing guidance on matching conventions and value guidance. AB asked the LGA to contact TPR

should attendance at the data conference be needed via the speaker request form.

5.17 JL thanked AB and LS for their attendance.

**ACTION 23.01.2023 (5.13): Helen Scargill to share the communications which WYPF has issued to their FRAs in respect of year-end data with TPR.**

## **6. PDD engagement sessions: Paper 1**

6.1 CH summarised the paper which detailed the PDD engagement sessions that had happened since the last SAB meeting. CH informed the group that the tax session on annual allowance and lifetime allowance is the next session and strongly encouraged Board members to attend.

6.2 CH also informed the Board that Elena Johnson (EJ) had created a new webpage called [Fire and Police SAB remedy collaboration sessions](#) to hold documents relating to each area of remedy, including the original PDDs.

6.3 GM advised that the invite for the tax session had not been received. FC said that the invite will be sent out again to those affected.

6.4 CH asked Anthony Mooney (AM) if a final policy position had been reached on the recovery of member contributions. AM said that the Home Office is still considering the final policy position, but this will be communicated as soon as possible.

6.5 CH asked if this would be known prior to formal consultation. AM said that may be possible on an informal basis.

6.6 JL asked if the content of other pension schemes' regulations had any impact on the policy position of the Firefighters' schemes. AM re-confirmed that HO are still considering the final policy position.

6.7 CH summarised the section in the paper regarding ill-health retirement. AM pointed out that a protected member who had been turned down for ill-health retirement after 1 April 2022 but where the process had commenced prior to that date, would need to be referred back for reassessment as they would

qualify for the ill-health underpin and be assessed to a normal pension age of 55 instead of age 60. CH agreed that this would apply and would have retrospective effect.

6.8 HS asked how tapered members' benefits would be recalculated. CH confirmed that tapered protected members cannot continue to receive their current benefits. HS therefore asked if tapered protected member benefits could decrease if the FPS 2015 benefits for the whole period are lower than what is already in payment. CH confirmed that this could be the case but there is provision in the PSPJO Act for schemes to deal with mixed service benefits.

6.9 CH detailed HO's policy proposal for optants out under which it is suggested that firefighters may opt back in under a contingent decision if they opted out up to two pay periods before transition to the FPS 2015. If a firefighter opted out outside of this timeframe, then evidence of the reason for opting out would be required in order to consider it as a contingent decision. CH asked the Board for their views on this specific period of time.

6.10 JL felt that it was reasonable to have some cases who would automatically qualify for a contingent decision if they opted out close to the transition date. For cases where evidence is needed, JL felt that this will be more difficult to determine as it is unlikely that firefighters would have specifically cited the introduction of the FPS 2015 as the reason for opting out. JL felt that the SAB needs to think about who will be making the decisions and whether there needs to be a body to deal with these, separate to the Internal Dispute Resolution Procedure (IDRP). JL asked Board members how they felt it should be taken forward, for example, through Local Pension Boards subject to centralised guidance.

6.11 CH asked KG if any policy decisions had been made in Scotland on optants out under Section 5. KG indicated that it had been discussed more as a nationwide topic. KG confirmed that SPPA had looked at the opt out forms, some of which mentioned financial reasons and that people did not want to move to the FPS 2015. In some cases there was an email trail; however, these were few in number. CH said that this could be taken forward as an

action by the LGA. JL agreed that it should be tabled for a future meeting taking into account experience from other schemes. JL suggested that the LGA could liaise with FRAs and LPBs to ask what information they hold on the reasons why firefighters opted out.

6.12 GM asked if there was any information available about how to raise other contingent decisions for those who are outside of the time limit and for those who do not succeed in their claim for a contingent decision, for example, in the compensation provisions.

6.13 CH confirmed that there is still some work to be done in this area. The PDD set out the principles under which a member could make a claim and says that there will be a form for the member to use for this purpose. Schemes would need to consider how they would communicate that this form is available. CH confirmed that there is not a definitive list of things which would be considered. CH asked HO if it had any further information. AM confirmed that if scenarios were being picked up then HO would need to refer them to HM Treasury for a view. CH suggested that union representatives could highlight scenarios that they have been made aware of, as early as possible, so that these can be noted and considered.

6.14 CH summarised the added years section of the paper, explaining that where a scheme manager agreed that a member would have taken out an Added Years contract during the remedy period had they have been eligible to do so, the member could enter into a contract retrospectively. CH explained that HO had sought views on the timing of the election: either from 1 April 2015 or at the earliest date that the member could have made the election, or should the election be deemed to have been made immediately before the remedy period ended. CH explained that an earlier election date would mean better factors for the member. A later election date would mean less interest payable by the member on the contributions that they would owe. CH asked the Board to feed back any views. AM confirmed that views would be helpful.

6.15 JL suggested that the SAB liaise with First Actuarial or GAD to create some scenarios which shows which option is better now that interest rates are known.

6.16 CH asked the Board for views regarding how a consistent approach can be taken on contingent decision claims, given that there are 44 scheme managers in England who may wish to make different decisions depending on their local circumstances.

6.17 JL felt that consistency is needed over all FRAs including the devolved nations and local government because FRAs have members of the LGPS also. JL suggested an industry wide group could be appropriate.

6.18 CH advised that Iain Coltman had contacted the LGA and NPCC regarding collaboration between England and Scotland on contingent decisions. JL confirmed that she welcomed this collaboration.

**ACTION 23.01.2023 (6.11): LGA to liaise with FRAs and LPBs to ask what information they hold on the reasons why firefighters opted out with a view to creating a mechanism for dealing with contingent decision cases which do not form part of the automatic right.**

**ACTION 23.01.2023 (6.13): SAB members to highlight scenarios for contingent decisions to the Board.**

**ACTION 23.01.2023 (6.16): SAB to liaise with First Actuarial or GAD to commission added years scenarios to determine the most suitable date for the added years election.**

**ACTION 23.01.2023 (6.18): LGA and NPCC to work with Iain Coltman on contingent decision processes.**

## **7. Retrospective correction of pensionable pay: note to FRAs**

7.1 JL introduced Mark Poulston (MP) who will be taking over as the SAB Legal Advisor in place of Jane Marshall.

- 7.2 MP advised that he had been looking at the draft note on the retrospective correction of pensionable pay which addresses some unresolved legal issues. The note had previously been shared with the SAB and has recently been reviewed in light of a Pensions Ombudsman (TPO) determination, Mr T vs Lancashire Fire and Rescue Service ([PO-22474](#)), whereby TPO found in favour of Mr T on the question of whether or not day crewing plus (DCP) allowance should be treated as pensionable. MP pointed out TPO made the point that the determination was specific to that case and the circumstances of Mr T.
- 7.3 MP advised that Weightmans had looked at TPO's decision and found that the note does not need updating in view of that case. Therefore, the note represents the current state of play.
- 7.4 MP asked the Board if there were any further queries or comments on the note before steps are taken to finalise it and to make it widely available.
- 7.5 CH advised that previously the SAB had not been able to reach agreement on the note because there were different legal views among the parties and there is a lack of available case law on retrospection and how and when the Limitations Act should apply. CH confirmed that the note will not be legal advice or guidance but a series of pointers which FRAs need to bear in mind when dealing with retrospective pensionable pay cases. MP agreed and pointed out that the document recommends that FRAs take their own legal advice where appropriate.
- 7.6 AM asked, if the determination was to be applied to the specifics of that case, why the ruling is being applied generally. MP confirmed that the ruling was to the specifics of the case but that the significance of looking at the case is to ascertain whether any general principles can be taken and applied when looking at the note which has been developed for FRAs. MP advised that no general principles could be taken from this TPO determination because the document does not drill down into specific elements of pay. It is a document relating to methodology and process.

7.7 JL asked if the note existed before the case of Mr T vs Lancashire FRS. MP advised that the determination was handed down in January 2021. CH confirmed that the version of the note is dated June 2021 but there would have been an earlier version. Jane Marshall was going to review the document in light of the determination. CH advised that there is sometimes a delay in these determinations filtering down and the LGA does not receive notifications of these cases.

7.8 JL asked whether it should be highlighted in the note that, in retrospective pensionable pay correction cases, where a member does not benefit from a recovery of pension contributions, recovery is still being sought, but in cases which relate to the age discrimination remedy, there is a discretion to waive underpaid contributions.

7.9 MP agreed that recovering pension contributions from members who will not benefit from this is a difficult area. MP said that there are some schemes where underpayment of pension contributions in this way is catered for by the benefits structure but that he understood that this was not the case with the Firefighters' Pension Schemes.

7.10 AM asked if some members would benefit from retrospective pensionable pay changes. MP confirmed that some people would benefit from this including pensioners, deferred, and active members but that there is a statutory duty for the scheme to correct errors going forward. It is easier to rectify for active members and more challenging for deferred and pensioner members.

7.11 JL suggested that the note could point out that FRAs may wish to take their own legal advice on the recovery of contributions where there is no benefit to the firefighter.

7.12 AM asked if the ruling affected Scotland, Northern Ireland, and Wales, and if so, what decisions are they making on the recovery of past service contributions. MP advised that the TPO determination is specific to that case but that determinations are published for educational reasons to encourage best practice, therefore, although the case related to an English FRA, the

case could inform authorities in the devolved nations to have regard to that decision if they believe there are elements of it which support their policies, decision making, and communication. MP believes that this determination would not influence the note in question because it specific to that case.

7.13 Tony Curry (TC) confirmed that the determination would just be for Lancashire FRS because the devolved nations did not operate DCP stations and most of the eleven DCP areas nationwide determined that this allowance would be pensionable from the outset. These eleven authorities have moved away from DCP now because it was deemed an unlawful shift system. TC believed that Lancashire would have been the last area to operate DCP. MP agreed therefore that the significance of TPO's determination would therefore be even narrower given TC's information to the Board.

7.14 RP suggested issuing the note because the information is correct currently but highlighted that the date of the paper will need updating. The note should make it clear that the information is correct as at the date given on the paper.

7.15 MP asked what the process was for issuing the paper. JL confirmed that this could be provided to the LGA to distribute as necessary.

7.16 CH suggested that the note could be held on the fpsboard.org website and publicised in the monthly FPS bulletin. It would be updated as and when required.

7.17 GM felt that the document would certainly be useful for FRAs because it highlights matters which should be taken into account.

7.18 JL asked for the note to be circulated, once updated, to those Board members who were not present at the meeting and subsequently issued to the sector.

## **8. Remedy timetabling: [Paper 2](#)**

8.1 CH informed the Board that under the PSPJO Act 2022, there is a requirement for every member affected by remedy to be provided with a remediable service statement (RSS) within eighteen months from 1 October

2023. This means that all members should have received a statement by 1 April 2025.

8.2 CH explained that this means there are a significant number of RSSs to be issued in this time and in order for this to happen, the LGA and NPCC have worked together to create a remedy timetable to ensure that all groups of members are covered in the timeframe.

8.3 CH shared some slides which help to explain the reasons for the decisions which have been made in respect of remedy timetabling.

8.4 CH asked the Board members present if they were happy with the proposals for remedy timetabling. NH agreed.

8.5 CH advised that further detail is available in the paper which has been issued to the Board.

8.6 CM asked if the interest rate had been confirmed as eight per cent. CH advised that the interest rates had been set in [the Public Service Pensions \(Exercise of Powers, Compensation and Information\) Directions 2022](#). CH advised that the interest rate for payments from the scheme to the member were set as eight per cent, in certain circumstances.

8.7 JL said that now the interest rate is known, it makes it easier to finalise the remedy timetabling. JL asked the Board if anyone had any other comments. JL also said that for those not attending the meeting, they would be able to view the remedy paper and provide any comments accordingly.

## **9. Action summary update: [Paper 3](#)**

9.1 CH detailed the actions which had been closed and were in progress. CH pointed out that some of the action update had already been dealt with at the beginning of the meeting.

9.2 With regard to action 5.1, 10.12.20, CH informed the Board that EJ had created a central training log for each member to record any training

undertaken or knowledge gained. CH asked members to inform the LGA if they undertake any courses so that they can be recorded.

9.3 With regard to action 5, 4.10.18, CH confirmed that Claire Johnson had reviewed the IQMP guidance and that this was now with the Communications Group for review. Once there is an agreed version, it will be brought to the SAB for review and comment.

9.4 With regard to action 6.3, 11.06.20, this had been discussed earlier in the meeting and Weightmans will return the note to the LGA for distribution.

9.5 With regard to action 6.1, 11.06.20, the LGA has done a comparison of the treatment of temporary contracts of employment with the LGPS. A comparison of Fire and Police regulations will now take place.

9.6 With regard to action 8, 23.06.22, some member details are still missing from the website. This will be followed up with the members concerned to ensure that this is completed.

9.7 Additionally with regard to action 8, 23.06.22, as already mentioned earlier in the meeting, a Local Pension Board effectiveness committee chair is also needed so volunteers would be welcomed.

9.8 CH asked the Board to note the contents of the paper. JL asked if there were any comments. None were raised.

#### **10.2015 Remedy update: Paper 4**

10.1 CH summarised the paper on remedy, highlighting that HO had advised the Board of a delay to the consultation which is not due to commence now until February 2023.

10.2 CH said that this means that regulations may not be issued until September 2023 which gives only a month until the implementation date.

10.3 CH advised that the LGA is working with software suppliers and administrators on any pre-work which can be done based on policy positions which are unlikely to change.

- 10.4 CH confirmed that the paper informs the Board that the Directions have been laid which gives schemes various powers to do various things that the Act allows, specifically around interest, compensation, and powers to reduce or waive liabilities.
- 10.5 CH told the Board that a new Firefighter Pensions Advisor will be starting on 20 March 2023 who will focus on communications, including those for remedy. This is a fixed term contract for twelve months which the LGA will be asking the Board to approve as a permanent post at the next budget.
- 10.6 CH highlighted the out-of-scope, now in-scope communications which had been sent out to members in scope for remedy. This was due to the change in understanding that the protections should have applied to the individual rather than to each employment separately.
- 10.7 CH highlighted that the LGA has issued a factsheet on ill-health reassessments and is working with the Cross Whitehall group now on the RSSs to decide what they need to include and what they should look like.
- 10.8 Regarding software, CH confirmed that the LGA is working with NPCC and Bluelight Commercial to analyse the software development proposals and make sure that they are offering value for money. CH confirmed that the LGA is going to invite both Heywood Pension Technologies and Civica to the next SAB meeting in March 2023 so that they can provide a progress update to the Board.
- 10.9 CH also advised that both software suppliers have agreed to deliver a 60-minute update session to pension scheme practitioners. CH highlighted that the paper has information in it on software costs.
- 10.10 CH summarised the remainder of the paper including details of the HMRC calculator being developed which will calculate compensation for Annual Allowance and Lifetime Allowance cases.

## **11. Response to HMRC consultation (tax regulations): [Paper 5](#)**

11.1 CH summarised the paper which had been supplied to the Board, highlighting the key points. The proposed tax regulations are due to come into effect from 6 April 2023 however some provisions will have retrospective effect.

11.2 CH advised that the SAB response expressed disappointment in the delay to the materials coming through which has had a knock-on effect on schemes being able to consult. The regulations do not currently deal with how to proceed with death, divorce, or transfer cases and the response expressed the need for clarity on these areas too.

11.3 JL said that the issue of pension contributions not being rolled back into the legacy scheme had been raised in the consultation response and this had previously been questioned but she was still waiting for a reply from HM Treasury.

11.4 CH pointed out that there are provisions in the Directions for recalculating lump sums which have been paid over twelve months ago as authorised payments. JL raised the issue of the scenario of a member who had paid an unauthorised lump sum tax charge who might now choose a higher pension meaning that the original lump sum was no longer excessive. It is not clear how the member's tax would be repaid by HMT and these sorts of areas need to be clarified.

11.5 CH asked the Board to note the contents of the paper and urged the Board to join the HO engagement session on tax.

## **12. Any other business and dates for next meetings**

12.1 JL asked the Board to note the forthcoming meeting dates for 2023:

- Thursday 23 March 2023 at Smith Square
- Thursday 8 June 2023 by Teams
- Thursday 14 September at Smith Square

- Thursday 14 December by Teams.

12.2 CM asked if a standard item for the SAB meetings could be to look at any relevant TPO determinations which have been made. MP said that Weightmans have a notification service from a publishing company which notifies them of TPO determinations and offered to look for anything of relevance. CH advised that the LGA would also check.

12.3 CH gave an update on the budget. Scheme levy purchase orders are arriving and around half have been received to date.

12.4 CH highlighted a potential issue in that CPI is running at a particularly high level which will have an impact on the annual allowance calculations in terms of revaluation of CARE accounts across most of the public service schemes, excluding Fire. For those schemes who are affected, this may lead to a significant number of their members breaching the annual allowance in this year because of the way the calculation is done.

12.5 CM expanded to explain that when calculating pension growth in a scheme year, HMRC looks at the level of pension at the end of the year at 5 April, and compares that with the amount of pension the member has built up at the start of the tax year. CM confirmed that when HMRC do that calculation, they take the figure at the start of the year and apply inflation to it. Most of the time the inflation figure which HMRC uses is not vastly different to the figure which has been applied to the scheme revaluation. However, there is an issue this year for many public service pension schemes, other than Fire, because the inflation measure which is used to increase the actual scheme benefit will be the 10.1 per cent CPI from September 2022.

12.6 CM said that, in isolation, this is good news for members and the benefits which they have built up; however, when it comes to HMRC doing their calculation, they will increase the start of their calculation figure not by the actual 10.1 per cent that the scheme benefit is increased by but by the CPI figure from the previous September (2021), which is about 3 per cent. There is therefore a significant difference between the two amounts.

- 12.7 CM explained that this may mean that more members than usual will breach the annual allowance and be liable to an annual allowance tax charge. CM explained that as the Firefighters' Pension Scheme revalues CARE benefits by Earnings, rather than CPI inflation this should be less of an issue for fire. Although CM noted that if Earnings were significantly different to CPI inflation from year to year, similar issues could arise for Fire.
- 12.8 CM explained that some public service pension schemes are looking to move the date that CARE revaluation applies from 1 April to 6 April each year to alleviate this issue. This would align the scheme increase with the increase that HMRC uses and provide consistency between the two.
- 12.9 CH explained that although this does not directly affect Fire, the Police Scheme is impacted by the same "CPI disconnect" as many of the other public service pension schemes. If the Police Scheme looks to change the date of revaluation for their Scheme, this may then delay the work that the third-party software suppliers are doing in respect of remedy and system developments for that project. CH asked the Board to note that this may become a risk.
- 12.10 GM asked if it should be added to the risk register. JL agreed that it could be added as a risk to note.
- 12.11 CH informed the Board that The Pension Regulator's single code of practice is due to be laid in parliament shortly. It has to lay in parliament for 40 days before it is released.
- 12.12 CH suggested that any amendments to processes and implications of the new code should be taken through the Local Pension Board effectiveness committee, which is why a chair of that committee is required as soon as possible. CH reiterated the request for a volunteer.
- 12.13 Finally, CH informed the Board that she would be leaving the LGA in April 2023 to take up a new position. The next meeting in March 2023 would therefore be her last meeting. The Board wished CH well in her new role and

expressed their thanks and appreciation for all the work in the past, particularly in the last year as Senior Pensions Adviser.

**ACTION 23.01.23 (12.2): The SAB's Legal Advisor and the LGA to monitor Pensions Ombudsman determinations so that any key determinations relating to FPS are noted accordingly and discussed at SAB meetings.**

**ACTION 23.01.23 (12.10): Change to revaluation rates for the Police Pension Scheme and the corresponding affect that this may have on the delivery of remedy software by software suppliers to be added to the SAB risk register.**