



## **ACTIONS AND AGREEMENTS**

**Thursday 3 October 2019**

18 Smith Square, Westminster, London SW1P 3HZ

### **PRESENT**

Malcolm Eastwood	Chair
Cllr Roger Price	Scheme Employer Representative (LGA)
Roger Hirst	Scheme Employer Representative (LGA)
Cllr Nikki Hennessy	Scheme Employer Representative (LGA)
Cllr Ian Stephens	Scheme Employer Representative (LGA)
Andy Hopkinson	Scheme Member Representative (FLA)
Brian Hooper	Scheme Member Representative (FBU)
Sean Starbuck	Scheme Member Representative (FBU)
Tristan Ashby	Scheme Member Representative (FRSA)
Glyn Morgan	Scheme Member Representative (FOA)
Matt Lamb	Scheme Member Representative (FBU)
Jane Marshall	Legal Adviser
Helen Scargill	Technical Adviser
Craig Moran	First Actuarial
James Allen	First Actuarial
Wadha Salah	Home Office
Amar Pannu	Home Office
Anthony Mooney	Home Office
Claire McGow	SPPA (observer)
Ian Howe	Leicestershire County Council
Clair Alcock	LGA – Board secretariat
Claire Hey	LGA – Board secretariat (Minutes)

### **1. Apologies**

1.1 Apologies were received from Cllr Roger Phillips, Cllr Nick Chard, Des Prichard and Dave Limer.

### **2. Changes to membership**

2.1 A replacement for Fiona Twycross is required as soon as possible. A nomination has been requested from the Labour group office.

### 3. Conflict of interest

3.1 All Board members completed a standard conflict of interest form. No interests were declared.

### 4. Minutes from previous meeting

4.1 The minutes of the meeting held on 13 June 2019<sup>1</sup> were agreed as an accurate record.

#### 4.2 Actions

Minutes reference	Action	Progress
6.45	For admin and benchmarking committee to look at recommendations	Committee meeting held on 15 August 2019, paper submitted to SAB members by email to approve actions.
7.7	Agreed to establish an ill-health working group to consider guidance and problems	Agreed to be postponed until more detail on Sargeant remedy is known.
8.7	LGA to produce draft IDRPs guidance	Not yet commenced.
9.3	Publish joint board guidance	Published with June bulletin <sup>2</sup> , no comments received.

### 5. Chair's update

5.1 Malcolm Eastwood (ME) informed the group of events attended in his capacity as chair of the SAB since the last meeting:

- LPB wrap up training
- Ill-health seminar
- LPB effectiveness committee
- Admin and benchmarking/ cost-effectiveness committee
- Pensions Tax Working Group
- Fire Pensions annual conference

### 6. McCloud/ Sargeant

6.1 Amar Pannu (AP) gave a verbal update on the FPS 2015 transitional protections legal challenge. The Government were refused right of appeal to the Supreme Court following the Court of Appeal judgment in December 2018, therefore the transitional protections are deemed to be unlawfully discriminatory. A Written Ministerial Statement<sup>3</sup> confirmed that the judgment affected all public service schemes and remedy would be needed. The case management hearing for FPS has been scheduled for 18 December 2019; Judges and Police will be heard this

<sup>1</sup> <http://www.fpsboard.org/images/PDF/Meetings/13062019/Minutes130619.pdf>

<sup>2</sup> <http://www.fpsboard.org/images/PDF/Bulletin21/Appendix5.pdf>

<sup>3</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-07-15/HCWS1725/>

month. AP confirmed that only the parties involved in the legal process; the appellants, Firefighters' Pension Scheme members and the respondents; the respective UK Governmental bodies and the Employers (Fire and Rescue Authorities), would be involved in the court process.

6.2 Technical discussions will take place after the hearings to ensure that remedy works for specific schemes and this will also give a better idea of timescales. While proposals are at an early stage, there will be several basic principles of remedy:

- Members will retain their accrued rights.
- Some members will be better off in the new scheme, so cannot necessarily revert all to their old scheme. Treatment must be equal.
- Remedy will vary dependent on scheme design.

6.3 AP confirmed that the recommendations made by Lord Hutton in 2011 still stand, and the Government are committed to providing pensions that are affordable and sustainable in the long term. The Home Office are working on a factsheet to support FRAS, which will be available this month.

6.4 Clair Alcock (CA) expressed a view that that timescales will be clearer following the case management hearing, in the meantime LGA are working with the department, and the SAB will become involved during the drafting process and consultation period. CA added that the complexity of implementing and administering any changes cannot be underestimated.

6.5 CA asked whether opportunity to propose changes to scheme design, for example in relation to tax, is now presented. AP said that considerations on tax was a separate work stream from the remedy proposals for Sargeant. Therefore if the board wanted to make proposals this could be considered.

6.6 CA asked Craig Moran (CM) to give an update on work in the public sector on tax flexibilities, Craig updated the board on the NHS consultation<sup>4</sup> on proposals for high earners to choose how much pension they earn and an option to phase in promotional increases over a number of years. This is evidence based, on the impact on delivery of frontline services.

6.7 Andy Hopkinson (AH) suggested that press coverage is underestimating the value of tax charges to members, and highlighted that charges are presenting a challenge to increasing diversity by discouraging applicants for promotion.

6.8 Anthony Mooney (AM) asked if there is misinformation in the sector, as the overall benefit is still likely to outweigh any tax charge using scheme pays. AH acknowledged that there can be a lack of communication and engagement, adding that it is difficult for members to calculate potential impact when applying for promotion. Roger Hirst (RH) agreed that a lack of proper worked examples makes it difficult to explain.

6.9 AH went on to give an update on the work of the re-named Public Service Pensions Alliance (PSPA) which was created to discuss and gather evidence on tax implications affecting middle earners. The group have written to the chancellor and ministers and were invited to a roundtable with HM Treasury to discuss tapered annual allowance. John Glen MP (Economic Secretary to the Treasury) recognised that pensions tax limits may have unintended

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<sup>4</sup> <https://www.gov.uk/government/consultations/nhs-pension-scheme-increased-flexibility>

consequences, but required evidence of this. ME noted that the group are conscious of yield.

- 6.10 To clarify the Home Office position, AP noted that HMT are open and willing to listen, but their threshold of evidence of impact on frontline delivery must be met. The Home Office will work together with HMT, although the first step needs to come from the sector.
- 6.11 Ian Howe (IH) explained that he deals with AA queries on a daily basis as an administrator. IH highlighted that flexibility already exists in other schemes such as LGPS and that communication is key. Helen Scargill (HS) added that member knowledge is growing and WYPF are seeing an increase in calculation requests for promotions.
- 6.12 CA reminded the board that the work-plan already includes educating employers to ensure information is available to members and commissioning further guidance, and a tax seminar is planned for 12 November. Consideration has previously been given to whether the board could mandate each FRA to provide information to members via procurement of a single provider, however, it was decided that it would not offer value for money as some FRAs provided advice to their members via their administrators.
- 6.13 CA asked the board to consider how active or passive they wished to be in the work arising from the PSPA, and whether SAB should put forward a business case for increasing flexibilities in the scheme. CA reflected that when the board considered the proposals for improving member benefits as part of the cost cap consultation, the board had struggled with evidence for their proposals. Views were welcomed particularly from employer representatives, who are firmly committed to increasing diversity and inclusion in services, and whether there was any evidence that the potential tax liabilities could threaten that.
- 6.14 Glyn Morgan (GM) stated that there is opportunity for the Board to develop proposals for change to scheme design, including taxation, ill-health reviews, and reporting. Work streams would be needed to put a business case together. AH added that the PSPA's work on tax flexibilities could be made available to the SAB. A survey to gather evidence which can be used consistently across public service is being developed and should be available this month.
- 6.15 Cllr Ian Stephens (IS) highlighted the need to ensure understanding across the employer side, through the Fire Services Management Committee (FSMC) and the LGA's Leadership Essentials course. IH suggested that the SAB should feed into FSMC. Cllr Nikki Hennessy (NH) supported this and added that the LGA fire conference would be an ideal forum.
- 6.16 CA welcomed this and said that limited responses had been received to the SAB request for information in late 2018<sup>5</sup>, where perhaps senior management had not had oversight. The LGA fire conference could provide an ideal opportunity aimed at senior leaders to provide more substantive evidence.

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<sup>5</sup> <http://www.fpsboard.org/images/PDF/Meetings/14032019/ITEM8-140319.pdf>

6.17 GM noted in terms of opt outs that affordability can affect all members, but flexibilities are more likely to affect higher earners. HS stated that a FF member with a duty system allowance could breach AA. AH reminded the meeting of on-going pay negotiations, with potential significant pay uplift which would need impact assessment. IH added that CPI has an impact on AA breaches.

6.18 AH queried whether the employer has a moral duty to provide calculation on potential impact of promotions. CA related various ombudsman cases relating to Protected Pension Age (PPA) which determined that the employer has a duty of care to ensure employees understand if there will be a tax implication. CA suggested the provision of a procurement framework for FRAs to call-off professional tax advice and encourage open competition.

<b>Action</b>
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Working party/ work stream to be convened with remit of pursuing evidence and developing proposals for flexibility.
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## 7. Future of Pensions Administration

7.1 CA explained that the Aon benchmarking review has raised issues about the complexity of the FPS and what the current market place for administration looks like. The SAB had previously expressed little appetite to change the framework, preferring to look at how the stakeholders of the existing framework could be supported. However, following Leicestershire County Council's recent decision to withdraw from the administration market, IH was invited to the meeting to talk about the risk as they saw it of the market staying as it was.

7.2 IH stated that the risk of FPS administration has been increasing year on year since 2015. That risk is now felt to be so significant that the decision was made to terminate Leicestershire CC's contract with three FRAs. Relevant risks include pensions taxation and the transitional protections challenge. IH noted significant concern over the impact of remedy on administration, such as costly system changes and "better of" protections. Additionally, TPR have introduced increased pressure around governance, data, and communications.

7.3 As there are only two software providers in the FPS market, with an already complex structure for a relatively small scheme, IH expressed concern that providers will not be able to guarantee the accuracy of future calculations. Additional risks are the complexity of valuation and cost-cap, and on-going training to keep staff knowledge up to date. IH highlighted that the decision had been made on risk alone, of which McCloud is the key factor.

7.4 SS asked for further clarification on the risk of McCloud, as there would be potential read across from the special member exercise. IH described the uncertainty over future scheme design, including:

- Retrospective benefit changes, including dependents' benefits to 2015.
- Tax implications and Unauthorised Payments.
- Communications.
- System changes.
- Cost.

- 7.5 HS added that the number of affected members will also be considerably higher.
- 7.6 AM asked whether Leicester had discussed their decision with any other administrators and what were their views. IH confirmed that the decision was made by Leicestershire CC in isolation, based on their risk register and four years of monitoring the situation. Other administrators have since expressed concern to IH.
- 7.7 HS and IH left the room while the Board discussed risks and options for the future of administration. While it is not within the SAB remit to drive administration, the Board were asked to consider the pros and cons of staying with the status quo. There is a risk that other providers may decide to leave the market place and those who are left get the business by default rather than design, and that other services such as software decide not to support the scheme going forward.
- 7.8 Possible options to explore while retaining a neutral position could be launching a consultation to obtain the views of stakeholders and / or setting up a procurement framework for fire administration. Procurement is currently challenging as the current frameworks that exist are unclear whether they provide option for comparison. For example, the Norfolk framework only offers one provider of Fire administration. However, the framework expires next year and they have expressed an interest in involving FPS, so there is an opportunity for the SAB to explore this avenue.
- 7.9 RH commented that attempts to manipulate the market could be concerning, although the reducing number of providers would lead to a lack of competition. CA agreed and proposed a consultation of stakeholder views, which would maintain the neutral position of the SAB. NH suggested asking FRAs if pension administration is on their risk registers and highlighted the need to be proactive.
- 7.10 CA explained that the three FRAs involved ideally want to retain the same software provider, and that they have a joint pension board application pending. Withdrawal of administration was not on their risk registers.
- 7.11 GM stated that information is needed from FRAs on the level of risk. AH asked if the consultation should be expanded to include LPBs as the current structure of 44 may not be effective and efficient. SS acknowledged that the verbal report is concerning, but there is a need to understand whether this is a blip or a trend.
- 7.12 Tristan Ashby (TA) explained that IH sits on the LPB effectiveness committee and is known to provide an excellent service, so expressed concern over who would pick up the business. CA confirmed that the FRAs are looking at procurement options, the Norfolk framework might be used, but as previously mentioned there is a lack of choice.
- 7.13 RH asked if it would be a problem for all three to choose different providers. RP suggested that other FRAs as well as providers should be approached, as they may be looking to expand. ME asked whether other providers were aware of the potential risks, as FRAs may expose themselves further if not.

7.14 SS emphasised the need to ensure administration provision is on FRA risk registers and stated that non-response to basic surveys is concerning. IS queried whether cost had been a factor in the decision at Leicester or if it was simply based on risk as stated. IS stressed that any communication regarding the future of administration need to come from the central SAB/ secretariat, rather than each employer representative to speak to their own FRA.

7.15 CA summarised that the SAB agreed there was cause for concern, but no action to be taken at present until further information sought.

<b>Action</b>
More information to be sought via consultation on the market place and risk.

## **8. Administration and Benchmarking review – recommendations update** **[\(Presentation 1\)](#)**

8.1 Following Aon's update at the AGM on the findings of the administration and benchmarking review CA presented an overview of next steps to the Board. CA highlighted that the challenges faced were important as the results could only be based on the information provided, which was often inconsistent. The lack of a suitable comparator made it difficult to benchmark scheme costs.

8.2 CA explained that the report, which sought to address how much the scheme costs to run and the efficacy of administration, focussed on seven recommendations in the following areas:

- Reducing complexity
- Addressing data issues
- Standardising timescales
- Improving engagement
- Adequate resources
- Improved breach recording
- Annual collection of costs

8.3 Collection of cost data had proven particularly difficult, although this was thought to be partly because such an exercise had never been undertaken before. The Board acknowledged this to be the case and agreed to the annual collection of costs, with the secretariat to work with the sector through the Fire Finance Network (FFN). The annual FFN conference in October would be an ideal opportunity to discuss the best way to do this. The cost of correcting errors needed to be included as well as broader pension costs, such as resources.

8.4 CA talked through the next steps as shown in [Presentation 1](#) which will be progressed by the LGA Bluelight team using the SAB, its committees, and other FPS forums, highlighting that some of the work is already underway. Comments were invited from the room.

8.5 AH stated the results reinforce the uncertainty and lack of understanding at FRAs. CA remarked that the seniority of the scheme manager role can impact on the level of support to pensions and the local board. RH asked whether it is more appropriate to a uniformed or non-uniformed role. CA confirmed that the governance regulations are not prescriptive, however, it is helpful for the scheme manager to have operational insight and they should certainly be part of the senior management team.

8.6 RH said that there are many good next steps and asked what the associated costs are and where they will fall. CA explained that the secretariat are working to quantify costs and that any item attracting a cost will be referred to the SAB. SS commented that there were some concerning results, but plenty of quick wins.

## 9. Governance ([Presentation 2](#))

9.1 CA gave a presentation and update on governance, based on the outcomes of TPR's governance and administration survey 2018, and data scoring. The main concern is that TPR have confirmed that FPS supervisory and engagement work will be undertaken based on the survey outcomes. Whereas the LGPS cohort work was by random selection, TPR have specifically identified four FRAs to visit. However, the reports will be confidential. TPR have been invited to the next meeting of the LPB effectiveness committee.

9.2 CA summarised the key findings in relation to FPS and highlighted that the SAB have a statutory duty to make FRAs aware of the TPR's requirements:

- Boards are less likely to meet quarterly, with an average of 2.5 meetings per year. The regulations are not prescriptive, but four is recognised good practice.
- Fire schemes are also less likely to have risk management processes in place and to review them quarterly, and to include administration on their meeting agendas.
- While schemes are more likely to have better data, FPS is a single employer, and 9% indicated that they had never performed a data review.
- Fire schemes noted an increase in access to knowledge and understanding from 36% in 2015 to 98% in 2018. However, the second most common barrier to improved governance was identified as lack of time and resources.
- TPR noted low recording and reporting activity in relation to breaches of the law, particularly outside of ABS breaches.
- Of the key processes measured each year, only 63% of FRAs have all six in place. This is one of the easiest ways for schemes to improve governance and it is recommended that boards self-assess against their own responses against the national results annually.

9.3 CA explained that TPR introduced common and scheme specific data scoring to the scheme return last year, although they did not provide a standard list of data items. Generally, FRAs scored their data highly, yet 55% could not confirm in the Aon survey whether they had data excluded from GAD's 2016 valuation assumptions.



9.4 To assist in addressing this, the secretariat plan to add criteria to the informal data scoring guidance<sup>6</sup> to adjust scores for accuracy, as shown in the following table. Plans are also in progress to support data improvement.

<b>Data Score</b>	<b>85</b>
<b>Data as expected</b>	0 = Processes in place 5 = No Processes in place
Process for two pension entitlement	5
Special 2006 data held on system	1
Process to identify reason for APBs	5
<b>Consistency</b>	
Administrator tolerance for +/- % pay change	0
<b>Validation</b>	
Monthly reconciliation	5
Number of returns to employer	2
Member queries after comms exercise (ie ABS)	3
Accuracy	3 %
<b>Scaled Score</b>	<b>82.45</b>

## 10. AGM feedback

10.1 ME said that the AGM was well received and had seen much networking taking place over the two days. Those who attended were asked for views. GM confirmed that the event was good and had received positive feedback. CM agreed. NH had attended for the first time and found it enjoyable.

10.2 CA agreed that all verbal feedback had been good and highlighted the need to ensure that training and events are beneficial, as they are funded by the statutory levy. The recent training survey results<sup>7</sup> show conferences to be well received and on the right topics. Views were sought on topics for next year.

10.3 HS asked whether there would be scope to repeat the workshops on day one so delegates could attend more than one session.

## 11. Update on actions summary/ items delivered

11.1 Items highlighted in yellow indicate completed actions since the last meeting:

- Board policies to be drafted – Ongoing.
- To note that past service costs on pensionable pay remains a risk.  
[Recent Booth vs Mid and West Wales case will require authorities to correct pensionable pay. The effect of that is yet to be understood.]

<sup>6</sup> <http://fpsregs.org/images/admin/TPRdatascoring0818.pdf>

<sup>7</sup> <http://www.fpsboard.org/images/PDF/Surveys/Training2019.pdf>

- Survey FRAs on impact of pensionable pay – Closed – new item on pensionable pay.
- Draft guidance note to boards to ensure they satisfy themselves that pensionable pay is correct in light of Norman V Cheshire – Closed new item on pensionable pay.
- Risk strategy
  - LPBs – Provided guidance.
  - Board – Done – ongoing review.
- SAB to lead on data improvement – In progress - data conference, working with admin and bench marking committee – Done issued [guidance](#) in bulletin 11 on data scoring and conditional data. Will need to monitor success. New item track data guidance.
- SAB to champion use of on line technology – This is now embedded in all of SABs comms. Secretariat to establish a software suppliers group. Close item.
- The board to respond to TPO judgment on pensionable pay – Summary of case included in [bulletin 14](#), likely to be challenged. Closed – new item on pensionable pay.
- AGM – Closed.
- Re-issue IDRPs guidance (done) offer training and support to FRAS, embedded into training.
- LGA to establish ill-health working group with SAB and stakeholders – In progress, Discussing with Home Office.
- Home Office to consult with SAB on valuation results – Done.
- Further tax training sessions and materials to be procured.
- Evidence gathered for public service tax liabilities – Done.
- Legal opinion to be obtained on award of pension credit benefits for transitional members – Item closed.
- Data scoring guidance (on-going) Data conference, embedded into training, regional groups to discuss, SAB shown weighting guidance.
- Secretariat to work with legal adviser on pensionable pay issues, to progress guidance to authorities.
- Board to collect patterns of IDRPs and establish where guidance is needed. [Next bulletin].
- Progress AON recommendations.

## 12. Future meeting dates and venues

12.1 All meetings to be held at 18 Smith Square from 10:30 to 15:30. The following dates have been agreed:

Thursday 12 December 2019  
 Thursday 19 March 2020  
 Thursday 11 June 2020  
 Thursday 17 September 2020  
 Thursday 10 December 2020

12.2 NH tendered apologies for the December meeting.

12.3 All meeting dates are held on the Board member log-in page of [www.fpsboard.org](http://www.fpsboard.org).

### **13. AOB**

13.1 There were no items of AOB.