



Actions and agreements
Thursday 10 December 2020
MS Teams

PRESENT

Joanne Livingstone	SAB Chair
Cllr Nick Chard	Scheme Employer Representative (LGA)
Cllr Nikki Hennessy	Scheme Employer Representative (LGA)
Roger Hirst	Scheme Employer Representative (LGA)
Cllr Roger Price	Scheme Employer Representative (LGA)
Cllr Leigh Redman	Scheme Employer Representative (LGA)
Cllr Ian Stephens	Scheme Employer Representative (LGA)
Philip Hayes	Scheme Member Representative (FRSA)
Brian Hooper	Scheme Member Representative (FBU)
Matt Lamb	Scheme Member Representative (FBU)
Pete Smith	Scheme Member Representative (FBU)
Mark Rowe (sub)	Scheme Member Representative (FBU)
Des Prichard	Scheme Member Representative (FLA)
Glyn Morgan	Scheme Member Representative (FOA)
Jane Marshall	Legal Adviser
Helen Scargill	Technical Adviser
Rob Hammond	First Actuarial
Craig Moran	First Actuarial
James Allen	First Actuarial
Claire McGow	SPPA (observer)
Ian Hayton	NFCC (observer)
Steven Pope	Devon & Somerset FRS [Item 5.2]
Clair Alcock	LGA – Board secretariat
Claire Hey	LGA – Board secretariat (Minutes)
Frances Clarke	Home Office
Josh Goodkin	Home Office
Anthony Mooney	Home Office
Cat Weston	Home Office

Scheme Advisory Board Secretariat

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1. Apologies and conflict of interest

1.1. Apologies were received from Cllr Roger Phillips. Sean Starbuck was substituted by Mark Rowe.

1.2. Joanne Livingston (JL) welcomed Frances Clarke (FC), Cat Weston (CW), Mark Rowe (MR), and Ian Hayton (IH) to their first meeting. As per agreement from the Board [[item 8.1 minutes 17.09.2020](#)] IH has joined the Board as a permanent observer. All new attendees introduced themselves to the group.

1.3. No conflicts of interest were declared.

2. Minutes from previous meeting.

2.1. The minutes of the meeting held on 17 September 2020¹ were agreed as an accurate record. The Board agreed to publication of papers 1 to 3 on the public site.

Minutes reference	Action	Progress
5.1.16	Engage with Home Office on pensionable pay retrospection	In progress, update in action summary
5.2.15	Draft survey for stakeholders on current arrangements	Tabled for discussion
5.3.8	Obtain legal view on abatement issues and guidance	In progress, update in action summary.
5.4.22	Immediate Detriment information request to be sent to FRAs	Tabled for discussion

3. [Paper 1: Chair's update on action summary](#)

3.1. JL summarised the actions in progress and completed as detailed in the covering paper. JL confirmed that a further meeting is scheduled with the Home Office to discuss rectification of past pensionable pay errors. The Board have one agreed postponed action on progression of a pensions tax working group. JL explained that this is on the

¹ [Meeting minutes 17 September 2020](#)

backburner, but tax issues will be at the forefront of remedy. The Board were asked to note the paper, no questions were received.

4. Age discrimination

4.1. LGA and Home Office update on HMT engagement

- 4.1.1. Clair Alcock (CA) advised that the secretariat is continuing to engage with HMT and has been included in the cross-Whitehall technical working and project management groups in an LGA capacity. This has been useful to understand thinking on policy points. The response to the consultation is expected in January 2021.
- 4.1.2. CA added that the level of engagement with the Home Office and HMT has significantly increased, giving assurance that the complexity of remedy issues affecting the FPS are understood.
- 4.1.3. CA highlighted some of the key questions which were addressed to the Home Office and HMT in part four of the [SAB response to the consultation](#). While there are no firm answers as yet, CA felt confident that the effects of policy decisions are now being properly considered and that the impact on administration and software is being taken into account.
- 4.1.4. CA summarised that concerns around timescales and the challenge of implementation have been understood and acknowledged. By January there will be a clearer picture on policy and focus can turn to practical implementation.
- 4.1.5. FC endorsed the comments made by CA. FC commented that LGA attendance at the remedy working groups had made a noticeable difference. FC thanked the Board for their comments on immediate detriment (ID) and advised that there will be a delay in updating the informal guidance, as the consultation response is likely to impact on the revisions. FC noted that the government is working through policy issues which have different impacts for different schemes.
- 4.1.6. JL invited questions from the Board. Glyn Morgan (GM) asked whether any FRAs are implementing ID payments. CA confirmed that although the numbers of potentially eligible members have been requested, FRAs have not been asked to confirm whether they are applying the guidance. This is an individual decision for FRAs to make, based on the information and informal guidance available.

- 4.1.7. Des Prichard (DP) commented that the judgment was made some time ago and there are members eligible to retire under their legacy scheme. However, FRAs are acting on the scheme regulations in force, leaving members in limbo. Anthony Mooney (AM) asked why FRAs are not implementing ID and offering members a choice, based on application of Section 61 of the Equality Act. AM acknowledged that there are technical complexities to implementation but wanted to understand the reasons for FRAs not acting on the guidance. DP said the evidence was anecdotal, however, he was aware issues had been raised around the legal status of the note. AM stated that reliance on Section 61 will be confirmed in the revised guidance and the consultation response.
- 4.1.8. Roger Hirst (RHI) expressed frustration at the situation, confirming that Essex PFCC wanted to make payments in line with the Home Office guidance. The service is seeking independent legal advice.
- 4.1.9. Brian Hooper (BH) reiterated that the final judgment was made over 12 months ago and commented that the Home Office guidance is not clear enough in giving instruction to FRAs to pay benefits. BH highlighted a case where a member has been restricted to a lower tier ill-health pension under FPS 2015 due to the FRA's interpretation of the guidance.
- 4.1.10. AM said that the Home Office responsibility was to provide guidance giving an informal view that eligible members have an entitlement to immediate detriment. The responsibility for making a decision on implementation and payment rests with the scheme manager.
- 4.1.11. Matt Lamb (ML) asked in what circumstances a member might be disadvantaged by recalculation of tax under remedy. CA explained that members will have to pay the tax that would have been due under the legacy scheme, although there will be no extraordinary charges. Administrators will have to strip records back and rebuild them. The additional tax liability for annual allowance might only impact a small cohort, but recalculations must be carried out for all members.
- 4.1.12. JL asked to what extent the HMT revisions will provide further clarity and expected timescales. FC confirmed that the suggested revisions are with HMT and that the guidance stands. The departments are reluctant to issue the guidance until policy intent has been made across the public sector. However, this does not mean that the guidance should not be actioned in the meantime.

4.1.13. RHI suggested that FRAs will need to take independent legal advice as there can be no expectation that further guidance from the Home Office or the LGA will resolve the outstanding issues. JL asked if RHI would be able to share the service's legal advice with the Board. RHI will check with the PFCC's lawyer.

4.2. SAB priorities: Home Office email

4.2.1. On 6 November 2020, the Home Office emailed Board members to acknowledge the SAB's consultation response and outline next steps in the timeline and implementation of remedy.

4.2.2. JL asked for comments or views on the email. None were received. The Board noted the email and acknowledged the constraints on Home Office resource and time.

4.3. [Paper 2: SAB survey of FRA arrangements](#)

4.3.1. JL introduced paper 2 and the [draft question set](#) of the survey to FRAs on their current administration arrangements and appetite for change and indicative future preferences. Paper 2 outlines an extension to the survey to assess how prepared FRAs are for remedy. JL explained the proposal to use Survey Monkey to deliver the questionnaire at an expected cost of £300.

4.3.2. CA shared the draft questions on screen and gave a brief explanation of the information requested. The Board were asked to agree to the expenditure and give any views on the questionnaire.

4.3.3. JL asked if the survey will be sent to scheme managers and how to ensure it reaches the right person who is likely to complete it. CA stated this is a common problem with FRA engagement. CA will liaise with IH to ensure the survey lands at the right organisational level.

4.3.4. Cllr Roger Price (RP) stated that the usual authorities are likely to respond, and consideration should be given to ensuring all FRAs reply. IH noted that the survey could be an excellent gap analysis tool to help scheme managers identify risks. IH suggested it should be promoted as such, with the scheme manager responsible for completion in collaboration with their administrator and Local Pension Board (LPB).

4.3.5. GM said that the survey is comprehensive and will be a useful tool for the Board to assess gaps, which could also be a cause for concern. CA remarked that the results could be helpful to deliver a business case to address these gaps. JL commented that the

solutions will depend on whether issues affect individual FRAs or the whole sector.

4.3.6. No objections to cost were raised and the survey received general approval from the Board to proceed.

Action 03.10.2019 (7)

Secretariat to arrange purchase of paid Survey Monkey plan and transfer Excel-based questionnaire to online software.

5. For discussion

5.1. [Paper 3: SAB workplan](#)

- 5.1.1. JL introduced paper 3 which looks to set out a formal workplan for the Board, focussing initially on the [revised SAB risk register](#) and results of the Pension Regulator's (TPR) governance and administration survey 2019.
- 5.1.2. JL suggested that the findings from TPR could be used to inform the key risks to be addressed in the short term. JL recapped that Nick Gannon had attended the last Board meeting and had been relatively positive on scheme manager action. However, the statistics do not reflect this. JL asked if the Board should take an action to address areas of poor performance.
- 5.1.3. CA previewed the risk register on screen. CA explained that the Board had discussed a more basic model previously and agreed that significant work was still needed. The current register more accurately reflects risks to the SAB, rather than the scheme or scheme managers, and has been kept deliberately high level with 11 risks categorised by type.
- 5.1.4. CA briefly described the contents of the risk register tabs and then each risk in turn. Some relate to regulatory functions and some, such as conflict of interest and knowledge and understanding, are TPR requirements. CA highlighted that the high score for failure of Board members to obtain knowledge and understanding is reflective of the complexity of the schemes. The score for the risk on ineffective LPBs has been increased to reflect the recent TPR survey results.
- 5.1.5. CA confirmed that the heat map will be used to continually measure and assess risk. CA said that the register is a useful piece of work to help inform the SAB workplan and should be reviewed in April 2021.

- 5.1.6. JL suggested the register is reviewed at the next meeting, with an ongoing deeper dive on certain items to work on continuous improvement in line with TPR recommendations.
- 5.1.7. CA agreed that the SAB should be a model of good practice. CA noted that the TPR survey results are always 12 months out of date, so the picture may have changed. CA said there were some good news stories in the results, yet there may be negative views externally from those with no understanding of the sector. Comments on the register were invited from the group.
- 5.1.8. GM said the register is a good piece of detailed analysis. Cllr Nick Chard (NC) said that training and briefings would be helpful to support members in obtaining knowledge and understanding. NC added it may be useful to go back to basics for the benefit of newer members.
- 5.1.9. CA acknowledged that training can be sporadic, and the register could be a driver to formalise a training plan with regular updates and training sessions. JL asked if Board members maintain training logs. CA advised that a central log has never been created. The secretariat will look at developing this and cross-referencing to the risk register.
- 5.1.10. JL suggested that this be the first risk to focus on. JL commented that the most recently added risk on poorly drafted legislation is already being addressed through collaborative work on the Sargeant and Matthews remedies.
- 5.1.11. JL suggested that some mitigation of compliance risks could be built into the committees' workplans. CA said that the committees have not been widely utilised recently, but there is a good framework in place. CA added that technical updates from the technical community would be reintroduced. CA requested a volunteer to chair the LPB effectiveness committee.
- 5.1.12. In summary, JL asked the Board to agree the risk register and scorings; CA sought permission to publish the register online as an example of best practice. Members agreed to both points.

Action 30.11.2016 (9)
Secretariat to publish agreed risk register online. Action closed.
Action 10.12.2020 (5.1)
(1) Secretariat to develop central training log to evidence Board members' knowledge and understanding. Training plan to be developed and agreed with Chair.
(2) Volunteer sought to chair LPB effectiveness committee.

5.2. [Paper 4: Temporary in the context of the pension schemes](#)

- 5.2.1. CA gave a brief introduction to paper 4, highlighting that decisions are often dependent on terminology in the regulations. The legal advice commissioned from Weightmans indicated that that employments of a temporary nature are not eligible for the FPS or compensation scheme. It may not have been the original intent of the regulations, although this is now irrelevant. Firefighters can join the Local Government Pension Scheme (LGPS) if they are ineligible for the FPS.
- 5.2.2. CA welcomed Steven Pope (SP) to the meeting to give an insight into the local impact of the advice on FRAs.
- 5.2.3. SP thanked the Board for the opportunity to join the meeting. SP explained that D&S FRS have a workforce planning requirement to fill positions using fixed term contracts (FTCs). Many firefighters have a retained post as well as a wholetime (WT) contract, so are offered an additional WT FTC to the retained duty system. SP is concerned that the legal advice will exclude these individuals from the schemes, meaning they do not receive an equal level of injury cover to WT firefighters, although they are already members of the FPS in their retained role.
- 5.2.4. SP highlighted that D&S have employed a number of individuals on FTCs who have been offered access to the FPS. This cannot be reversed but leaves a question mark over future arrangements. SP stated that FRAs are now seeking to implement more flexible working arrangements and queried any possible contractual alternatives.
- 5.2.5. CA asked the Board to determine next steps. Members were asked whether they accepted the legal advice and if so, how this advice could be shared and communicated to FRAs.
- 5.2.6. IH said that the position at D&S is not an isolated case across services and is therefore an FRA-wide consideration for the Board. Helen Scargill (HS) agreed and stated that employees on FTCs are being entered into FPS 2015.
- 5.2.7. RP provided feedback from Hampshire noting some discrepancy between paragraphs 10 and 11 of the paper. It was also asked whether roles should be looked at in isolation or in total for an individual.
- 5.2.8. GM commented that the regulations are clear that temporary contracts are not eligible. However, individuals should be given

access to the compensation scheme if this can be achieved legally.

- 5.2.9. CA explained the complicating factor is interpretation of employment law around the definition of temporary. For some employment rights, this is up to two years. However, this is not for the pension regulations to determine and the outstanding issue for the Board is whether and how to share the legal advice.
- 5.2.10. JL stated that the compensation scheme falls outside of the scope of the SAB's role and cannot be considered. CA added that this is because injury benefits are funded by the employer, not the government. While is not a problem for the Board to consider, it is a wider problem and therefore presents difficulties when considering the consequences of the advice.
- 5.2.11. SP commented that the concern is not about funding, but about offering protection for employees.
- 5.2.12. DP asked if this is a governance issue which should be reported to the secretary of state by the Board in its role of ensuring the efficiency and efficacy of the scheme.
- 5.2.13. Jane Marshall (JM) asked why the use of FTCs is so prevalent in FRAs and for such extended periods, and whether this in itself is a funding issue. SP advised that FRAs would ideally seek to avoid FTCs, however, they are generally used to pick up changes to stations through workforce planning and tend to be initially awarded for 12-months and then extended.
- 5.2.14. CA summarised that the advice is clear that temporary employments are not pensionable, yet it is for employment law to consider the meaning of temporary. CA added that there is a lack of consistency between FRAs. CA asked the Home Office about possible routes of escalation and which would be the most appropriate responsible body to consider the issue, given the impact on the compensation scheme.
- 5.2.15. FC advised that the Home Office would consider this and revert back. JL suggested that the legal advice is released in the interim to confirm the position and instruct FRAs to seek individual advice.
- 5.2.16. DP queried the implications for payments made ultra-vires to an individual who was not eligible for the scheme. JM responded that the Teachers' Pension Scheme (TPS) is strict on eligibility and has set a precedent for unravelling cases; TPS contributions have been refunded and employees granted retrospective access to the LGPS.

5.2.17. JL asked if the Board were happy to commission JM to convert the legal advice into a note for FRAs. All agreed. SP left the meeting.

Action 11.06.2020 (6.1)

Board to commission Weightmans to convert legal advice into a note for FRAs. Home Office will consider possible routes of escalation on policy intent due to impact on compensation scheme.

6. To note

6.1. [Paper 5: Ill-health update – Medical retirements](#)

6.1.1. In the paper provided to the Board, CA reflected on the current issues surrounding ill-health retirements which mainly relate to misunderstandings of process and terminology, and conflicting information from stakeholders. The paused action to convene a working group will be revisited in the new year.

6.1.2. Additionally, CA has been in discussion with IQMPs on the challenges they face and the possibility of providing scheme training. Some practitioners are concerned about providing a determination on both the legacy and reformed schemes due to the wording of the regulations around independence. They have confirmed that they would be able to rely on a statement from the SAB to confirm this is permissible. CA highlighted the risk of inconsistency in cases where different IQMPs assess the same member under the criteria for separate schemes. CA asked if there were objections to releasing such a statement.

6.1.3. JL confirmed that CA would write a statement on behalf of the Board. CA agreed to draft a letter and publish the wording via the monthly FPS bulletin. CA advised that the guidance and training would be refreshed as part of the same process. CA said there is some confusion over when an assessment under both schemes is needed for immediate detriment, and there may also be instances where the member may be better off under FPS 2015 for higher tier. Progression of the working group will allow proper support and guidance to be provided. CA sought permission to publish paper 5.

6.1.4. JL noted that there were no comments or disagreements.

Action 04.10.2018 (5)

Working group to be convened in January 2021.

Action 10.12.2020 (6.1)

Secretariat to draft statement on behalf of SAB to confirm that IQMPs may assess the same member against the criteria of multiple schemes for recognised purposes including injury awards under the compensation schemes, transitional deferred benefits, and age discrimination remedy/ immediate detriment.

6.2. [Paper 6: Immediate Detriment data](#)

- 6.2.1. CA explained that the paper provided to the Board expands on some of the technical complexities which mean that benefits may not be calculated correctly under ID. Many require policy decisions which have not yet been made. In order to understand the scale and impact of these cases, FRAs were asked to provide data on their membership.
- 6.2.2. CA commented that the usual problems with data requests were experienced, such as lack of response, lack of accuracy, and in some cases lack of understanding. There could be various reasons why this was the case. However, while the data received may not be reliable, it can still be used to illustrate the challenges. A further response has been received from West Midlands FS which needs to be incorporated. CA summarised some of the main findings.
- 6.2.3. The total reported number of members within the ID categories was 3,500, split between claimants and non-claimants. Nearly six per cent of cases were identified to have a technical issue on their record.
- 6.2.4. The original Home Office guidance on ill-health cases stated that legacy benefits could only be paid if the member was not entitled to any award under FPS 2015. This is believed to be revised in the next iteration yet to be released. FRAs reported eight affected claimants, however, it is not clear whether payments have been made as this information was not requested. CA noted that FRAs were advised from January 2020 to obtain assessments under both schemes.
- 6.2.5. A high number of transfers were recorded, as transitioning into FPS 2015 offered members a new 12-month transfer window.
- 6.2.6. CA suggested that the returns cast reasonable doubt over FRAs' understanding of their data and membership. CA added that further work on remedy data is being carried out by the communications group to develop a data collection template and guidance to ensure the relevant data is available for implementation.

6.2.7. CA asked Board members to note the paper in response to their September request to identify quantum.

6.2.8. JL commented that the non-respondents were fewer than previous occasions. CA said that reminders had been issued via the SAB, with HS successfully chasing up several FRAs. RP reiterated the importance of engaging with non-respondents.

6.2.9. MR asked if the paper would remain confidential at the end of the meeting. CA clarified that this would be a Board decision, although there was no sensitive data other than the list of FRAs who did not respond. MR said it was helpful to see confirmation of numbers affected. RP supported publication of the paper and commented that the numbers would increase as further FRAs respond.

6.2.10. JL confirmed that the paper had been noted and there would be no further attempts to chase responses.

6.3. [Paper 7: SAB budget 2020-21](#)

6.3.1. JL noted as per paper 7 that the Board budget had been approved by the minister. Reductions as a result of COVID-19 were incorporated and these savings have paid for the accessibility project work on the FPS and SAB websites.

6.3.2. RP queried whether the Board have opportunity to request more money within a year once the budget has been agreed, for example if complex legal advice or a second opinion is needed. CA stated that there is a contingency amount built into the budget but no process in case of an overspend as previously this has just reduced the carry-forward amount.

6.3.3. CA advised that the secretariat would reflect on this, as legal demands are likely to be greater next year in light of Sargeant and Matthews. Preparation of the budget will start in January 2021 once a decision on immediate or deferred choice has been communicated. The budget for 2021-22 will reflect the level of communication and engagement work needed, potentially including modelling tools.

7. AOB

- 7.1. JL raised the recent High Court determination² on GMP equalisation in the Lloyds case, requiring the recalculation of transfer values for affected members. JL explained it is not yet clear if public service schemes are impacted.
- 7.2. GM asked if GMP is an area that the Board want to respond on, as there is a live consultation closing on 30 December. Rob Hammond (RHA) clarified that the consultation concerns GMP indexation, which will impact on the public sector.
- 7.3. CA stated that this would need to be a technical response, so the Board may not have a definitive view. The consultation proposes the most practical way forward to minimise administrative burden.

² <https://www.outertemple.com/wp-content/uploads/2020/11/Final-Judgment-in-Lloyds-Banking-Group-Pensions-Trustees-Ltd-20.11.2020-.pdf>