



**SAB special meeting: HMT consultation – actions and agreements
Thursday 3 September 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 Phillips	Scheme Employer Representative (LGA)
Cllr Roger Price	Scheme Employer Representative (LGA)
Cllr Leigh Redman	Scheme Employer Representative (LGA)
Brian Hooper	Scheme Member Representative (FBU)
Matt Lamb	Scheme Member Representative (FBU)
Sean Starbuck	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

Clair Alcock	LGA – Board secretariat
Claire Hey	LGA – Board secretariat (Minutes)

Tahmina Ahmad	Home Office
Josh Goodkin	Home Office
Anthony Mooney	Home Office

1. Apologies

- 1.1. Apologies were received from Cllr Ian Stephens and Pete Smith (FBU). Philip Hayes (FRSA) did not attend.

2. Conflict of interest

2.1. Conflict of interest forms were provided by email to all members to complete. No conflicts were declared.

3. Introductions

3.1. Each attendee introduced themselves and their role on the Board for the benefit of the new Chair.

4. Summary and discussion on key points of the consultation

4.1. Joanne Livingstone (JL) highlighted that the purpose of the special meeting was to discuss formulation of a response to the [HM Treasury consultation on remedying age discrimination](#) at future meetings and next steps. Clair Alcock (CA) presented a set of [slides summarising the background and key points](#) of the consultation.

5. Feedback on stakeholder reactions to HMT consultation and Home Office immediate detriment guidance

Consultation

5.1. JL explained that the consultation document is similar to HMT's initial thinking and has been fleshed out, although significant detail is still missing. The Board were invited to provide views.

5.2. Glyn Morgan (GM) stated that there was nothing within the consultation that persuaded FOA to divert from DCU. Although it may be more administratively complex, it mitigates some risk of flawed decision making and future legal challenge.

5.3. JL noted that the SAB's previous preference was for DCU with an indicative immediate choice, to give a better handle on costs and member certainty. This is not an option put forward in the consultation but can be suggested in the Board's response. JL asked if this would still be a consideration. GM agreed that an indicative choice would hopefully reduce the burden at a later date.

5.4. Cllr Roger Phillips (RPH) said that there are pros and cons to both options. DCU allows for more knowns, however, there are considerations around data and costs of administration and communication. FRAs are increasingly concerned about administrative capacity and the growing cost of resourcing.

- 5.5. Sean Starbuck (SS) confirmed that the FBU have started drafting a response. SS noted that the generic approach of the consultation across public service schemes means that there are issues with the [Equality Impact Assessment](#) (EIA). SS suggested that a separate EIA for the FPS is needed to take account of considerations such as members retaining fitness until a normal pension age (NPA) of 60. SS added that immediate choice does not remove discrimination as younger members will be more dependent on advice received to make the most beneficial decision and it is unclear how this information will be provided.
- 5.6. SS stated that there could be a cost benefit to DCU as the need to communicate immediate choice options would be removed and all information would be provided at point of retirement. SS pointed out that the same data will need to be collected for both options. However, FBU believe that members should be given a choice over the default DCU legacy scheme due to the differing contribution levels. SS clarified that the FBU will be pushing for DCU with a choice of legacy scheme.
- 5.7. Following the meeting, Helen Scargill (HS) raised a further complication arising from the DCU default legacy scheme for FPS 2006 transition members. For retained firefighters defaulting from FPS 2015 to FPS 2006, administrators would have to calculate qualifying final salary service based on actual pay received during each year from 2015 to 2022 in relation to reference pay. This would place a considerable burden on organisations and would ultimately be redundant if the member later elected for reformed remedy benefits.
- 5.8. SS advised that the FBU are likely to diverge from the wider Board's view on members moving to the reformed scheme from 2022, due to concern over the NPA of FPS 2015. SS commented that there is a lack of clarity on arrangements for 2022 onwards.
- 5.9. On the [unpausing of the cost-cap process](#), SS advised that the FBU have requested a Judicial Review (JR) along with other representative bodies to challenge the cost of remedy being included in the cap calculation. JL asked for timescales of the JR process. SS confirmed that the initial review was to request the unpausing of the process, so has now been amended in respect of remedy. A meeting has taken place with the government legal team and the review has been stayed until the HMT Directions are available.

- 5.10. Des Prichard (DP) confirmed that the FLA are leaning towards DCU, however, there are unanswered questions around future scheme valuations such as how GAD will account for an unknown member choice. DP stated that the Board have a collective responsibility to ensure the future viability of the scheme and should guard against unintended consequences, for example increasing the complexity of the scheme such that it is undeliverable, and administrators withdraw from the market.
- 5.11. JL commented that the scheme is already very complex, with an associated high cost of retrospection and rectification. JL cautioned that remedy will be difficult to deliver correctly at the first attempt and that members need to be made aware of this. JL said that the impact on valuation and cost-cap is unknown at least until the Directions are issued.
- 5.12. Rob Hammond (RHA) added that consideration should be given to the impact of future valuations on employer contributions and suggested that GAD is likely to make very prudent assumptions around DCU. JL said that the Board's response could reserve position due to the number of unknowns.

Immediate detriment guidance

- 5.13. CA had circulated the Home Office immediate detriment note to the Board in advance of the meeting. CA explained that further guidance would be needed for FRAs to be able to implement the note in practice and highlighted the challenge of providing consistent choice to affected members. CA commented on the lack of detail in relation to tax and pension growth.
- 5.14. CA highlighted the significant task of providing step by step guidance in applying the note and commented that there are concerns over the legal status of the guidance for non-claimants. It was not possible to elaborate due to the FRA's ongoing legal challenge, however, CA confirmed that the relevant Fire Services Management Committee (FSMC) papers could be resent to employer representatives. A written response from the Home Office on queries raised is awaited.
- 5.15. Anthony Mooney (AM) confirmed that he is aware of the queries that have been raised. The Home Office position is that there is a legal underpinning for both claimants and non-claimants. AM confirmed that a response will be made following internal discussions.

- 5.16. SS stated that the FBU supported the call for guidance, however, claimants have an immediate right to remedy under the interim order which was made nine months ago. SS said that the guidance is not satisfactory, particularly as it does not address retrospective retirements. SS added that regardless of any ongoing legal challenge between the Home Office and FRAs, claimants and non-claimants should be treated equally.
- 5.17. AM recognised and accepted the points raised but stated that the FRA is the scheme manager and is responsible for interpreting and applying the rules of the scheme, therefore there is no further role for the Home Office in regard to the note.
- 5.18. JL drew the item to a close, noting that the objective of the meeting was to consider the consultation response and the immediate detriment item had been added to raise awareness, as any solutions developed in the short term will need to assimilate with the eventual remedy. JL hoped that the necessary answers would be provided by the Home Office to allow FRAs to move forward with the guidance and that there would be more clarity by the next meeting.
- 5.19. RPH agreed that clarity and consistency are key and that the Board should lead on this. SS stressed that members suffering immediate detriment need to be treated as a priority and that while the need for consistency is appreciated, this should not delay immediate action.
- 5.20. HS commented that the note is lacking sufficient detail for administrators to pay benefits accurately. If a prompt response from the Home Office is not forthcoming, then administrators will need to make a decision on implementing the existing note and agree a position with clients. However, difficulties are likely to arise if benefits are overpaid. Roger Hirst (RHI) highlighted that the note states that all cases will be subject to revision once remedy is determined.

6. Discussion on key issues – defaults, deferral, practical impacts

- 6.1. JL opened a discussion on key remedy issues by asking for views on timescales and whether 2022 was practical for implementation.
- 6.2. SS asked for clarity from the Home Office on continuation of FPS 2015 in 2022, stating that this is a fundamental point to the response. AM confirmed there had been no discussion on further reform at policy level and he was not aware of any changes. AM stated that any lack of clarity should be highlighted in the response. AM added that the post-remedy period is outside of the consultation scope once discrimination is removed, however, this can be raised with HMT.

- 6.3. RHA noted that question 9 of the consultation concerns the post-remedy period and whether moving members to the reformed scheme from 2022 ensures equal treatment. RHA suggested that this is an opportunity to comment on future arrangements.
- 6.4. JL stated that some schemes are consulting separately on a new scheme and had understood that for the purposes of this exercise, retrospective remedy is either the existing legacy or reformed scheme and future arrangements are out of scope. JL commented that the terms of FPS 2015 may be subject to amendment pending review of the cost-cap. AM suggested that the question is raised at the HMT direct engagement meeting.
- 6.5. CA highlighted that future scheme arrangements are significant in terms of equality and this should have been addressed in the consultation document. For example, FPS 2015 has a higher bar for ill-health under the “one-pot” arrangement. CA emphasised the challenge of making a robust response without clarification of the unknowns.
- 6.6. JL agreed that answers are needed in order to respond. One route is engagement with HMT, the Board were asked for views on other avenues to explore. RPH said that the secretariat’s ongoing dialogue with the department is key and that the representative bodies have an advantage as they are already engaging directly with HMT.
- 6.7. SS confirmed this is an ongoing frustration as questions are being raised by and through the Board, yet answers are not coming back from the Home Office. AM reiterated that he will raise the post-remedy question with HMT directly.
- 6.8. Reverting back to time scales, JL summarised that lack of information on scheme design is an issue and should form a major point of the response in relation to legislation and administration.
- 6.9. DP suggested that the Board could provide commentary on the proposals rather than answering the consultation questions, in order to give a more proactive response. DP proposed that this could be a collective view with other Boards.

- 6.10. In reference to point 6.3, RHI quoted paragraph 3.7 of the consultation which states the government's position on the suitability of the reformed 2015 schemes as a means of future pension provision. RHI was of the opinion that new scheme design is a separate conversation and current focus should be on the consultation questions at hand. JL said that the Board could respond to Q9 based on the current FPS 2015 and would respond to any further consultation on scheme design in due course.
- 6.11. Moving on to Annex B – pensions tax relief, JL noted that the use of varying terminology is confusing. CA agreed that clarity on some points is needed before a firm response can be made.
- 6.12. JL asked for views on providing information to members. RPH stressed that proper communication is key, therefore DCU is favoured as it will allow members to make an informed decision. JL pointed out that DCU with an indicative choice would still require comprehensive information to be provided in the immediate term.
- 6.13. JL asked CA to comment further on the position of the remedy solution and default scheme for taper members. CA provided examples of how the proposed remedy policy could lead to inequality of treatment for tapered members, for example if they would have been able to achieve 30 years in FPS 1992 and then continue to accrue benefits under FPS 2015.
- 6.14. CA explained that the consultation does not provide any timescales for secondary legislation and it is not possible to evidence the difficulty in administering the changes without an idea of timings. Software suppliers have advised that they are not able to start drafting specifications until immediate or deferred choice is confirmed. This will depend on how long it takes HMT to issue their consultation response.
- 6.15. CA highlighted some other implementation considerations, noting that the Board had listened to a number of conversations about the reducing administration market, but had not expressed a clear appetite or direction for change. CA commented that suitable financial advice is difficult to source for public service pension schemes, especially the FPS. CA added that education will be needed for pensions staff as well as members, and there may be an impact on the SAB budget to facilitate this.

6.16. SS felt that these considerations strengthened the argument for DCU, for example access to financial advice. By not basing the choice on assumptions, the risk of future challenge is reduced. SS pointed out that entitlement to contributions holidays also needs to be considered for tapered members and included in the response. SS remarked that members should not be prevented from taking a combination of benefits solely due to administrative complexity.

6.17. Cllr Nick Chard (NC) said he was not convinced that risk had been mitigated as much as possible. As each member's circumstances are different, there is still risk within DCU of an "incorrect" decision being made.

7. Next steps – working groups, advice, clarification from HMT/ HO

7.1. JL confirmed that the next chronological step is the meeting of the stakeholder group with HMT on 10 September. JL encouraged members to start collating ideas and suggested that regular meetings would be needed. JL confirmed that the FPS AGM workshops are remedy focussed and will rely on the working group to feed questions in.

7.2. CA clarified that the working group SAB representatives will be as per the informal discussions early in 2020: Cllr Phillips and Cllr Chard for the employers and one employee representative from each body. However, the meeting is open to all members. CA emphasised the need to ensure targeted messages that reflect the Board's conversations to date.

7.3. JL asked the Board's advisers for any reflections. SS said that the examples previously provided by First Actuarial were helpful, but now require adjustment as they were based on remedy ending in 2023. SS reiterated that a separate EIA should be requested.

7.4. Craig Moran (CM) said that the examples could be amended although the outcomes are likely to be the same. CM agreed that a specific EIA is needed due to variations in the FPS such as different contribution rates across schemes and double accrual. JL asked who would be responsible for carrying out the EIA. Jane Marshall (JM) advised this is partly a legal issue and partly actuarial, to take into account member demographics.

7.5. JM felt that a full impact assessment may not be possible within the timescales but agreed to speak to First Actuarial to see what could be provided at a high level. JM stated that membership statistics would be helpful. JL commented that in the absence of data, any assessment would need to be based on principles rather than specifics

7.6. SS said that the Home Office should provide the EIA and that it should incorporate the ongoing reformed scheme, as well as immediate and deferred choice. AM stated that the Home Office could consider this internally following a request from the Board.

7.7. JL proposed that a list of questions is collated for the HMT engagement meeting. RPH agreed that the group needed to be focussed. AM highlighted that the meeting is a unique opportunity to engage with HMT and that providing a list of questions in advance would be beneficial.

7.8. JL asked what the objective of the meeting is, as HMT had not yet provided an agenda. AM thought it was to raise issues specific to the FPS. CA highlighted that other public service schemes had been able to engage with HMT prior to the consultation as the relevant department is the scheme manager. However, this had not been possible for FPS as the scheme manager (FRA) is also the employer. CA therefore welcomed this opportunity.

8. AOB

8.1. RPH asked what would be done to clarify the approach to the meeting with HMT. CA confirmed that a pre- and post- meeting would be scheduled.