



ACTIONS AND AGREEMENTS

Thursday 11 June 2020

Zoom

PRESENT

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| Matt Lamb | Scheme Member Representative (FBU) - Chair |
| Cllr Roger Price | Scheme Employer Representative (LGA) |
| Cllr Roger Phillips | Scheme Employer Representative (LGA) |
| Roger Hirst | Scheme Employer Representative (LGA) |
| Cllr Nikki Hennessy | Scheme Employer Representative (LGA) |
| Cllr Nick Chard | Scheme Employer Representative (LGA) |
| Cllr Leigh Redman | Scheme Employer Representative (LGA) |
| Brian Hooper | Scheme Member Representative (FBU) |
| Pete Smith | Scheme Member Representative (FBU) |
| Sean Starbuck | Scheme Member Representative (FBU) |
| Glyn Morgan | Scheme Member Representative (FOA) |
| Philip Hayes | Scheme Member Representative (FRSA) |
| Des Prichard | Scheme Member Representative (FLA) |
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| 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) |
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| Amar Pannu | Home Office |
| Joshua Goodkin | Home Office |
| Anthony Mooney | Home Office |

1. Introductions and apologies

- 1.1. Matt Lamb (ML) chaired the meeting pending appointment of the new post-holder. ML welcomed all to the meeting. Apologies were received from Cllr Ian Stephens.

2. Changes to membership

2.1. There have been three new members to the Board: Cllr Leigh Redman (Lab) replaces Fiona Twycross AM as a scheme employer representative. Pete Smith (FBU) replaces Dave Limer and Philip Hayes (FRSA) replaces Tristan Ashby, as scheme member representatives.

2.2. Clair Alcock (CA) confirmed that the chair interviews concluded week ending 15 May and several appointable candidates had been recommended to the minister. Amar Pannu (AP) added that once a decision had been made, it could take between six weeks to two months for the necessary security clearance to be obtained.

3. Conflict of interest

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

4. Minutes from previous meeting

4.1. The minutes of the two virtual meetings held in March were agreed as an accurate record. Sean Starbuck (SS) requested that Philip Hayes be amended from an attendee to an observer on 23 March 2020.

4.2. CA gave an update on actions arising: the Board had agreed that a direction on including projections on Annual Benefit Statements should be issued and this was communicated to stakeholders via the April FPS bulletin along with the HM Treasury caveat on remedy. The paper on guidance for immediate events was escalated to the Home Office and is listed on the agenda for discussion.

4.3. [Minutes of the virtual meeting held on 23 March 2020](#)

4.4. [Minutes of the virtual meeting held on 31 March 2020](#)

5. Sargeant/ McCloud consultation update

5.1. AP noted that the consultation is on track with the expected timeline and is hopeful that it will be released before summer recess and the Employment Tribunal (ET) hearing in July.

5.2. SS explained that the FBU have submitted a [letter to the Home Office](#) regarding the progression of immediate cases given that it is six months since the interim order was made. AP confirmed that the department hope to respond in a constructive manner within the requested timescales. However, there is a further step of discussing

any guidance with the FRAs who would be implementing and administering any change.

- 5.3. CA re-iterated the importance of the guidance being issued as soon as possible to avoid the possibility of FRAs acting inconsistently in the meantime. Des Prichard (DP) asked whether this could be construed as unlawful. CA confirmed that actions may potentially be ultra-vires or lead to tax penalties which if as a result of remedy may result in a financial liability for the FRA to resolve. CA added that FRAs may have no recourse if they had acted before receipt of the necessary guidance. DP was concerned that members may be exposed to the risk of financial penalties.
- 5.4. SS asked if any further responses had been received to the SAB request for data on immediate events. CA advised that no additional data had been received, but the figures submitted provided a good indication of the numbers involved.
- 5.5. Cllr Nikki Hennessy (NH) asked if FRAs are aware of the current position. CA confirmed that all relevant information had been provided although it could depend on internal controls.

6. Papers for discussion

6.1. [Paper 1: Temporary in the context of the pension schemes](#)

- 6.1.1. CA confirmed that legal advice had been received from Weightmans indicating that temporary contracts are not eligible to the pension schemes or the compensation scheme. CA asked whether this is line with the Board's expectations.
- 6.1.2. Anthony Mooney (AM) noted that considerations with regards to the compensation scheme may technically fall outside of the SAB's remit.
- 6.1.3. SS stated that the FBU would prefer to take advice and then provide written comments as it would depend on the scope of the issue. SS added that there may be concerns regarding auto-enrolment and the impact on apprenticeships.
- 6.1.4. CA said that obtaining the SAB legal advice is the starting point and that wider conversations are needed on the implications before FRAs can be informed.
- 6.1.5. DP remarked that contractual issues are not the Board's concern as this is a matter of employment law, however, there is a potential cost implication if people who would not be eligible are entered to the scheme. DP asked whether relevant data should be

collected from FRAs. Cllr Roger Phillips (RPR) agreed that incurring unnecessary costs would be a concern and highlighted the need to achieve consistency across the 45 FRAs.

6.1.6. Glyn Morgan (GM) noted added complexity due to different definitions of “temporary” which would make data gathering difficult. GM added that the Board have previously only ever issued guidance, rather than advice, and queried whether the status of existing guidance should be escalated.

6.1.7. ML summarised that there was no immediate resolution arising from Paper 1, and this would be continued to be considered at the next meeting. ML asked for comments to be submitted in advance of the next meeting. CA added that members may wish to hold discussions outside of the SAB in their respective employer/ member roles.

6.2. [Paper 2: COVID-19](#)

6.2.1. CA explained that administrators seem to be coping well with new working arrangements and have confirmed good operational resilience. A further temperature check will be carried out now some time has elapsed, as some public service schemes have noted delays in processing death benefits.

6.2.2. CA said that statutory deadlines did not appear to be a problem and that fortnightly catch ups were providing useful informal engagement with practitioner stakeholders.

6.2.3. CA described the following pension scheme issues:

- Protected pension age (PPA) relaxation has been extended to November. Abatement is still to be applied.
- Central guidance is expected from HMT on assessing COVID-19 as a qualifying injury. The Department of Health and Social Care (DHSC) has agreed a £60k life assurance scheme for NHS and social care staff on the frontline. This is a government funded payment, unlike the Firefighters’ Compensation Scheme (FCS).
- FRAs are temporarily increasing resilience. As discussed, temporary contracts are not eligible to the FPS or FCS.

6.2.4. ML remarked that stakeholders had adjusted well to current conditions. Comments were invited from the Board.

6.2.5. RPR stated that the response to the pandemic was a credit to all involved and that having the survey results on record was

important reassurance of the quality of scheme delivery. RPR agreed that continuing temperature checks are important and suggested that discreet pressure should be applied, via the employer representatives, to FRAs who do not typically respond. CA confirmed that a list of respondents could be provided to the SAB.

6.2.6. NH agreed with RPR that engagement across the FRAs should be promoted.

6.2.7. SS said that the FBU had written to all FRAs to request that COVID-19 be accepted as an automatic qualifying injury. SS noted that it needs to be made clear to FRAs and employees that fixed term contracts are not eligible for the FCS, with assurance that representative bodies are not then in a position of having to pursue numerous claims.

6.2.8. Philip Hayes (PH) queried whether retained firefighters would be covered by the compensation scheme in their substantive RDS contract. SS agreed that clarity is needed.

6.2.9. ML suggested that members again submit written comments to be considered at the next meeting. CA added that contractual issues fall mainly under employment law and there is therefore no role for the SAB in this regard. However, members could follow up outside of their Board positions. AM reiterated the point that the FCS also does not fall within the SAB remit. CA agreed but noted that the Board need to be aware of the overall position.

6.2.10. In order to treat a death from COVID-19 as a qualifying injury for the purpose of the compensation scheme it must be a work-related injury. AM suggested informally that there may be sufficient discretion within the current regulations for employers to accept a COVID-19 death as work-related. This should be an FRA decision and not based on medical evidence, an IQMP is unlikely to make a determination on this without FRA acceptance, such as advising that the member is working on the frontline to provide COVID-19 support or undertaking [additional activities as agreed by the tripartite statements](#).

6.2.11. DP felt that there should not be an issue if normal processes are being followed. AM noted that the crux of the issue is where an IQMP is asked to opine on whether a COVID-19 death has been occasioned by the individual's work as a firefighter in the absence of the FRA definitively recognising it as being work related.

6.2.12. CA highlighted that this illustrates a wider problem which is that FRAs do not have processes in place, and lack clarity on which decisions rest with the employer and which with the IQMP. CA added that the regulations can be interpreted narrowly or widely. SS suggested that the central guidance is awaited before considering further action.

6.2.13. SS asked if there was an update on the suspension of medical appeal boards. CA confirmed boards are suspended to the end of June. AM acknowledged the query and confirmed that an update from HMT is expected.

6.3. [Paper 3: Pensionable pay](#)

6.3.1. CA summarised the paper and invited comments from the Board. SS welcomed the paper as a useful update on pensionable pay concerns. SS noted that the confidential legal advice on the matter of retrospection contains issues which are being challenged locally. SS added that the FBU will seek their own legal advice and respond to Weightmans, as there are additional points on limitation which the FBU feel need to be picked up under retrospective action.

6.3.2. DP commented that the paper does not cover eligibility of senior roles to the scheme, which has previously been discussed by the Board. CA noted that although this was a wider valid point on past service costs, it was not relevant to the current advice, and that a [factsheet on eligibility](#) has been issued.

6.3.3. ML suggested that retrospective action is looked at again once the FBU advice has been received. CA pointed out that the Board is not a negotiating body so will be limited on what action can be taken in relation to retrospection.

6.3.4. SS noted for the minutes that the FBU are in a difficult position as they hold a place on the Board but do not agree the legal advice in full. Roger Hirst (RHI) suggested that this is not a conflict of interest as the position is confusing and contradictory to all parties.

6.3.5. Cllr Nick Chard (NC) queried the scale of the issue and whether FRAs are well-informed and can access legal advice. CA confirmed that most FRAs will be affected, with the LGA only becoming involved later in the process. CA clarified that any FRA can potentially obtain independent legal advice.

- 6.3.6. SS commented that central advice from the Board would be the preferred outcome once a version has been agreed, rather than 45 separate advices.
- 6.3.7. ML summarised that there was no action at present. The resources to FRAs were noted and it was agreed that retrospective action be tabled for the next meeting pending separate employer/ member representative discussions.
- 6.3.8. On past-service costs, CA noted that the FPC asked the Home Office (then DCLG) in 2013 to commission advice from GAD on [the impact of duty system costs on the valuation](#). CA asked the Board if similar action is required now or whether they are content to note that the position that cost remains a risk and consider that sufficient advice has been provided.
- 6.3.9. AM said that the pensionable pay issue is exacerbated by the introduction of new, bespoke working patterns by FRAs when devising contracts and duty systems, noting that it is an employer responsibility to make decisions.
- 6.3.10. GM commented that past service costs arising from pensionable pay needs to stay on the agenda as there is a risk to the scheme, and knowing whether pay is being treated correctly remains a problem. GM proposed that this is raised with GAD for the next valuation.
- 6.3.11. DP agreed that there is a risk of breaching the cost-cap due to misuse of the pension scheme which has been evidenced by case-law. DP highlighted the inherent risk of a national scheme with 45 local decision makers.
- 6.3.12. NH asked whether it was possible to put a deadline on the outstanding points. CA stressed that this would be challenging, however, the Board should consider timeframes and what actions could be taken before the next meeting. CA suggested that each point be given a separate timeline:
- Retrospective action tabled for September meeting, pending confirmation from Jane Marshal that legal advice can be shared with trade union legal representatives.
 - Past-service costs will be more challenging to find a way forward as the actions of individual FRAs have an impact on the overall scheme.
- 6.3.13. Rob Hammond (RHA) noted that GAD acknowledged the possible impact on the 2016 valuation but based the results on

actual pay figures received. RHA added that it is almost certain that the 2020 cycle will not take account of pensionable pay issues and asked whether the Board could provide any data to be incorporated into GAD's calculations.

6.3.14. RHA reminded the group that the 2017 SAB consultation response in respect of past-service costs due to GAD v Milne and FPS 2006 special members stated that these should not be included. RHA proposed that current issues may have a likely impact on the 2024 valuation.

6.3.15. AM clarified that GAD undertook research for the 2016 valuation and the impact of pensionable pay decisions was determined to be immaterial. AM will try to find this advice to forward on. RHA suggested that GAD are asked to test whether it is still immaterial for 2020.

6.3.16. ML summarised that point one on resources was noted; more information on point two (retrospection) and point three (past-service costs) is needed and will be reconsidered in September.

7. Papers to note

7.1. Board papers by email

7.1.1. CA noted that agreement had been received on the IDRPs guidance circulated by email and the factsheet had been issued with FPS Bulletin 33. More detailed guidance for members and decision makers is to follow. CA confirmed that IDRPs data will be collected from FRAs annually.

7.2. [Paper 4: LGA update](#)

7.2.1. CA explained that Paper 4 was provided instead of a verbal update to give Board members a wider view of the LGA Bluelight team and delineate between the dual roles of employer advisers and secretariat to the SAB. CA asked for comments from members.

7.2.2. RHI asked who the team is tasked by: FRAs or the SAB. CA confirmed that both entities provide workstreams for the team as outlined in the paper, with accountability held to both the LGA and the Board.

7.2.3. ML concluded that the paper was useful to note.

7.3. [Paper 5: Update on action summary](#)

7.3.1. CA said that Paper 5 had been drafted to complement the action summary and evidence clear progress against the Board's work-plan. There were no further questions or comments. ML noted the paper.

7.4. [Paper 6: Administration and Benchmarking update](#)

7.4.1. CA stated that Paper 6 had been provided as a rolling update on actions and recommendations arising from the administration and benchmarking review and would be a useful summary for the incoming chair. The paper was noted.

7.4.2. GM asked how procurement may be affected after Britain's exit from the EU. CA was unsure that there would be any impact, noting that the biggest problem for FPS administration is the lack of available alternatives and framework.

8. Future meeting dates and venues

8.1. The following meetings are scheduled:

- Thursday 17 September 2020 – virtual (Zoom or MS Teams)
- Thursday 10 December 2020 – location to be confirmed

8.2. The Board were asked for their preference regarding forthcoming meetings. It is accepted that the scheduled September meeting will be held virtually. CA noted that special meetings are likely to be needed to respond to the consultation on remedy and any other scheme announcements and these will also be held virtually.

8.3. RPR commented that online meetings can work well, but it would be preferable to hold the December meeting in person as the new chair will be in post by then. However, the Board should be guided by the rules in place at the time.

8.4. CA agreed and noted that future meetings may be held on an alternating basis to cut down on travel time and expense.

9. AOB

9.1. There were no items of AOB raised. ML thanked all for attending. The meeting closed at 13:00.