



**SAB special meeting: HMT consultation response
Tuesday 16 February 2021
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)
Cllr Ian Stephens	Scheme Employer Representative (LGA)
Brian Hooper	Scheme Member Representative (FBU)
Matt Lamb	Scheme Member Representative (FBU)
Mark Rowe (sub)	Scheme Member Representative (FBU)
Pete Smith	Scheme Member Representative (FBU)
Glyn Morgan	Scheme Member Representative (FOA)
Philip Hayes	Scheme Member Representative (FRSA)
Jane Marshall	Legal Adviser
Helen Scargill	Technical Adviser
Rob Hammond	First Actuarial
Craig Moran	First Actuarial
James Allen	First Actuarial
Iain Coltman	SPPA (observer)
Ian Hayton	NFCC (observer)
Joanne Donnelly	LGA (observer)
Clair Alcock	LGA – Board secretariat
Claire Hey	LGA – Board secretariat (Minutes)
Frances Clark	Home Office
Anthony Mooney	Home Office
Cat Weston	Home Office
Robert Fornear	Government Actuary's Department (GAD)
Jan Claisse	Government Actuary's Department (GAD)

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1. Apologies

1.1. Apologies were received from Des Prichard. Sean Starbuck was substituted by Mark Rowe.

2. Conflict of interest

2.1. No conflicts of interest were declared.

3. GAD: Cost cap update

3.1. Representatives from GAD attended the meeting to provide an update on the cost cap. Robert Fornear (RF) explained that the cost cap process had recommenced, although HM Treasury (HMT) Directions are still awaited. The 2016 valuation is being repeated as a baseline and it is likely that the seven-year remedy period will be included in the calculations. As part of that, GAD is looking at the retirement assumptions with the Home Office, particularly for FPS 1992-2015 transition members.

3.2. RF confirmed that if the cost cap ceiling is breached, there will be no reduction to member benefits. If the floor is breached, consultation on improving benefits will take place. RF explained that the whole cost cap process is under review and it would not be appropriate to reduce benefits while the mechanism is possibly not working as expected.

3.3. RF said that Directions are expected in the summer, at which point GAD can finalise the report and calculations. Joanne Livingstone (JL) asked for clarity on the timing and interaction of this process. RF confirmed that HMT will first issue draft Directions, allowing GAD to finalise the calculations while HMT finalise the Directions.

3.4. Craig Moran (CM) asked if a breach of the cost cap floor is likely for the FPS. RF could not confirm any possible outcome at this stage.

3.5. Cllr Roger Phillips (RPH) sought clarity on employer contribution rates, as these were increased following the original outcome of the valuation to pay for benefit improvements which were not realised. RF said there will be no immediate impact on employer rates. Any changes would not take effect until 2023 under the normal valuation process and have been delayed a further year to 2024.

3.6. Rob Hammond (RHA) commented that member benefits would be impacted between 2019 and 2023. RHA asked at what point the SAB would become involved if there has been a breach of the cap. RF said there are no timescales for potential changes as yet.

- 3.7. JL asked how GAD will take account of Deferred Choice Underpin (DCU) if all seven years of the remedy period will be treated as a past service cost. RF explained that this will depend on the wording of the Directions, but the expectation is that calculations will be performed for each member on both legacy and reformed accrual and the higher aggregate value per member will be used in the valuation. The calculations will not consider the higher value per contingency. RF noted a significant difference between FPS 1992 and FPS 2015 accrual.
- 3.8. JL asked if GAD had received all pensionable pay data requested from FRAs. RF confirmed that all FRAs had responded to date and there seemed to be limited changes to pensionable pay arrangements in England following the Booth v MAWW determination. Either relevant allowances were already deemed pensionable or there were low numbers of members in receipt of those allowances.
- 3.9. Clair Alcock (CA) asked if the data had been interrogated for accuracy, as these findings do not support the secretariat's experience. RF stated that the data is taken at face value based on the direct questions asked and suggested picking this up outside of the meeting.
- 3.10. CA noted that questions had been raised by FRAs on medium-term financial planning and requested confirmation that any change to employer rates would definitely be delayed from 2023 to 2024. RF confirmed that the final decision rests with HMT, but this is the case to the best of his knowledge.

4. Home Office update on HMT consultation decisions

- 4.1. Cat Weston (CW) talked briefly through the [HMT consultation response](#) which was published on 4 February. CW explained the two main decisions are DCU, to give members a choice at retirement of legacy or reformed benefits for the remedy period, and that all remaining members of the legacy schemes will be moved to FPS 2015 on 1 April 2022.
- 4.2. CW advised that in recognition of the challenge and risk to members, the implementation date has been put back to 2023. [FAQs](#) are available on the FPS Regulations and Guidance website and CW asked for any additional questions to be directed to the Home Office, noting that there are still some decisions and policy issues to work through.

- 4.3. Frances Clark (FC) said that the Home Office understands the Board's concerns over missing policy details and appreciates comments received on the immediate detriment (ID) guidance. FC confirmed that updating the guidance is a top priority and the Home Office is working closely across government and with the LGA.
- 4.4. FC added that there are outstanding policy issues around tax which affect ID due to the difference in contributions between schemes and annual allowance implications. FC could not provide answers now but was happy to take questions away.
- 4.5. RPH welcomed the clarity provided by the consultation on DCU and also the practicality of the extended timescale to address difficult and sensitive issues such as tax and contribution adjustments. RPH noted that ID is an extremely sensitive issue and needs to be handled carefully. RPH stated that further guidance would be helpful, as FRAs are under pressure from the representative bodies to make payments and would like to process cases. However, they need to be fully sighted on the risks involved.
- 4.6. RPH emphasised the clear challenge around administration and funding, which presents a new burden. RPH highlighted the need for all parties to move at speed now that the response has been issued, as amendments to software were delayed until this point.
- 4.7. In respect of ID, Roger Hirst (RHI) noted it is key to get to a point where decisions can be made. RHI felt that FRAs will never get to a position of no-risk based on the information that has been received and is likely to be received in the future.
- 4.8. Ian Hayton (IH) welcomed the clarity of the response and noted that FRAs are keen to progress ID. IH said that although further guidance would be helpful, the primary and secondary regulations to underpin the payments are key. IH asked for confirmation on a timeframe for FRAs bearing this risk as organisations do not want to wait until 2023 to implement immediate cases.
- 4.9. FC noted the points made on ID and thanked the Board for their comments. FC confirmed that the Home Office is pushing for clarity and will provide an update as soon as possible. FC said it is helpful to understand that decisions can now be made around software and hoped that the delay to 2023 was a welcome development.

- 4.10. FC outlined a high-level legislative timeline. The prospective remedy will be achieved by primary legislation and led by HMT. This is expected to be brought forward in the middle of the year and needs Royal Assent by April 2022. It is anticipated that retrospective remedy will be delivered through secondary legislation. The Home Office is already scoping scheme regulations following publication of the consultation response and is committed to engaging with the Board on the draft regulations.
- 4.11. RHI asked whether the Home Office will have to wait for Royal Assent on the primary legislation before developing the secondary. FC confirmed that consultation will take place on secondary legislation while the primary is moving through the House. FC was unsure on the position of laying Statutory Instruments and would follow up on this.
- 4.12. Matt Lamb (ML) stated that the decision on DCU is a logical way forward. FBU has concerns over the reformed scheme from 2022, however, the most important issue now is ID. ML noted continuing frustration over timescales, particularly for ill-health cases and increasingly now that implementation has been extended to 2023. FBU considers this to be unacceptable.
- 4.13. JL reminded the Board of its role set out in legislation, to advise on the effective and efficient administration and management of the scheme. This translates to understanding what the barriers to implementing ID are, ensuring procedures are in place for ID and remedy so FRAs are acting as consistently as possible, and putting in a place a roadmap now that the response has been issued. JL clarified that the reformed scheme from 2022 will be FPS 2015.
- 4.14. ML commented that the SAB had previously made recommendations on changes to FPS 2015 following the cost cap breach, for example improved early retirement factors, and asked whether there is now opportunity to revisit these. JL noted that this would depend on the reassessment of the 2016 cost cap valuation.

5. Recap of SAB response to the consultation

- 5.1. CA explained that the SAB response would be compared to the HMT response in order to pick up outstanding points and determine where policy decisions need to be pushed for. CA highlighted the need to agree consistent terminology and explanations for addressing different audiences in different capacities. As an example, all members are already in FPS 2015, except those that were fully protected. There is a misconception that all members will be moving between schemes.

- 5.2. CA recognised that ID is a hugely emotive issue. FRAs want to action payments but have a lack of clarity on the risks they would be taking on. CA asked Board members, in their role of providing advice under 4.13, if they felt comfortable that the six-page note issued by the Home Office in August 2020 is sufficient instruction for FRAs. This could result in a disjointed process of 45 separate decision makers acting on partial information. The Board were also asked to consider what governance Local Pension Boards (LPBs) have over scheme manager decisions and escalation processes to the SAB. Local boards are not always clear on their role, however, the secretariat will be providing relevant training and support.
- 5.3. IH suggested that one action for the SAB could be identification of risks and challenges moving through implementation via a risk assessment to assist scheme managers and LPBs. IH said there are likely to be 45 different risk assessments in place, where the SAB could provide an overview of risks and mitigations.
- 5.4. Glyn Morgan (GM) agreed the need to clarify and provide guidance. GM suggested identifying areas where clarity can be provided, despite the many policy decisions still outstanding.
- 5.5. CA explained that there is already a framework for support in place, using existing training sessions for LPBs and scheme managers. CA said that caution should be exercised on a central risk assessment, as the Board cannot determine what a service's individual risks are, only signpost to overarching themes. CA reminded the Board of the planned [self-assessment survey of FRAs](#) to determine preparedness for remedy. There had been some administrative delays with procurement of Survey Monkey, but these are now resolved and update on the survey will be provided at the next meeting.
- 5.6. JL commented on the response decisions, noting that relative to the SAB's proposals agreement was not received on taper members, default choice and contributions for FPS 2006 transition members, and the ability to make an indicative choice. The HMT response indicates that some mechanism or mitigation will be put in place for contribution refunds due on converting back to FPS 2006 membership. While it is confirmed that interest on amounts due to and from the scheme will be charged, there is no clarity on rates, and further detail is needed on tax and compensation processes.

6. Discussion on key issues - Practical impacts

- 6.1. CA stated that the majority of the response was welcomed. However, there is an outstanding concern on taper members who would be offered a choice for the whole remedy period. Many of those members will have achieved 30 years' service during the period and continued to accrue CARE membership. There is therefore uncertainty over this accrual. The response acknowledges that there is an issue but does not provide a satisfactory resolution. There is an associated impact on ID that the SAB need to be aware of.
- 6.2. ML commented that the response is clear that the remedy period will be treated in its entirety and queried whether there is any scope for negotiation on this. Both JL and CA read the response as a definitive position. Anthony Mooney (AM) confirmed that the position on taper members is HMT policy and any questions about flexibility should be directed to HMT.
- 6.3. CA commented on the lack of policy details on an indicative choice or alternative default for FPS 2006 transition members, as there is no clarity on what easements or mitigations might look like. CA asked if the Board wished to issue a response to HMT, to acknowledge and welcome the response, and highlight the additional detail that is still required.
- 6.4. JL wondered if this would be addressed directly to HMT or held on the Board website. CA confirmed that this would be a letter to HMT that the Board would be content to publish online, focusing on FPS specific issues. RPH supported this and noted that care would need to be taken over wording to send the right message to stakeholders. GM also supported a public statement.
- 6.5. CA highlighted that the response indicates national guidance will be provided on scheme by scheme contingent decisions to support decision making.
- 6.6. Helen Scargill (HS) confirmed from an administrative perspective that the three issues raised above are key. HS expressed concern about members receiving a refund of FPS 2006 contributions, then choosing reformed benefits at retirement and subsequent contribution arrears attracting interest. HS agreed that the response is definitive on taper members and proposed that the Home Office consider mitigations that might be available under secondary legislation, as members are being denied their normal retirement dates. HS suggested an APB process for overpaid contributions as a solution to refunding and recharging.

6.7. CA noted that the taper situation can become quite technical and was unsure whether the issues are widely understood by stakeholders; a paper will be drafted to crystallise the concerns. CA was keen to avoid the ongoing situation of members continuing to accrue benefits over 30 years that they may not be able to access. CA said it would be useful to understand from HMT or the Home Office whether proposed solutions are welcome.

6.8. FC noted an action to check with HMT as tapering is central policy. AM commented that there may be a further complication of the 30-year service cap for protected members creating further discrimination.

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

7.1. JL summarised that the next steps for the SAB are a letter to HMT/ public statement and identification of outstanding issues. A project plan and working groups will be established to clarify responsibilities and timescales:

7.1.1. CA explained that scheme managers are responsible for implementation. The LGA in their employer role have formed a group of senior stakeholders and drafted a project implementation document (PID). The SAB role in remedy is around governance and oversight, giving advice on effective and efficient administration.

7.1.2. CA confirmed that engagement with software suppliers has started. The FPS is behind the curve of the centrally administered schemes and there is a need to make sure solutions and delivery are being led correctly.

7.1.3. The technical group chaired by HS will be used to look at policy decisions in detail. Not all FRAs have specialist technical knowledge and the SAB will work closely with the technical group, with reports back from the chair.

7.1.4. The Fire Communications Working Group (FCWG) will establish what communications are needed and how best to deliver messaging. This will include consideration of accessibility and the challenges of making a complex issue easily understandable. The chair of FCWG will feed back into SAB and the group may put forward business cases for use of the SAB budget for central communication materials such as videos.

7.1.5. The [three SAB committees](#) can also be utilised more. The Administration and Benchmarking committee will work directly with administrators on their challenges for escalation to the Home Office and HMT.

- 7.1.6. Reporting mechanisms will be put in place to ensure the Board remain fully sighted. A specific remedy steering group could be considered; however, it may be preferable to keep roles and actions within existing central frameworks.
- 7.2. JL commented that governance would correspond to the LPB effectiveness committee remit and asked whether working groups would be provided with timelines and project plans. CA responded that these would be developed as part of the working groups' actions.
- 7.3. CA added that the LGA team have also formed an overarching project management group with the Home Office and are reliant on HMT for timescales at present. CA noted that parallel working is needed on the separate elements of implementation:
- 7.3.1. Working without systems and guidance for immediate cases.
- 7.3.2. Moving remaining members to FPS 2015 in 2022. This should be relatively straightforward to administer but will require a big communications exercise.
- 7.3.3. Retrospective remedy – DCU.
- 7.4. CA agreed to share the PID and associated risk register with the SAB. JL asked for comments from the Board.
- 7.5. RPH remarked that the right processes and documents appeared to be in place to ensure all workstreams are captured while not duplicating effort. CA confirmed the documents are important for transparency on processes and considerations and to provide an audit trail on decision making.
- 7.6. JL asked if there are outstanding vacancies on the committees which need to be filled. Claire Hey (CH) confirmed that a chair is needed for the LPB effectiveness committee and a SAB member representative for Administration and Benchmarking. For information, there is also a practitioner vacancy on the LPB committee. CH proposed that an existing member of this committee be promoted to chair, and a further member representative sought from the Board.
- 7.7. ML queried whether the chair should be elected by the committee. CA explained that although the committees are intended to reflect sector stakeholders, a SAB member is always appointed as chair, and also comprise one representative each from the employer and employee side. JL confirmed this would be picked up after the meeting. CA added that the committees have not met in some time and the secretariat will consider next steps.

- 7.8. RPH suggested this be added to the next full SAB agenda and emphasised that the chair should be drawn from the Board to ensure that views and outcomes are fed back.
- 7.9. JL asked the secretariat if anything further was required from the Board. CA confirmed that the secretariat could now start looking at timetabling and drafting. CA added that training for LPBs will commence and the SAB will be invited to attend a session. CA asked for views on starting communications although there are still gaps in policy. JL felt this would be helpful, to identify areas needing further clarity. GM agreed that as much information as possible should be provided and should start to be developed now, despite the unknowns.
- 7.10. Mark Rowe (MR) queried where the SAB sit in relation to the interim order handed down by the Employment Tribunal and subsequent EAT decision on the FRA's Schedule 22 appeal. MR asked if the Board need to instruct FRAs to act on the interim order and start to process ID cases. MR appreciated the lack of available information but expressed frustration over the timescales of applying a court ruling.
- 7.11. JL stated that the Board's role is to advise on how to make it happen not to state that it must happen. CA added that the Board's role is effective and efficient administration and considering how this can be achieved in relation to ID.
- 7.12. MR said the point is the SAB is engaging in a process to make it happen without acknowledging the court ruling that it is immediate. CA suggested that a conversation is needed on the risk to members due to a lack of guidance and process, and what risk the SAB would be exposed to in instructing FRAs to immediately action ID cases.
- 7.13. RHI said there is a difficult balance to strike in advising FRAs either way. RHI suggested the Board should seek to provide further information to support FRAs in implementation. JL agreed that the position is challenging for the Board and asked for comments from the SAB advisers.
- 7.14. RHA commented that timescales and clarity on opportunities for the SAB to be involved or provide comment are crucial, especially on the cost cap.

7.15. JL asked CA if the central working groups involve HMT. CA confirmed that HMT facilitates both a technical working group to determine policy detail and a project management group, which are meeting regularly. The project management group has recently been extended to include administration and software representatives and are working through policy issues to provide transparency. CA agreed to submit a paper on the project management process to the next SAB meeting.

8. AOB

8.1. No items of AOB were raised. The meeting closed at 15:20.