

REPRESENTATION MODEL INDEPENDENT INQUIRY

This is the report of my independent inquiry into the objections of two Combined Fire and Rescue Authorities (FRAs) – Cleveland Fire Authority and Dorset & Wiltshire Fire and Rescue Authority - to proposed amendments to their Combination Schemes, which would allow the relevant Police and Crime Commissioners (PCCs) for their areas to sit on the FRAs with voting rights where the FRA agrees to such a request from the PCC.

2. It comprises:
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SUMMARY

3. The Government’s policy is to foster closer collaborative working between PCCs and local fire and rescue services. One way of doing this is to enable PCCs to take part in discussions and decisions of FRAs in a meaningful and effective way. The Policing and Crime Act 2017 therefore amends various pieces of legislation to enable PCCs to be represented on their local FRA (and/or its committees), with voting rights, subject to the consent of the FRA. Under the Fire and Rescue Services Act 2004 Combined FRAs must have their combination schemes amended before the “representation model” can apply. The 2004 Act provides that where the Secretary of State wishes to make amendments to a combination scheme, a period of formal consultation is required; and where a FRA does not agree to the proposed amendments and the Government, having considered the authority’s views, wishes to proceed, it is then under a duty to hold an inquiry.

4. The consultation exercise was launched on 27 November 2017. The Government issued its response on 12 June 2018. It announced that 20 of the 22 affected Combined FRAs (91%) had agreed with the proposed amendments, that amendments would be made to their combination schemes by a negative statutory instrument and that this inquiry would be held to consider the objections of two that did not agree.

5. As implementation of the Government’s policy of fostering closer working relationships had been enacted in legislation and was also enabling rather than determinative in nature – a FRA is not required to allow a PCC to join its membership - my working assumption throughout the inquiry was that any objection to the proposal would have to be very strong if it were to be successful, that is to persuade the Government not to amend a particular FRA’s Combination Scheme.

Cleveland Fire Authority

6. Cleveland Fire Authority argued that it had a very good working relationship with the PCC for Cleveland (as did their respective services) and it was not necessary to give the PCC

membership of the Authority to improve this further. It did not object to the PCC, as an elected individual, sitting on the Authority, though Hartlepool Borough Council had concerns about this on the grounds that there might be a conflict of interest, real or perceived, when the PCC came to vote on the precept of the Authority. The Authority's main issues were (i) maintaining political proportionality in the event of a particular set of circumstances arising which might mean that the PCC had in effect the casting vote; and (ii) if the PCC was able to send a deputy, how the presence of a non-elected individual on an otherwise elected body would work, a point that Hartlepool Borough Council also made.

7. The Authority was also concerned about the lack of an effective mechanism for reducing the size of its membership if that was necessary to maintain political proportionality, the advent of a further change so soon after the changes to the membership of the Authority in 2016 and the difficulty of increasing the size of the membership so as to maintain political proportionality (if that option were chosen) at a time when the number of fire fighters was being reduced.

8. I was impressed by the nature of the collaborative working relationship between the Authority and the PCC but I do not think that that provides sufficient reason to prevent the enabling power from being put into place. While it is unlikely that Cleveland will see a request to take advantage of the enabling power in the immediate future, there might be a time when it is the right thing to do.

9. I accept that the Authority can foresee a set of circumstances when the PCC might have the casting vote and are concerned about the possible impact on the political balance of the Authority. The Home Office takes the view that it is for an authority to decide what to do in such circumstances. I think it is unlikely that the set of circumstances will occur, and, if it did, it should and would fall to the Authority to consider how best to handle it.

10. Turning to the position of the deputy, one could argue that the individual deputising for the PCC would only have influence if what they said made sense (and that if it did not, he or she would not sway the membership). However, I can understand the Authority's concern that there is a clear distinction to be made between the elected councillors on the Authority and a Deputy PCC who was employed to do a professional job (or anyone else deputising for the PCC), and that, as a consequence, the deputy should not be given membership of the Authority albeit with a less comprehensive role and set of powers.

11. In its response to the consultation exercise the Government confirmed that under the Police Reform and Social Responsibility Act 2011 a PCC was able to delegate his functions to a Deputy PCC or someone else. However, its policy approach towards Combined FRAs was to enable a deputy to attend and speak at FRA meetings, but not to have voting rights and not to be treated as a member of the authority for any purpose, for example making the meeting quorate. The Government took this approach precisely because the members of the Authority do not have similar rights to delegate their role to an unelected official. It saw this approach as the appropriate way of balancing two legislative frameworks.

12. The Home Office further confirmed to me that if a PCC asked to join a FRA, they would expect the parties to engage in a discussion about the terms of the membership. This could include the nature of the deputy arrangements. The combination scheme would be amended to allow an individual deputising for the PCC to attend meetings and speak (but not vote or otherwise be treated as a member of the authority) but the authority and PCC could agree locally not to make provision for a deputy on the basis that the PCC would want to attend all of the meetings of the authority which took place during the year. I think that it is up to Cleveland Fire Authority to agree locally with the PCC what role, if any, the deputy should play on the Authority.

13. I regard Cleveland's other objections as being secondary because they did not attract the same level of emphasis in the written follow up to the consultation exercise and in my discussion with them. I do not think any of them has sufficient force to persuade the Government not to implement its central proposal, with the outcome that the PCC, with the agreement of the FRA, can sit on the Authority.

14. As Cleveland along with several other FRAs were concerned about the additional cost of a PCC when they were under pressure to demonstrate savings, the Government has now stated that its policy intention is that it would not expect PCCs to receive any FRA membership allowance for being on an authority because they would be acting in their capacity of PCC and were already remunerated for that role. The Government has invited views on this approach. I would support the Government's position: as membership of a FRA would flow from and be a key element of the PCC role, which is remunerated, there would seem to be no case for a PCC to ask for an allowance from the FRA for being one of its members. In Cleveland, where the concern was not significant, it is unlikely to be a continuing issue because the PCC has now said that he would not ask for the membership allowance.

Dorset & Wiltshire Fire and Rescue Authority

15. The Authority has no difficulty with the proposal that a PCC should sit on an authority because the individual would have a democratic mandate; indeed, the Authority has fixed the membership of councillors at 18 to allow headroom for the PCCs to join, subject to the PCCs' making (in the Authority's words) a business case that they would add value to its work.

16. The Authority's concern was solely with the proposal that the PCC was able to send a deputy to a meeting of the authority, who would be expected to interact with elected councillors and exercise influence. The Chair told me that the councillors, who put themselves in the hands of the electorate every four years, were acutely aware of the democratic mandate that they held; they believed there should be no confusion between those who were appointed to the Authority as elected councillors and a deputy PCC, who was employed to do a professional job.

17. Dorset & Wiltshire's concerns about an unelected deputy are, in essence, the same as Cleveland's objection to the proposal. It follows that I take the same view.

18. I believe that the issue of the deputy is one that is best discussed and agreed locally. I do not believe opposition to this aspect should prevent the more important feature of the proposals – that the PCC should be able to sit on the authority if the authority agrees – from being put in place.

Conclusion

19. Although it is for the Minister to determine how far he takes into account in his decision making the points put forward by the authorities, my assessment is that the arguments do not have sufficient strength to sustain a successful objection to the Government’s proposal, that the Combination Schemes of the two authorities should be amended to enable the PCC to sit on the authority if it agrees.

20. I do, though, think it would be useful for the Government to confirm the following:

- to Cleveland, that if the PCC is appointed, it is open to the Authority to decide locally to increase the membership by one (on the basis that the political balance is heavily weighted in one direction already) to accommodate the PCC or, if they wish to maintain the existing political balance, to reduce the membership by one or increase it by one or more. (The Authority does not need the Home Office’s formal approval to increase its membership because the maximum number permitted under its Combination Scheme is 25.)
- to Cleveland and to Dorset & Wiltshire, that while their Combination Schemes will be amended to allow for the PCC to send a deputy to its meetings, it is open to them and the PCC to agree locally the terms of the PCC’s sitting on the Authority and this might involve the PCC’s undertaking not to send a deputy or anyone else in his place if he was unable to attend a meeting.

INTRODUCTION

21. I was appointed by the Minister of State for Policing and the Fire Service to undertake an independent inquiry into the objections of two Combined Fire and Rescue Authorities – Cleveland and Dorset & Wiltshire - to proposed amendments to their Combination Schemes, which, with their agreement, would allow the relevant Police and Crime Commissioners for their areas to sit on the FRAs with voting rights, implementing what is termed the “representation model”.

Background to the inquiry

22. The Policing and Crime Act 2017 amends various pieces of legislation to enable PCCs to be represented on their local FRA (and/or its committees), with voting rights, subject to the consent of the FRA. This “representation model” is intended to enable PCCs to take part in discussions and decisions of FRAs in a meaningful and effective way so as to foster closer collaborative working between PCCs and the authorities.

23. Combined FRAs established under section 2 or continued in existence under section 4 of the Fire and Rescue Services Act 2004 must have their combination schemes amended before the “representation model” can apply. The 2004 Act provides that where the Secretary of State wishes to make amendments to a combination scheme, a period of formal consultation is required; and where a FRA does not agree to the proposed amendments and the Government, having considered the authority’s views, wishes to proceed, the Secretary of State is then under a duty to hold an inquiry.

24. On 27 November 2017 the Minister for Policing and the Fire Service launched a public consultation on proposed amendments to combined FRAs combination schemes to apply the “representation model” to Combined FRAS in the same way as it applies to County and Metropolitan FRAs under the Policing and Crime Act 2017. The consultation ended on 15 January 2018. I understand that six FRAs raised concerns about the proposed amendments. The Home Office subsequently clarified its position on a number of issues in further discussion with those authorities. At the end of this further period Cleveland Fire Authority and Dorset & Wiltshire Fire and Rescue Authority maintained their objections.

25. The Government issued its response to the consultation - “summary of consultation responses and next steps” - on 12 June 2018. It announced that 20 of the 22 affected Combined FRAs (91%) had agreed with the proposed amendments, that amendments would be made to their combination schemes by a negative statutory instrument and that this inquiry would be held to consider the objections of two that did not agree.

26. As the Government’s policy had been enacted in legislation and was also enabling rather than determinative in nature – a FRA is not required to allow a PCC to join its membership - my working assumption throughout the inquiry was that any objection raised during the consultation exercise would have to be very strong if it were to be successful, that is to stop the Government’s amending a particular FRA’s combination scheme.

Purpose of the inquiry

27. This inquiry has been set up by the Home Office under the Fire and Rescue Services Act 2004 to better understand the concerns of the two FRAs and to help the Minister come to a view on whether to make the proposed amendments to their respective combination schemes.

28. I was asked:

- to consider the representations made in response to the consultation and the Government’s policy on enabling closer working between the emergency services; in particular, the provisions that aim to strengthen collaboration and fire and rescue governance as set out in the Policing and Crime Act 2017.
- to interpret the objections put forward by each FRA separately and the Government’s position in implementing these provisions.

- to consider whether this should prevent the provisions being made to each FRA's combination scheme, and where necessary, provide any recommendation that may help to resolve the FRA's objection.
- to produce a written report by 11 July.

29. My full terms of reference are at Annex A.

Process followed in the inquiry

30. In terms of carrying out the inquiry, I took into account:

- the Policing and Crime Act 2017 and the accompanying Explanatory Notes;
- the Government's consultation document, published on 27 November 2017, and its response to the consultation, published on 12 June 2018;
- the responses to the consultation from (i) Cleveland Fire Authority and Dorset & Wiltshire Fire and Rescue Authority and subsequent correspondence between the authorities and the Home Office; (ii) the PCCs for Dorset and Wiltshire; and (iii) the responses of Hartlepool Borough Council and Wiltshire County Council; and
- additional material provided to me by Cleveland Fire Authority, as described later in the report.

31. I had the benefit of discussing the FRAs' objections to the proposals with the authorities and the PCC for the Cleveland and the Office of the PCC Wiltshire. We subsequently agreed a note of these discussions or confirmed the main points in an exchange of emails. I had an email exchange with the Office of the Dorset PCC. I also looked at the websites of the authorities and the PCCs.

32. I spoke to the Home Office on a number of occasions during the inquiry seeking clarification of their position.

33. My description of the Government's position, the FRAs' objections and the views of the PCCs are based on the written material and my discussions with them. My assessments of the objections and my conclusions are, of course, my own.

34. I am grateful to the Authorities and to the PCCs for the open and cooperative way in which they approached this inquiry.

THE GOVERNMENT'S POLICY ON ENABLING CLOSER WORKING BETWEEN THE EMERGENCY SERVICES

35. The purpose of the Policing and Crime Act 2017 was, among other things, to drive greater collaboration among emergency services and to bring the same level of direct accountability to fire and rescue as exists to policing. The Act places a duty on police, fire

and rescue and ambulance services to keep collaborative opportunities under review, and to enter into them where it is in the interests of their efficiency or effectiveness. It also enables PCCs to take on responsibility for the governance of fire and rescue services where a local case is made and accepted by the Home Secretary (the “governance model”) and those PCCs (and combined authority mayors with responsibility for both policing and fire) to put in place a single chief officer for both services (the “single employer model”). In areas where the PCC does not take on responsibility for the fire and rescue service the Act contains provision to enable a PCC to be represented on a FRA (outside London) with voting rights, if the FRA agrees (the “representation model”).

36 In respect of the “representation model” for Combined FRAs, the Government proposes to enable the authority to appoint the relevant PCC to be a member of the authority (this provision is already in place for County and Metropolitan FRAs). However, the PCC can only be appointed if he or she requests membership and the authority agrees. If a request is made, the authority must consider the request; give reasons for its decision to agree or refuse the request; and publish those reasons in such a manner as it thinks appropriate.

37. The Government also proposes to allow the PCC to delegate their attendance at a meeting of the authority. The consultation document says that the person who attends on behalf of the PCC may speak at the meeting but not vote; and is not to be treated as a member of the authority for any purpose, for example being part of the meeting quorate. The Government explained that this is because the FRA comprises elected individuals, who, unlike PCCs under the Police Reform and Social Responsibility Act 2011, do not themselves have similar rights to delegate attendance or other delegable functions to an unelected official.

CLEVELAND FIRE AUTHORITY

38. I visited Cleveland Fire Authority on 26 June, where I met:

- Jan Brunton Dobson, Chair of the Authority;
- Ian Hayton, Chief Fire Officer; and
- Peter Devlin, Legal Adviser and Monitoring Officer.

39. As well as Cleveland’s response to the consultation exercise, the Authority had also provided me with the papers for and minutes of the Authority’s meetings where the Government’s proposed amendments had been discussed. They also gave me papers for and minutes of earlier meetings in 2015 and 2016 when consultation with the PCC and the Police Service had been discussed.

40. I had a telephone conversation with Barry Coppinger, the PCC for Cleveland, on 3 July.

The Authority

41. The Cleveland Fire Services (Combination Scheme) Order was made and came into force in December 1995 (1995 No.3131), with the full operation of the scheme coming into

effect on 1 April 1996. The areas of the borough councils of Hartlepool, Middlesbrough, Redcar and Cleveland, and Stockton-on-Tees were combined and Cleveland Fire Authority was constituted as the fire authority for the combined area.

42. The Order also set out the constitution of the Authority. Although the Order allowed for a maximum of 25 members, the Authority decided on 23 because that number made it easier to reflect the relative populations of the boroughs (the Order required (as did the Orders for other authorities) “each constituent authority shall, so far as is practicable, appoint such number of representatives to be members of the Authority as is proportionate to the number of local government electors in its area in relation to the number of such electors in each of the other constituent authorities’ areas”).

43. Against a background of continuing pressure on public expenditure, the Authority proposed in 2015/16 to reduce the number of members. Consultees included the four boroughs, the MPs for the area and adjacent fire authorities. The general consensus was that action needed to be taken but the size of the Authority was a matter for it. However, Hartlepool strongly preferred the option of 16 members rather than 12 because this would provide them with 3 members rather than 2, thus helping to maintain their influence within the Authority. The Authority consulted the Department for Communities and Local Government, who at the time had responsibility for the Fire Service, about the proposal; they were content.

44. Since 2016 the Authority has had 16 members: 3 for Hartlepool; 4 for Middlesbrough; 4 for Redcar and Cleveland; and 5 for Stockton-on-Tees. Ten of the members are Labour; 3 Conservative; 2 Independent; and 1 Liberal Democrat. The Chair confirmed that given the nature of the Authority’s business, the members work together on the issues facing it and do not tend to vote along party lines.

The Authority’s consideration of the Government’s proposals

45. The Authority had considered the Government’s proposals at a full meeting on 8 December. Ian Hayton, on behalf of the Authority, submitted its objections to the Home Office on 9 January 2018.

46. The Home Office noted the Authority’s objections on 16 February, responded to the issues that had been raised and invited the Authority to reconsider its objections in the light of the clarifications provided and to respond by 28 February. Ian Hayton replied on 27 February saying that in accordance with its governance rules, the Chair had no democratic mandate to amend the Authority’s stated objection. He added that “while the Authority remained staunchly opposed to the proposal, the Chair would wish to confirm that the Authority would fully comply with any future statutory amendments and would equally give any request, by the local Police and Crime Commissioner, Mr Barry Coppinger to become a member of the Fire Authority, serious consideration”.

47. On 9 March the Authority considered the Home Office response and confirmed its view of the proposals. It concluded that it was not minded to remove its objection while the position on the issues which particularly troubled it (political proportionality and an

unelected deputy) remained unresolved. This view was conveyed to the Home Office on 26 March.

The Authority's objections to the Government's proposals

48. The Authority's starting point for its objection was (in its words) "if it isn't broke don't fix it". It went on to express concerns about the issues of political proportionality and an unelected deputy being able to take the place of the PCC in meetings, points which carried equal weight in the Authority's thinking. It was also concerned about the lack of a mechanism for making a reduction in the size of the membership, the impact of a further change to its governance and how an increase in its membership would be viewed against a background of a reduction in the number of fire fighters.

If it isn't broke don't fix it

49. In its objection to the Home Office, the Authority pointed to the strength of the existing relationship with the PCC and the achievement, in practice, of effective collaboration and integrated working between the emergency services on Teeside that had achieved tangible improvements in: public safety and the management of community risk (effectiveness); connected and co-ordinated front-line services; improvements in the performance of the emergency services, individually and collectively; the maximisation of cost efficiency, economies of scale and value for money (efficiency); improvements to the resilience, responsiveness and sustainability of local emergency services (resilience); and ensuring an integrated emergency services response to major or complex incidents (interoperability).

50. In discussion with me, the Authority pointed out that the PCC had not been elected to sit on the FRA and membership of the Authority might require a PCC to acquire a new set of skills.

Political proportionality

51. Although there is currently a substantial political majority on the Authority, it could imagine a set of circumstances in which the overall political balance within the Authority could become finely drawn. If the size of its membership had been increased by one to accommodate the PCC, it might mean that the PCC had in effect the casting vote. As the current PCC was elected on a Labour ticket, this would mean that Labour would carry the day on the issue. To avoid this, the Authority had considered maintaining the existing political balance of the Authority by reducing the Labour membership by one, with the PCC replacing that member. But this raised the questions of which Labour member would stand down, which council would lose a representative and whether or not his or her borough council would then be under-represented vis-à-vis the other councils.

52. The Authority did accept that this was a potential issue rather than one that was likely to be faced because so far decisions had generally had the full support of all of the members and had not been taken on political grounds.

53. The Authority explained the comment in its formal objection about the possible impact on independents. Speaking hypothetically, if the PCC had no political affiliation, would that mean that an independent would have to step down to maintain the political balance? And if it did, would this be portrayed as an attack on independents, given the number of independent members was so small?

A non-elected deputy

54. The Authority was united in its concern that a non-elected deputy could attend meetings. Although there was a substitution system in place within the Authority, which meant that if a member could not attend a meeting a fellow elected member could attend in their place, there was no mechanism whereby anyone else could attend on the member's behalf, for example a political assistant. Members were concerned that a PCC had the power to send an unelected deputy in his or her place.

55. The Authority was not clear how the presence of a non-elected individual on an otherwise elected body would work. There was concern that this was the start of a move towards a different model of governance, which would challenge the democratic nature of the Authority.

56. Contrasts were drawn with the attendance of brigade officers and other independent persons. Brigade officers attended meetings of the Authority (or parts of them) on a case by case basis, for example if they were presenting an issue within their responsibility. Or they might attend for development and succession planning reasons. But they spoke at the invitation of the chair.

57. The Authority had independent persons appointed under section 28 of the Localism Act 2011 on its Audit and Governance Committee, but the position in relation to them was very different. The individuals had applied in response to an advertisement and had been formally appointed as the result of a selection exercise. They were completely independent and had no connection to the members. They too were invited to speak by the chair. There was a concern that unlike these independents, the deputy would have an association with the PCC rather than the Authority.

Mechanism for reducing the number of members

58. The Authority noted that if the intention was to maintain the number of members at 16, there was no mechanism for a member to step down to accommodate the PCC apart from a member's deciding to resign. And in the normal course of events if a member were to resign, his or her borough council would wish to nominate a replacement.

59. The position in Cleveland was complicated by the different approach towards appointments to the Authority adopted by the borough councils. For example, Stockton-on-Tees appointed all five of its members for a four year term at the same time because the Council as a whole was elected together; whereas Hartlepool appointed its members for a year at a time because a third of the council was elected every year.

A further change

60. The Authority explained that they had been through a thorough review and full consultation exercise in 2016 when the number of members had been reduced to 16. They were reluctant to face another change so soon after the last one.

Front-line reductions

61. In a process that was still continuing, the Fire Service had seen a 30% reduction in front line fire fighters since 2010. The Authority thought that it would be very difficult to explain why the size of the Authority was being increased when the number of fire fighters was being reduced. It did, though, appreciate that this would be more a question of perception rather than reality. The cost of an additional member would be relatively small in terms of allowance payments. Moreover, there was provision for a member to forego the allowances. The possible cost of increasing the membership was therefore seen to be a second level consideration.

The PCC's views

62. Mr Coppinger, the PCC for Cleveland, advised me that while he was open minded about the governance arrangements for fire authorities and other emergency services in the longer term, seeking membership of the Authority was not an immediate priority for him. He confirmed that he had a good collaborative working relationship with the Authority and was looking to build on that. On the question of an unelected deputy, he said that if appointed, he would wish to proceed on the basis of consensus and would be prepared to give an assurance that he would seek to attend all of the Authority's meetings and that if he could not attend a particular meeting, he would not send anyone else in his place. He does not have a Deputy.

Hartlepool Borough Council's objections

63. Following an elected members seminar on 10 January 2018 which had discussed the Government's proposal, Gill Alexander, the Chief Executive of the Borough Council, wrote to the Home Office on 15 January setting out the Council's concerns. While the Council saw merits in the proposal, they were concerned at the effect of the PCC's sitting on a FRA and, in particular, the PCC's ability to delegate attendance to a deputy, which they felt would strongly distort the composition and purpose of a FRA. The presence of a deputy would be totally out of keeping with the basis of elected representation on a FRA.

64. The Council were also concerned that a PCC could be compromised (or there would be a perception that the PCC could be) when he or she attended and voted upon the precept of a FRA in addition to taking part in the budget setting requirements of a PCC for his or her own police area.

65. The Council concluded that the Government's proposal presented "severe representational and reputational issues for the PCC and FRA", which were "most starkly

illustrated on the status and position of a 'deputy' sitting on the FRA in the absence of a PCC".

My assessment of the Authority's objections

66. As my starting point, I note that the Authority's assurance to the Home Office that while it remained opposed to the proposal, it would fully comply with any future statutory amendments and would equally give any request, by the local PCC to become a member of the Fire Authority, serious consideration. It seems to me that the Authority does not object in principle to the idea of a PCC asking to join the Authority and, subject to the Authority's agreement, then joining it. Any concerns that the PCC had not been elected with the prospect of serving on the Authority will, of course, disappear with the next round of PCC elections. And any concern that the PCC did not have the required skills set (or lacked knowledge of the work of a FRA), could be met by a tailored induction programme. Rather the Authority objects to the overall proposal while its concerns over political proportionality and an unelected deputy remain unresolved. I do note that Hartlepool Borough Council has a more substantial objection to the principle of a PCC being a member of the Authority.

67. On the "if it isn't broke don't fix it" point, the Authority and the PCC seem to have good working relationship and both parties are keen to build on that. They advised me that the Chair of the Authority, the PCC, the Chief Fire Officer and the Chief Constable had signed a memorandum of understanding and now met on a quarterly basis to discuss common strategic issues. The Chief Fire Officer and Chief Constable discuss operational issues every month. And below these strategic and operational levels there are a number of collaborative development working groups comprising officers of the Fire and Police Services which look at various initiatives. Links were also beginning to emerge with the North East Ambulance Service, other fire services and the water utilities. Against that background, neither party currently sees the PCC's membership of the Authority as a necessary step for further increasing collaboration. However, that does not seem to me to be a sufficient reason to rule out the possibility of the PCC's joining the Authority; at some point it might be the right thing to do.

68. On political proportionality, it is difficult to see how the appointment of the PCC (with a Labour hue) could upset the current political balance, when 10 of the 16 current members of the Authority come from a Labour background. Even if the position were to change, it is probable that the current approach of seeking round-the-table agreement to decisions would continue, given the nature of the issues discussed by the Authority. I accept that the Authority can envisage a set of circumstances where the political balance of the Authority could become more finely drawn but the chances of that happening must be remote. I think it would be difficult to base a decision – to forego giving an enabling power to the Authority - on the possibility that what is likely to be a rare set of circumstances might occur.

69. The Government's response confirms that it is up to a FRA to consider the impact of a PCC's membership locally and to determine how they wish to proceed. It further says that it is open to an authority to increase the number of members, but urges the authority to keep the number under review "to ensure that it is sufficient enough to allow effective

scrutiny, while being focused, nimble and decisive but not over burdensome". The Home Office has confirmed to me that it would be open to the authority to increase its membership by one to accommodate the PCC or, if it wished to maintain its political balance, to reduce its membership by one or to increase membership by one or more. It seems to me that if the Authority were to agree that the PCC should be appointed to the body, the decision on how it should proceed on the question of maintaining political balance is rightly one for it to take locally.

70. The issue of an unelected deputy taking the place of the PCC is more problematic. The Authority has no substantive objection to an elected PCC asking for membership of the Authority; its concern is a non-elected member taking part in discussions and influencing the decisions that are taken. Hartlepool Borough Council also had concerns on this point - they are particularly uneasy about the role of the deputy, saying this was out of keeping with the elected nature of a FRA.

71. Although one could argue that the individual deputising for the PCC would only have influence if what they said made sense (and that if it did not, he or she would not sway the membership), I can understand the concern that the presence of an unelected deputy might begin to change the elected nature of an authority.

72. In its response to the consultation exercise the Government confirmed that under the Police Reform and Social Responsibility Act 2011 a PCC was enabled to delegate certain functions to a Deputy PCC or arrange for any person not a DPPC to exercise these functions (a deputy). This would include enabling a deputy (including a Deputy) to attend and speak at meetings of the FRA where the PCC is unable to, and potentially enables a deputy to have voting rights (subject to amendments being made to the relevant combination scheme). However, the Government's policy approach towards Combined FRAs is to enable a deputy to attend and speak at FRA meetings, but not to have voting rights and not to be treated as a member of the authority for any purpose, for example making the meeting quorate. The Government took this approach precisely because the members of an authority do not have similar rights to delegate their role to an unelected official. It saw this approach as the appropriate way of balancing two legislative frameworks.

73. When I discussed this point with the Home Office, they advised me that if a PCC asked to join a FRA, they would expect the parties to engage in a discussion about the terms of the membership. This could include the nature of the deputy arrangements. The combination scheme would be amended to allow the PCC to send a deputy to meetings of the authority in their place. However, the authority and PCC could agree locally not to make provision for attendance by a deputy at all on the basis that the PCC, committed to his or her role on the FRA, would want to attend all of the meetings of the authority which took place during the year (there are usually only 4 or 5 of them). The Home Office can, therefore, envisage circumstances in which provision for a deputy is not made.

74. I also note that in relation to Cleveland that the PCC is willing to give an assurance that (i) he will seek to attend all meetings of the Authority and (ii) if he cannot attend a particular meeting, he will not send a Deputy (he does not have one) or someone else in his place.

75. It seems to me that the issue of the deputy is one that is best discussed and agreed locally. I do not believe opposition to this aspect should prevent the more important outcome of the proposals – that the PCC should be able to sit on the authority if the authority agrees – from being put in place.

76. I would regard Cleveland's other objections as secondary level concerns because they were not included in the Authority's email of 9 March to the Home Office which confirmed that the Authority would maintain its objection to the overall proposal while the position on the issues that particularly troubled it – political proportionality and an unelected deputy – remained unresolved. This relative emphasis was also reflected in my discussion with the Authority. I comment on these concerns as follows: on having no mechanism for reducing the membership by one, if a PCC were appointed and the Authority wished to follow this path to maintain political balance, it would be up to them to agree a way forward with the constituent borough councils. I do not think that the Authority's having gone through a change in 2016 (the reduction in its membership to 16) is sufficient to prevent a further change now, particularly one that is being introduced across the country.

77. I agree with Cleveland that the difficulty of increasing the size of the Authority at a time when the number of fire fighters is being reduced is more of a question of perception than one of reality. The allowances for an additional member would not be significant (the annual basic allowance is currently £2,194 a year), and there is provision for a member to forego allowances. In the case of Cleveland the PCC has confirmed that he would not seek any remuneration beyond his PCC salary for being a member of the Authority.

78. In its response to the consultation exercise the Government said that it had considered the views expressed on the issue of allowances – a number of FRAs were concerned about the additional cost of a PCC when they were under pressure to reduce the membership in order to demonstrate savings. It said that its policy intention was that it would not expect PCCs to receive any additional allowance for being represented on a FRA. As they would be acting in their capacity of PCC and they were already remunerated for that role, the Government would not want the PCC's representation to increase the governance costs of the authority. It would be open to the PCC to claim expenses but only in relation to their role as a PCC and not as a member of the authority.

79. The Government has invited the views of FRAs and PCCs on this point. It also expects that this inquiry would look to explore the issue because one of the FRAs who had objected had raised this as a concern.

80. Concern about allowances is unlikely to be an issue in Cleveland any longer because the PCC has now advised that he would not ask for one. I would, though, endorse the Government's position: PCCs are remunerated for the role of PCC and, as membership of a FRA would flow from and be a key element of that role, there would seem to be no case for a PCC to ask for an allowance from the FRA for being one of its members.

81. In summary, although it is a matter for the Minister to determine how far he takes into account in his decision making the points put forward by Cleveland Fire Authority, my assessment is that the arguments do not have sufficient strength to sustain a successful objection.

82. I do, though, think it would be useful for the Government to confirm to the Authority that:

- if the PCC is appointed, it is open to them to decide locally to increase the membership by one (on the basis that the political balance is heavily weighted in one direction already) to accommodate the PCC or, if they wish to maintain the existing political balance, to reduce the membership by one or increase it by one or more. (I note that the Authority does not need the Home Office's formal approval to increase its membership because the maximum number permitted under its Combination Scheme is 25.)
- while the Authority's Combination Scheme will be amended to allow for the PCC to send a deputy to its meetings, it is open to them and the PCC to agree locally the terms of the PCC's sitting on the Authority and this might involve the PCC's undertaking not to send a deputy or someone else in his place if he was unable to attend a meeting.

DORSET & WILTSHIRE FIRE AND RESCUE AUTHORITY

83. I spoke to Jonathan Mair, the Clerk and Monitoring Officer for Dorset & Wiltshire FRA, on 4 July and Spencer Flower, the Chair of the Authority, on 6 July. I also spoke to Kieran Kilgallen, the Chief Executive of the Office of the Wiltshire PCC (Angus Macpherson) on 5 July and had an email exchange with Simon Bullock, the Chief Executive of the Office of the Dorset PCC (Martyn Underhill) between 5 and 10 July.

The Authority

84. The Authority has 18 members drawn from five constituent councils according to their relative share of the electorate in the Authority's area: Dorset (5); Bournemouth Borough Council (2); Borough of Poole (2); Wiltshire (6); and Swindon Borough Council (3). In terms of the members' political background, 13 are Conservative, 3 Liberal Democrat, 1 Labour and 1 Independent. The Chair and the Monitoring Officer both advised me that if one were to attend a meeting of the Authority, one would not be able to tell the political allegiance of the members because of the nature of the issues under discussion and the wish to proceed by consensus.

85. From 1997 there were separate authorities for Dorset (and Bournemouth and Poole) and Wiltshire (and Swindon). 2013 saw the start of a process leading to convergence. The Dorset and Wiltshire Fire and Rescue Authority (Combination Scheme) Order 2015 (Statutory Instrument No 435) came into full effect on 1 April 2016.

86. The new Authority had a combined membership of 30 in 2016. The Authority recognised from the outset that the number of members was too large and the Chair led a review with the aim of reducing it. This coincided with discussions about the Policing and Crime Bill and the Government's emphasis on more effective service and governance arrangements. Members wanted to embrace the spirit of the Bill and supported a more streamlined membership. This was given effect by the Fire and Rescue Authority (Membership) Order 2017 (Statutory Instrument 1165), which covered Hampshire and the West Midlands as well as Dorset & Wiltshire. The Chair told me that the Authority thought that a maximum membership of 20 would be effective in governance terms and, wanting to allow headroom for the PCCs for Dorset and Wiltshire to join (subject to their making (in their words) a business case for doing so), decided on a membership of 18 councillors.

The Authority's consideration of the Government's proposals

87. The Chair, who took soundings from the other members, the Chief Fire Officer and the Clerk and Monitoring Officer considered the Government's proposal. Given the timing of the Authority's meetings there was no opportunity to put the proposal to a full meeting of the Authority.

88. The Home Office responded to the Authority's objections on 16 February, clarifying its policy on deputies. Jonathan Mair, on behalf of the Authority, confirmed the Authority's continued objection on 23 February.

The Authority's objections to the Government's proposals

89. The Authority had no difficulty with the proposal that a PCC should sit on an authority because the individual would have a democratic mandate; indeed, the Authority had fixed the membership of councillors at 18 to allow headroom for the PCCs to join, subject to their making a business case that they would add value to the work of the Authority.

90. The Authority's concern was with the proposal that the PCC was able to send a deputy to meeting of the authority. In its written material the Authority set out its objection to the notion that a PCC may be substituted by an un-elected person who, whilst not being a voting substitute, would be expected to interact with elected councillors and exercise influence. Part of its opposition was the inequality of an arrangement in which councillors who are members of the Authority could not be substituted in the event that they were unable to attend but the PCC could be substituted. This inequality was starker now that the membership of the Authority had been reduced to 18. For example, if a member representing the Borough of Poole, which has two representatives, were unable to attend Poole would be under-represented, and it would be difficult to explain why the PCC could be substituted when the councillor could not be. (The Authority has no provision to allow for the substitution of a member by another elected councillor.)

91. In our discussion, the Chair of the Authority confirmed this view: the councillors, who put themselves in the hands of the electorate every four years, were acutely aware of the democratic mandate that they held; and there should be no confusion between those

who were appointed as elected councillors to the Authority and a deputy PCC, who was employed to do a professional job. If the deputy had been elected alongside the PCC there would be no issue with his or her taking part in meetings of the Authority. The Chair was very concerned about the governance of the Authority and would not wish to do anything which affected its quality.

The PCCs' views

92. Both PCCs responded to the consultation exercise, saying they were content with the Government's proposals. The Chief Executives for the PCCs for Dorset and Wiltshire both confirmed to me that the PCCs were content with the proposal that a PCC should be able to send a deputy to represent them at the meeting, but that person should not be able to vote. The Chief Executive for the PCC for Dorset noted that this was a compromise. Although legislation provided for the deputy to substitute for the PCC at a FRA and undertake the full role (including having voting rights), he also recognised the contrary position. He therefore agreed that the Home Office policy was a sensible way forward.

Wiltshire County Council's views

93. Baroness Scott, the Leader of Wiltshire Council, responded to the consultation exercise by agreeing with the Government's proposal. She thought that the proposal "will helpfully streamline the process for including PCCs on combined FRAs and potentially drive integration between police, fire and constituent authorities". She pointed to strong collaboration in Wiltshire between the council and emergency services and added some thoughts about the handling of requests from PCCs where a combined FRA covered more than one PCC area so as to ensure equity in potential representation.

My assessment of the Authority's objections

94. Dorset & Wiltshire's concerns about an unelected deputy are, in essence, the same as Cleveland's objection to the proposal. It follows that I take the same view.

95. Although one could argue that the individual deputising for the PCC would only have influence if what they said made sense (and that if it did not, he or she would not sway the membership), I can understand the Authority's concern that there is a clear distinction between the elected councillors on the Authority and a deputy who was employed to do a professional job, and that the deputy should not be given membership of the Authority, albeit with a less comprehensive role and powers.

96. In its response to the consultation exercise the Government confirmed that under the Police Reform and Social Responsibility Act 2011 a PCC was enabled to delegate certain functions to a Deputy PCC or arrange for any person not a DPPC to exercise these functions (a deputy). This would include enabling a deputy (including a Deputy) to attend and speak at meetings of the FRA where the PCC is unable to, and potentially enables a deputy to have voting rights (subject to amendments being made to the relevant combination scheme). However, the Government's policy approach towards Combined FRAs, which was to enable a deputy to attend and speak at FRA meetings, but not to have voting rights and not to be

treated as a member of the authority for any purpose, for example making the meeting quorate. The Government took this approach precisely because the members of the Authority do not have similar rights to delegate their role to an unelected official. It saw this approach as the appropriate way of balancing two legislative frameworks.

97. As I note in relation to Cleveland, the Home Office advised me that if a PCC asked to join a FRA, they would expect the parties to engage in a discussion about the terms of the membership. This could include the nature of the deputy arrangements. The combination scheme would be amended to allow the PCC to send a deputy to meetings of the authority in their place. However, the authority and PCC could agree locally not to make provision for attendance by a deputy at all on the basis that the PCC, committed to his or her role on the FRA, would want to attend all of the meetings of the authority which took place during the year (there are usually only 4 or 5 of them). The Home Office can, therefore, envisage circumstances in which provision for a deputy is not made.

98. As with Cleveland, I conclude that the issue of the deputy is one that is best discussed and agreed locally. I do not believe opposition to this aspect should prevent the more important feature of the proposals – that the PCC should be able to sit on the authority if the authority agrees – from being put in place.

99. In summary, it is, of course, a matter for the Minister to determine how far he takes into account in his decision making the points put forward by Dorset & Wiltshire Fire and Rescue Authority; however, my assessment is that the arguments are not sufficiently strong to sustain a successful objection to the Government's proposal to amend its Combination Scheme.

100. I do, though, think it would be useful for the Government to confirm to the Authority that it is open to them and the PCC to agree locally the terms of a PCC's sitting on the Authority and this might involve the PCC's undertaking not to send a deputy in his place if he was unable to attend a meeting of the Authority.

J K Barron CBE
11 July 2018

Terms of reference

Independent inquiry following the representation model consultation

PURPOSE

1. **To undertake an independent inquiry that must be held if a Combined Fire and Rescue Authority (FRA) does not agree to the Secretary of State’s proposed amendments to its combination scheme.**

BACKGROUND

2. **The Policing and Crime Act 2017 amends various pieces of legislation to enable Police and Crime Commissioners (PCCs) to be represented on their local FRA (and/or its committees), with voting rights, subject to the consent of the FRA.** This ‘representation model’ is intended to enable PCCs to take part in discussions and decisions in a meaningful and effective way to foster closer collaborative working between PCCs and local fire and rescue services.
3. **Combined FRAs established under sections 2 and 4 of the Fire and Rescue Services Act 2004 must have their combination schemes amended before the ‘representation model’ can apply.** Where the Secretary of State wishes to proactively make amendments to a combination scheme, a period of formal consultation is required (see sections 2(5) and 4(5) of the Fire and Rescue Services Act 2004). To this end, a consultation was launched on 27 November 2017 and closed on 15 January 2018.
4. **The Government has considered the consultation responses and will now begin to draft a negative statutory instrument to amend the combination scheme of FRAs who are supportive of the amendment.**
5. **Two FRAs objected to the proposed amendments; Cleveland and Dorset & Wiltshire.** Where a FRA does not agree with the proposed amendments to their combination scheme, and the Secretary of State wishes to continue with the amendments, the Secretary of State is under a duty to hold an inquiry (see sections 2(8) and (9) and 4(6) and (7) of the Fire and Rescue Services Act 2004). As such, the Home Office intends to launch an inquiry under the provisions of the 2004 Act to better understand the concerns of the FRAs and to help come to a view on whether to amend the respective combination schemes.

REQUIREMENTS OF THE INQUIRY

6. **The purpose of the inquiry is to consider the objections raised by two FRAs, Cleveland FRA and Dorset and Wiltshire FRA, to the proposed Government amendments to their combination scheme.** The inquirer will need to interpret the objections put forward by each FRA (separately) and the Government's position on implementing these provisions. You will need to consider whether this should prevent the provisions being made to each FRAs combination scheme, and where necessary, provide any recommendations that may help to resolve the FRAs objections
7. **To ensure the independence of the inquiry itself, the Home Office is not prescribing how the inquiry should be carried out, but the inquirer should have due regard to:**
 - a) The Government's policy on [enabling closer working between the emergency services](#) and in particular, the provisions that aim to strengthen fire and rescue governance, drive greater collaboration and develop the role of PCCs as set out in the Policing and Crime Act 2017. This includes the 'representation model', whereby PCCs are able to sit on and on a FRA with voting rights.
 - b) The representations made by FRAs and other interested parties in response to the consultation on the proposed amendments, including any accompanying documentation, in order to interpret and clarify the objections or other views on the proposals.
 - c) The need to engage with the affected FRAs and consider whether to engage other relevant stakeholders, such as the local authority and/or relevant PCC. The aim is to understand the evidence that has been provided by the two FRAs to support the conclusions reached in their response to the consultation, to assess whether these are substantiated and challenge where necessary.
 - d) Consider the need to collect further evidence from relevant parties as appropriate.
 - e) The need to produce a written report, citing all sources, and with clear conclusions in response to the relevant FRA's objection to the Secretary of State's proposed amendments. In the interests of transparency, the inquiry report and Government response to the inquiry will be published shortly afterwards.
 - f) List all assumptions made in coming to conclusions and reaching a final judgement. Supporting evidence should be clearly presented. The inquirer may reach a different conclusion for individual FRAs dependent on the evidence presented.

Be able to outline to the Home Office who they have contacted in conducting the assessment, when and on what basis. Where the Inquirer has been unable to come to a view on a matter due to inability to obtain required information from relevant parties they should outline this to the Home Office and make this clear in their final report.

TIMESCALES

8. We expect that it would take up to 10 working days to complete the inquiry over a period of four weeks.
9. The inquirer must submit an inquiry report to the Home Office once the inquiry is complete. The Inquiry report and a Government response to the inquiry will be published shortly afterwards.
10. An extension may be requested by the inquirer depending on the nature of the objections, the associated workload and the level of engagement with relevant stakeholders.

QUALITY

11. The final report provided to the Home Office must clearly set out:

- a) any elements the inquirer has been unable to investigate due to the lack of engagement from relevant parties or for any other reason
- b) any elements of the evidence or information that they have been unable to form a view on, and the rationale for this
- c) how the inquirer has reached their view, supplemented with appropriate supporting evidence to enable the Home Office to understand their assessment and how they reached their conclusions and,
- d) the inquirer's interpretation of the objections put forward by each FRA (separately) and the Government's position on implementing these provisions. Including whether the objections should prevent the provisions being made to each FRAs combination scheme, and where necessary, provide any recommendations that may help to resolve the FRAs objections

12. In line with the principles developed to shape the process, the inquirer must ensure that the approach or methodology applied is:

- a) **Robust** - the inquirer must ensure, to the best of their knowledge, they are satisfied with the accuracy of any information provided to them in making their decision and any final documentation provided to the Home Office.
- b) **Transparent** – the inquirer must set out in the report how they approached the inquiry and how they came to a judgement.
- c) **Impartial** – must maintain an objective and impartial view when conducting the inquiry.
- d) **Timely** – the independent inquirer should aim to deliver the report in accordance with agreed timescales and inform the Home Office of any anticipated risks or issues which will impact on this.