

## **Working Paper No 4.**

# **Protocol on Central Government Intervention Action for Fire and Rescue Authorities**

## **Annex A: of the 'Fire and Rescue National Framework for England' Government (Home Office) consultation**

Draft Response



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## Introduction and Purpose of Working Paper 4

This is a draft response to the government consultation on Annex A the proposed new **'Protocol on Central Government Intervention Action for Fire and Rescue Authorities'** which is part of the Home Office Consultation on the new **Fire and Rescue National Framework for England**, which began on the 27 December 2017, and ends on 14 February 2018.

It has been produced with the intention of publishing a draft of our anticipated final response and making this draft available to Fire Sector Federation members via the Intranet, in sufficient time for Federation members to comment or to use the draft in order to inform their own response(s) prior to the consultation closing on 14<sup>th</sup> February 2018.

It has been produced following our presentation and an undertaking to produce this Working Paper at the Public Policy Exchange Symposium entitled 'The Role of Fire and Rescue Authorities Ensuring Public Safety' held at the Grange Wellington Hotel in London on 9<sup>th</sup> January 2018.

It was our stated intention at the symposium that the working paper will be followed/accompanied by two further Working papers addressing some of the related issues within this consultation. These will be:

- **Working Paper 2:** Draft of a potential response to the Home Office consultation: **'Fire and Rescue National Framework for England: Government Consultation'**<sup>1</sup> and;
- **Working Paper 3:** Draft of a potential response to the Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services consultation: **'Proposed fire and rescue services inspection programme and framework 2018/2019'**<sup>2</sup>.

For ease of use, the Working Paper follows the structure of Annex A on page 25-26 of the Home Office consultation – with our general comments being followed by comments on the individual sections in the Annex A on the new 'Intervention Protocol'.

We have been conducting a separate research project on Intervention and/or engagement by central government in FRS/FRA, that covers the period since the Office of the Deputy Prime Minister formed a Fire and Rescue Improvement Support Team in 2005. This was intended as a means for the government to engage with those FRAs assessed as 'poor' or 'week' in the Comprehensive Performance Assessment Reports that were due to be published by August 2005.

Our response to the Annex is therefore informed by our response to the HMICFRS consultation documents, to our response to the Home Office consultation on the new national framework for fire and rescue services, and to our, as yet, unpublished research findings.

## 1. Introduction

1.1. There are three fundamental aspects of the proposed approach to intervention by central government into failing or significantly underperforming public services or organisations that have been a feature of the intervention regimes operated in Local Government and in the Fire Sector since government intervention and engagement was introduced for Comprehensive Performance Assessments in 2002<sup>3</sup>.

1.2. They are:

- That any intervention had to be based on robust evidence of a failure to provide (or serious risk of failing to provide) for continuous improvement, evaluated by reference to the economy, efficiency and effectiveness with which an authority was conducting its activities.
- That formal intervention could potentially include all and any aspects of an authority's activities, (services, financial, corporate or collaborative performance), and
- That formal intervention (at that time available under Section 15 of the Local Government Act 1999) would predominantly be used as a last resort.

1.3. We strongly support these principles, and although they appear to be included, implied and/or assumed in the current document, in something as important as an intervention protocol, that may, if used, come under intense legal and political challenge, it is important to be as clear and as unambiguous as possible. We suggest these be clarified, articulated and set out within the introduction to the protocol, immediately after the legislative context and the basis of the protocol is described.

1.4. The initial lessons and experience from the first 18 months of Local Government Intervention were available to the government when section 22 and 23 of the 2004 Fire and Rescue Services Act were drawn up.

1.5. Although the government had previously had 'intervention' powers in some aspects of Education, Social Services, Benefits Administration and more substantially in cases of financial irregularity, it quickly became apparent that the new powers under Section 15 of the Local Government Act, were far more wide-ranging and all-embracing than any of their predecessors, and were therefore 'prayed in aid' of numerous service or corporate interventions during this early period<sup>4</sup>.

1.6. In fact, in the vast majority of engagement or intervention cases, the formal use of powers did not have to be resorted to. However, the threat of their potential use, and the failure or withdrawal of all legal challenges to either their actual use or their proposed use, was a key aspect of the success of the Intervention and engagement programmes from 2001 (when three intervention pilots were undertaken, in Walsall

Rossendale and Hull) through to 2009, when the final case in Northampton was successfully closed<sup>5</sup>.

- 1.7. Section 15 powers are, of course, still available (albeit now to a different Secretary of State), but notwithstanding that the government intend the current protocol to be used solely in terms of Section 22 and 23 of the 2004 Act (as made clear in paragraph 5), in our view the existence and the true extent of the Section 15 powers, and their availability to government should be made clear in any protocol.
- 1.8. While the first sentence of paragraph 3 is correct when it states, “To date there has been no formal intervention in the operations of a fire and rescue authority by the Secretary of State under these powers”, this refers specifically to powers under the 2004 Fire and Rescue Services Act, and currently gives a misleading impression to the reader.
- 1.9. It is only because of the existence of these powers (and the existence and use of Section 15 powers elsewhere within local government), that intervention/engagement/improvement action was undertaken in 7 FRAs falling in the poor/weak category of CPA in 2005<sup>6</sup>.
- 1.10. Cornwall was subjected to an improvement programme in 2008-2009, after it declined from fair to poor on CPA and a ‘direction of travel follow-up assessment’ by the Audit Commission highlighted inadequacies; which led to an external corporate inspection<sup>7</sup>. More recently external interventions in Essex FRS<sup>8</sup> and Avon FRA<sup>9</sup> have only resulted because of the existence of such powers.
- 1.11. The Fire and Rescue authorities and services require robust internal and external scrutiny arrangements to ensure they remain economic, efficient and effective deliverers of their services and provide appropriate assurance to the public. Experiences over the last 20 years have shown that the possibility of government intervention, even if only as a last resort, is a necessary part of that assurance and we support both the principle and the need for such a process to be formalised and structured and guided by a protocol.
- 1.12. In our view, the situations in Essex and Avon and the inadequacies highlighted by the NAO<sup>10</sup> the Public Accounts Committee<sup>11</sup> were partially a result of inadequate internal and external scrutiny and enforcement regime of the time. Part of this was the inadequacies in design and implementation of the ‘Sector-Led’ regime of performance management and intervention in Local Government and Fire and Rescue that has operated since 2010<sup>12</sup>.
- 1.13. The NAO and PAC investigations found significant inadequacies in the DCLG oversight of the Fire and Rescue Sector and significant inadequacies in the data and

information available to DCLG in which to provide government and the public with the levels of assurance they could expect. Fire and Rescue Services, (individually or collectively) in effect did not have all the necessary performance management and scrutiny, tools and techniques, intelligence and data, to manage the sector-led system promoted by DCLG from 2010 to the end of 2015, when the NAO report was published.

## **2. Role of partners in supporting fire and rescue authorities at risk**

- 2.1. A key part of the inadequacy of the Sector-Led performance management and intervention regimes was the 'evidence base' available to decision takers locally and nationally, a fact acknowledged by the Prime Minister when announcing the governments intended amendments to the (then) Crime and Policing Bill in March 2017<sup>13</sup>.
- 2.2. The previous regimes from 2002-2010, were co-ordinated by the former Audit Commission and backed by extensive national and local performance reporting and data, data analysis, information and intelligence at national, regional and local levels. It had a demonstrable commitment to improving the evidence base available to the sector, to the Audit Commission and all key stakeholders, including the public.
- 2.3. As we state above, in our view any intervention has to be based on robust evidence of a failure to provide (or serious risk of failing to provide) for continuous improvement, evaluated by reference to the economy, efficiency and effectiveness with which an authority was conducting its activities.
- 2.4. We are concerned that paragraph 6 of the proposed protocol, appears to perpetuate an approach to identifying any FRA that is failing or likely to fail, to the one that has operated since 2010. The only differences being the replacement of the Chief Fire and Rescue Advisor by HMICFRS; the Chief Fire Officers Association by the NFCC and DCLG by the Home Office.
- 2.5. We therefore have concerns, about the adequacy of evidence available both to trigger an intervention (whether or not there has been a corporate inspection by HMICFRS), or to justify an intervention, and/or upon which to base an effective and appropriate recovery programme.
- 2.6. We note that neither the HMICFRS consultation document nor the proposed National Framework, have an explicit commitment to building evidence, capacity and capability and that they both assume and accept a shrinking resource envelope.

- 2.7. Paragraph 6 states that HMICFRS will play a 'leading role' in identifying potential interventions. We note however, that the HMICFRS consultation states that they are not being resourced to carry out thematic inspections and that they are not proposing to undertake regular and routine corporate inspections.
- 2.8. We question therefore whether the current proposals are 'fit for their intended purpose', particularly in a situation where political and legal challenges may be forthcoming.
- 2.9. In terms of the proposed reaction to potential intervention in an authority (paragraph 7), we strongly support the contents and principles articulated in this paragraph.

### **Circumstances leading to statutory intervention**

- 2.10. We also strongly support the content and the assurance provided by paragraph 8, and hope these will be retained in any final protocol the government issue with the new National Framework.
- 2.11. Paragraph 9 refers to the merits and scheduling of sector-led initiatives as opposed or in parallel to alternative external interventions which are discussed at length in the paper '*Building the next model for intervention and turnaround in poorly performing local authorities in England*<sup>4</sup>' referred to in paragraph 1.5 of this response.
- 2.12. Paragraph 9 refers to the Secretary of State being able to appoint HMICFRS to carry out an investigation under Section 28 of the Fire and Rescue Services Act. This provision is not limited to HMICFRS inspectors but to inspectors (you may, for example, need to appoint a financial investigator) – we suggest the insertion of the words "or other inspectors".

### **3. What happens upon statutory intervention?**

- 3.1. It might be useful in paragraph 11 to mention the relevant Police Authority, the Local Authority and the relevant Ambulance Trust, amongst the bodies that the Secretary of State may consult.
- 3.2. We agree and support the suggestion that any formal intervention will be determined on a case by case basis. However, paragraph 12 suggests the Secretary of State will subsequently 'agree a course of action, and how the improvement will be delivered'. This is far too unfettered in the power it abrogates to the Secretary of State.
- 3.3. There should be public reporting and timetable requirements drawn up in practice guidelines for the conduct of these interventions as there has been for all cases in

the past. These requirements should include arrangements for keeping the NFCC, the LGA and HMICFRS informed.

#### **4. Concluding comments**

- 4.1. We strongly support the need for a clear, unambiguous protocol on which to base decisions (and to scrutinise) formal statutory interventions.
- 4.2. As can be seen from our responses above, we believe the current proposals can, and should be improved and clarified for the benefit of all key stakeholders including the public and we have sought to make a contribution towards that goal.

#### **References**

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2. Murphy P., Glennon R., Lakoma K. & Spencer T. (2018). Working Paper 3: Draft of a potential response to the Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services consultation: 'Proposed fire and rescue service inspection programme and framework 2018/19'.
3. Murphy P. & Greenhalgh K. (2018). *The Gathering Storm: Modernisation, Local Alignment and Collaboration. Fire and Rescue Services under the Early New Labour Administrations from 1997 to 2005*. Chapter 2 in: Murphy P. & Greenhalgh K. (2018) ed. *Fire and Rescue Services. Leadership and Management Perspectives*. New York: Springer (2018).
4. Murphy P. & Jones M. (2016). Building the next model for intervention and turnaround in poorly performing local authorities in England. *Local Government Studies*.
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9. House of Commons (2017). Statutory inspection of Avon Fire and Rescue Authority.
10. National Audit Office (2015). Financial Sustainability of Fire and Rescue Services.

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13. Home Office (2016) Home Secretary Theresa May's speech on fire reform at 'Reform' think tank London 24th May 2016.