



Buckinghamshire & Milton Keynes Fire Authority

Meeting and date: Fire Authority, 13 October 2021

Report title: Draft Response to Home Office Consultation 'Giving Police and Crime Commissioners greater powers of competence'

Lead Member: Councillor Lesley Clarke OBE, Chairman

Report sponsor: Graham Britten, Director of Legal & Governance

Author and contact: Graham Britten, Director of Legal & Governance

Action: Decision

Recommendation: That the draft response (Appendix 1) be approved for submission by the Chairman on behalf of the Authority.

Executive summary: The purpose of this report is to propose a response from the Authority to the Home Office consultation, 'Giving Police and Crime Commissioners greater powers of competence', to be submitted by the Chairman. The draft response is attached as **Appendix 1**.

On 16 March 2021, the Home Secretary laid a Written Ministerial Statement in Parliament setting out the findings the first part of a two-part Police and Crime Commissioners (PCC) Review. It included:

“To ensure PCCs have the levers they need to tackle crime, in Part Two of the Review, the Home Office will consult on giving a General Power of Competence (as afforded to Local Authorities) to all PCCs, to potentially help PCCs with the role they play in the wider crime and criminal justice landscape, and will consider partnership arrangements more fully.”

A copy of the consultation document ('the Consultation'), which was published on 1 September 2021 and concludes on 27 October 2021, is included in the Agenda pack.

The focus of the Consultation is distinct from the proposals that relate to a PCC taking on the governance role of fire and rescue authorities and becoming a Police, Fire and Crime Commissioner (PFCC), although the Consultation does highlight the disparity of ancillary powers that exist between a PCC and a PFCC¹.

¹ See page 6 of the Consultation "Where a Police, Fire and Crime Commissioner (PFCC) is created in England under section 4A of the Fire and Rescue Services Act 2004, they fall within the definition of a relevant FRA and have the general power under section 5A FRA in relation to their fire functions but not in respect of their PCC functions. There are currently four PFCCs with this responsibility. The Government will shortly consult on further proposals to mandate the transfer of fire governance to other PCCs across England."

The Statement also referenced further consultations which, at the time of this report, have yet to be undertaken:

“The Home Office will be launching a consultative White Paper on fire reform later this year. The White Paper will be used to set out our reform agenda in further detail and explore the Review proposals on fire governance which include:

- Consulting on whether to mandate the transfer of fire and rescue functions to the Police, Fire and Crime Commissioner model across England where boundaries are coterminous, unless there is an option to transfer fire governance directly to an elected Mayor.
- Consulting on how to address coterminosity challenges, including in the South West.
- Legislating to create operational independence for Chief Fire Officers and to clearly separate and delineate strategic and operational planning for fire and rescue.
- Considering options to clarify the legal entities within the PFCC model.”

The Consultation states that it is ‘targeted’ and it specifically invites views from, i.a., PCCs, PFCCs, Chief Constables, and fire and rescue authorities².

Financial implications: No direct impact.

Risk management: The recommendations create no risk to the delivery of the Authority’s functions. The Government’s proposals to mandate the transfer of fire governance from fire and rescue authorities to PCCs is a separate issue that will be subject to a separate consultation exercise.

Legal implications: Set out below is the legal context to provide the rationale for the substance of the proposed draft responses.

BMKFA is a ‘single purpose’ local authority, and it is therefore similar in that respect to a PCC.

Section 5A of the Fire and Rescue Services Act 2004 (FRSA) provides a power for the Authority to do (a) anything it considers appropriate for the carrying out of any of its functions, (b) anything it considers appropriate for purposes incidental to the carrying out of any of its functions (whether directly or indirectly incidental) or (c) anything it considers to be connected with (a) or (b).

Prior to the implementation of section 5A by the Localism Act 2011, BMKFA had the “power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions” under the repealed predecessor section 5 of the

² See page 3 of the Consultation for list of targeted individuals and bodies including principal councils, the LGA, and the NFCC.

FRSA. The intent of section 5 was to mirror the wording of section 111 of the Local Government Act 1972 applicable to local authorities. The logic would have appeared to have been that local authorities which provided fire and rescue services already had powers under section 111.

Section 5 thereby replicated the powers conveyed to fire and rescue authorities which were council fire and rescue authorities. In turn when PCCs were created to replace police authorities, Parliament granted them the same level of ancillary powers police authorities had before their abolition³: 'A police and crime commissioner may do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of the functions of commissioner.'⁴.

Since the Localism Act 2011 the parity that existed between fire and rescue authorities and PCCs in terms of incidental powers has therefore been lost.

Privacy and security implications: The Consultation requests respondents to provide the following information: job title or capacity in which they are responding to this consultation exercise and company name/organisation (if applicable). The approved response will be treated by the Authority as being in the public domain.

Duty to collaborate: The Policing and Crime Act 2017 requires the Authority to consider opportunities for collaboration with the police and ambulance services. The PCC's monitoring officer has been consulted about the draft response and is content that it does not present any impediment to the joint duty to consider opportunities to collaborate.

Health and safety implications: None arising from the recommendations

Environmental implications: None arising from the recommendations

Equality, diversity, and inclusion implications: None arising from the recommendations

Consultation and communication: The PCC's monitoring officer has been consulted about the draft response and is content that it is consistent with the Home Office objective, to ensure PCCs have the levers they need to tackle crime and to potentially help them with the role they play in the wider crime and criminal justice landscape.

Background papers: None

³ Police authorities were local authorities for the purposes of section 111 of Local Government Act 1972 - R. v DPP Ex p. Duckenfield R. v South Yorkshire Police Authority Ex p. Chief Constable of South Yorkshire [1999] 2 All E.R. 873

⁴ Paragraph 14, Schedule 1 of the Police Reform and Social Responsibility Act 2011

Appendix	Title	Protective Marking
1	Draft Response to Home Office Consultation 'Giving Police and Crime Commissioners greater powers of competence'	



Home Office

Giving Police and Crime Commissioners greater powers of competence

Government Consultation

This consultation begins on 1 September 2021

This consultation ends on 27 October 2021

Consultation Questions

Role/Job title	Chairman for and on behalf of
Organisation	Buckinghamshire & Milton Keynes Fire Authority

1. Do you think PCCs should be given greater powers of competence to enhance their ability to get upstream of crime issues as well as to drive efficiency and make better use of police estates?

	Please select one of the following options
Strongly agree	
Agree	x
Neither agree, nor disagree	
Disagree	
Strongly disagree	

Wider Functional power of competence

2. Should PCCs be granted a **wider functional power** of competence including the power to do **anything indirectly related to their functions, no matter how many times removed and to charge and trade**?

	Please select one of the following options
Strongly agree	
Agree	x
Neither agree, nor disagree	
Disagree	
Strongly disagree	

3. What do you see as the benefits that may come from granting PCCs a **wider functional power** of competence?

This response was considered in draft by Buckinghamshire & Milton Keynes Fire Authority (BMKFA) at its meeting on 13 October before approval for submission. Its response is based on acknowledging that as a combined fire and rescue authority BMKFA has benefited from additional powers granted to it by the insertion of section 5A of the Fire and Rescue Services Act 2004 (FRSA) by the Localism Act 2011.

BMKFA is a 'single purpose' local authority, and it is therefore similar in that respect to a PCC.

Section 5A of the FRSA provides a power for the authority to do (a) anything it considers appropriate for the carrying out of any of its functions, (b) anything it considers appropriate for purposes incidental to the carrying out of any of its functions (whether directly or indirectly incidental) or (c) anything it considers to be connected with (a) or (b).

Examples of where wider functional powers under Section 5A has enabled BMKFA include:

BMKFA participating in arrangements with the ambulance services whereby ambulance service clinicians train firefighters in Immediate Emergency Care qualifications to deliver high quality patient care in settings including, but broader than, fire or traffic incidents; arrangements with the ambulance service to be first responders in the event of medical emergencies and in driving ambulances; and in arrangements with health service providers in Covid-19 vaccination programmes.

BMKFA incentivising its employees to participate in staff welfare surveys; providing financial support to a charity which operates a children's interactive safety learning centre; and, together with powers under the Local Democracy, Economic Development and Construction Act 2009, for BMKFA to join the Fire and Rescue Indemnity Company which enabled a collaborative approach to managing risk, and which has saved BMKFA over £50k a year since April 2019.

From the experience at BMKFA it is likely that wider functional powers would give the PCC the ability to explore commercial and non-commercial collaborative ventures, subject to general public law constraints and circumscribed by any existing statutory prohibitions.

Moreover, the wider functional powers would be likely to complement the duties for the PCC and the police to explore collaboration opportunities with other blue light services under section 2 of the Policing and Crime Act 2017.

Finally, wider functional powers for a PCC would create parity with PFCC counterparts.

4. What do you consider to be the risks of granting PCCs a **wider functional power** of competence?

A risk that PCCs could lose focus on their prime functions which are to secure the maintenance of an efficient and effective police service, and to hold the chief constable to account for the exercise of his or her functions.

5. If PCCs were granted a **wider functional power** of competence, do you consider that additional safeguards or limitations on those powers would be necessary?

<p>Yes - please provide details of what safeguards or limitations on the powers you think would be required.</p>	
<p>No - please explain</p>	<p>Scrutiny of PCCs exists from Police and Crime Panels and Her Majesty's Inspector of Constabulary and Fire & Rescue Services (HMICFRS) through which their performance is accountable to the public. PCCs are also accountable through public elections, allowing their performance to be scrutinised directly by the community.</p> <p>Police and Crime Panels are made up of nominated elected representatives from each local authority within the police area and co-opted members. Their role includes reviewing the PCC's proposal for precepts (with a right of veto), considering the police & crime plan and monitoring performance against delivery of agreed plans.</p> <p>The HMICFRS is charged by the Secretary of State with responsibilities to inspect and report upon the efficiency and effectiveness of police services.</p> <p>A PCC must have a chief finance officer who has responsibilities for financial affairs and a designated monitoring officer, with the duties of making a report in relation to any unlawful conduct, unlawful spending,</p>

	or maladministration by the PCC.
Don't know	

General power of competence

6. Should PCCs be granted a **general power** of competence which would give them the power to do **anything** that an individual can do so long as it is not prohibited by legislation?

	Please select one of the following options
Strongly agree	
Agree	
Neither agree, nor disagree	
Disagree	x
Strongly disagree	

7. What do you see as the benefits that may come from granting PCCs a **general power** of competence?

The general power does not appear to be necessary, as the duties and functions of the police are not as broad as local authorities and the wider functional power would enable the necessary freedoms.

Prior to the introduction of the general power of competence, local authorities in England and Wales had a 'well-being' power, permitting them to do anything to promote economic, social or environmental well-being. This 'well-being' power was introduced in the Local Government Act 2000 and was never applied to police authorities or stand-alone FRAs as they were single purpose authorities.

8. Please explain what you consider the risks may be to granting PCCs a **general power** of competence.

The Department of Communities and Local Government published its impact assessment in January 2011 'Localism Bill: General Powers for fire and rescue authorities'

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/6030/1829719.pdf

The, then, Coalition Government's, impact assessment confirmed that 'Only the 15 county fire and rescue services will be covered by the proposed general power of competence. Stand-alone fire and rescue authorities will need a similar power to address the lack of sufficient freedoms and flexibilities to do things that they might properly wish to do which could benefit or contribute to their purposes.'

In respect of the option to legislate to give stand-alone FRAs General Powers of Competence the impact assessment stated: "This option was rejected as it would, in effect, remove the single-purpose status of a fire authority. This would not be the most effective method of implementing ministers' objectives of providing a power specifically for the better delivery of fire and rescue services, as it would risk the dilution of skills and resources currently focused on fire and rescue services."

The rationale applied by the Coalition Government when discounting the option of granting a general power of competence to stand-alone FRAs would seem applicable by analogy as both FRAs and PCCs are single purpose bodies i.e. that the objectives of providing powers should be for the better delivery of a PCC's priorities of maintenance of an efficient and effective police service and a general power would risk the dilution or diversion of skills and resources focused on those key functions.

9. If PCCs were granted a **general power** of competence, do you consider that additional safeguards or limitations on those powers would be necessary?

Yes - please provide details of what safeguards or limitations on the powers you think would be required.	
No - please explain	
Don't know	x

10. Given the benefits and risks of a general and wider functional power of competence, which approach would you prefer?

	Please select one of the following options
Retain existing PCC powers	
Give PCCs a wider functional power of competence, in line with the powers currently held by standalone fire and rescue authorities and some combined authorities	X
Give PCCs the general power of competence, as held by local authorities	

11. Do you consider there to be any equality impacts with granting PCCs either a wider functional or a general power of competence?

Yes - please provide details	
No - please explain	
Don't know	x