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Minimum Service Levels for Fire and Rescue Services – Consultation Response

Please find attached Cleveland Fire Authority's (CFA) response to the Home Office consultation on Minimum Service Levels (MSLs) in the Fire and Rescue Services (FRSs), published on 9th February 2023.

CFA acknowledge Government's intention to implement MSLs for FRSs and the focus of this consultation on how they could potentially be implemented in England.

Before providing our response to the questions and options set out in the consultation, the Authority have set out a series of more general points about MSL and their implementation below:

- While existing trade union legislation maintains the right to strike within the Fire and Rescue Service (FRS), it is crucial that the Government's approach to setting MSLs **balances public safety** and the protection of the most vulnerable within our society, with FRS staff's legitimate ability to take industrial action up to and including strike action. Consequently, CFA strongly believe that, if MSLs are to be introduced, it must be done in a balanced and proportionate manner.
- The introduction of MSLs must also be accompanied with clear, unequivocal guidance that ensures a consistent approach applicable across all FRSs in England. **MSLs must be easily understood and implementable** from the perspective of both FRS staff and the professional and political leadership of the Service.

- In the event of the level of operational cover during strikes being less than 'optimum,' to ensure the efficient and effective management of local risks, the application of a suboptimal level of operational cover via **MSLs means that Authorities will need to increase their risk tolerability for some, though not all, fire and rescue risks**. Consequently, MSLs that represent a reduced capacity of the FRS business-as-usual operational resources increase risk to firefighters and the community.
- It is also important to ensure that the introduction of MSLs, while balancing the ability to strike with public safety, does not unintentionally lead to a **degradation of pay and conditions** over time. Therefore, it is essential that the arrangements for the future negotiating mechanism are also made clear.
- All FRS senior leadership teams will need to work closely with their staff around any **implementation of MSLs** to ensure that positive engagement is maintained, and it does not lead to the deterioration of employee relations.
- Given the variance across FRSs, careful consideration will have to be given to balancing the **degree of local flexibility against the requirement for national consistency**.
- **CFA strongly disagree with any suggestions that an MSL should give a partial capability**. Fire and Rescue Authorities have the statutory responsibility, as defined in the National Framework for FRS, to identify, assess and mitigate risk in their local area. Consequently, a reduced capability MSL will nullify this duty.
- CFA accept that the introduction of MSLs must be run in tandem with the implementation of certain proposals outlined in the *White Paper on Fire Reform*, namely, to give **CFOs operational independence** in the management and deployment of FRS resources (both people and assets) to meet the risks and demands facing communities, including the risk of reduced staffing in periods of industrial action.
- CFA strongly believes that the introduction of MSL will deconstruct the existing national and local **major incident return-to-work protocols**. Therefore, unless this becomes a statutory component of MSLs more will be lost than gained. For the purposes of this protocol, a major incident should be defined in line with the principles enshrined in the **Joint Emergency Service Interoperability Programme (JESIP)**. This would ensure that FRSs would be prepared and able to respond if a major incident was declared by another emergency service.
- In addition to the requirement to make statutory provision for major incidents, consideration needs to be given to the practical **application of Fire and Rescue Service Act 2004 s13 & 16**. If neighbouring FRSs have diminished capacity their ability to support other FRSs is also diminished. The consultation remains silent on this matter but CFA believes that it needs careful consideration in the event of a local and/or national major incident.
- CFA's and indeed all FRSs, approach to risk mitigation and public safety is through the application of prevention, protection and emergency response services therefore we believe that these services and the associated staff should be included within the scope of an MSL. CFA therefore recommend that FRS staff who are issued with a work notice as part of their FRS MSL provision should be required to fulfil **all elements of the role map**, including training, Protection, and Prevention work, thus ensuring any urgent work can continue during periods of industrial action to mitigate risks as they arise.

- Without a realistic and achievable way to implement MSLs, there is a risk that business continuity during periods of industrial action is simply a case of **risk being transferred from national government to local FRSs** and Fire and Rescue Authorities, without the means to effectively implement it – this must be avoided.
- CFA have concerns about the potential practical **difficulties of implementing MSLs**, specifically the tight timescales and the heavy administrative burden involved in the issuing of work notices. The Strikes (Minimum Service Levels) Bill requires FRSs to determine their MSL provision, consult with the union on the MSL, and issue work notices to staff seven days before the strike. This is a significant administrative burden for FRSs to undertake which will be further exacerbated if several periods of industrial action are announced in close proximity to one another.
- It is crucial that FRSs have enough time to prepare and issue work notices, and CFA suggest that consideration is given to extending the **deadline for the issuing of work notices** to allow sufficient time to develop and implement an effective MSL provision.
- The practical application of MSL to those staff contracted to the **On-Call (Retained) Duty System** must also be carefully considered as the nature of this duty system is such that the availability of staff, and therefore on-call staffed appliances, is much more variable due to the contractual nature of the duty system. CFA believe that applying an MSL to the on-call duty system and its on-call staff will be extremely challenging and that this matter should not be underestimated.
- The introduction of MSLs in FRSs and the broader provisions within the Strikes (Minimum Service Levels) Bill are controversial and will undoubtedly be contested. Consequently, CFA believe that it is reasonable to expect a deterioration in the relationship with trade unions and their membership, with a high likelihood of increased hostility towards the senior leadership, which could make the daily work of the Authority more difficult. CFA therefore stress the importance of carefully managing the introduction of MSLs.

CFA welcome the opportunity to respond to this consultation and encourage Government and Home Office officials to take note of the above viewpoint in addition to the direct responses to the consultation questions below.

Yours sincerely,



Councillor Paul Kirton
Chair
Cleveland Fire Authority



Ian Hayton QFSM
Chief Fire Officer
Cleveland Fire Brigade

Respondent Information

Q1. In which capacity are you responding to this consultation? As...

Cleveland Fire Authority

Q2. Do your comments relate to the fire and rescue services in:

England

Q3. How many employees does your business or organisation have? [If response is from an organisation (Q1 response options 6-9 and 'other')]

Over 250

Q4. Please give the name of the organisation you represent (if applicable):

Cleveland Fire Authority

Q5. We may wish to mention specific feedback from named organisations that are content to be included in the consultation response. Would you be content for your organisation to be identified in the published Government response to this consultation?

Yes – TBC by newly-formed Fire Authority (June 2023)

Q6. – Q10.

N/A

'Essential Services' for MSLS

Q11. The 'essential services' to which we intend to apply MSL can be simply understood as covering:

- **Firefighting**
- **Rescues, including actions to avoid further harm**
- **Dangerous substance clean-up**
- **Crewing of national resilience assets**
- **Services necessary to carry out the above, e.g., control room activities.**

To what extent do you agree or disagree that the essential services outlined should be applied to any MSL?

Tend to Disagree

While trade unions and their membership have the ability to strike, it can be reasonably expected that due to the significantly reduced level of available resources that normal fire and rescue services (prevention, protection and emergency response) will be severely restricted thereby increasing the risk to public safety.

In regard to the 'Crewing of National Resilience (NR) Assets' it should be recognised that the specialist NR appliances and equipment are usually staffed by a dedicated cadre of specialist personnel. If this element is considered an essential service then, in practice, the same skilled staff would be included on every occasion in any work notice. Undoubtedly this will lead to equality claims and a restriction of their right to strike.

For an MSL to ensure an effective but reduced level of public safety during periods of strike action, CFA support the inclusion of prevention (Home safety Visits) and protection (Building Safety) activity in the list of essential services to be included within an MSL.

Q12. However, MSL (especially during prolonged action) may need to take into account requirements for some additional activities. For each activity below, please indicate the extent to which you agree or disagree that MSL should apply to during prolonged periods of strike action.

Responding to major incidents including marauding terrorist attack

Strongly Agree

Fire protection activities such as enforcement actions

Strongly Agree

Fire prevention activities

Strongly Agree

CFA strongly believes that the introduction of MSL will deconstruct the existing and voluntary national and local major incident return-to-work protocols. Therefore, in the case of marauding terrorist attacks and other major incidents, it is our strong belief that these protocols **must** be covered by MSLs and qualified as 'essential services'.

Q13. If you have any further comments about the range of activities to be covered by MSL, please outline these in the space below.

As stated in responses to Q.11 and Q.12, CFA believe that it is critical that a major incident return-to-work protocol is incorporated into MSLs for the FRS, regardless of the anticipated length of the strike action, in order to provide sufficient assurance that FRSs were equipped to respond to a major incident that occurred whilst staff were striking. This protocol is necessary to replace the current voluntary major incident agreements between FRSs and the unions, which are likely to disappear given the strong opposition to the Strikes (Minimum Service Levels) Bill from trade unions.

The FRS is not just an emergency service, and protection and prevention work saves lives by minimising both the risk and the cost of fires. The engagement, regulation, and enforcement work of FRSs' protection staff, as well as the support and guidance provided to businesses and building owners, maintains and improves fire safety across the built environment. Likewise, FRSs' prevention activities are crucial in raising awareness of public safety risks and, therefore, lead to safer, healthier, and more resilient communities.

Furthermore, under the Civil Contingencies Act 2004, the FRS has a duty to warn and inform the public and provide information and advice at a time of an emergency. This, therefore, should be included as an essential service unless the Government is prepared to accept a 'best endeavours' approach.

Consequently, CFA believes that protection and prevention staff who deliver the essential statutory services should be included within the scope of MSL provision.

Questions for Option 1 – Staff who provide essential services listed above must never go below a certain level of attendance in line with business-as-usual levels

Q14. To what extent do you agree or disagree that Option 1 would be an adequate approach to setting a minimum service level to mitigate fire and rescue risks during times of strike action?

Tend to Disagree

Option 1 is a straightforward approach to setting MSLs that also provides consistency across FRSs. However, this option on its own is insufficient to be an adequate approach to mitigating fire and rescue risks during periods of strike action.

It should be recognised that there is a variance in the local risk profiles in the geographic area that each FRS serves means that a one size fits all approach is not appropriate. Equally local circumstances such as workforce structure (the distribution of wholetime and on-call staff) will impact on the ability of FRSs to apply a universal MSL.

Scope for local flexibility is, therefore, essential for MSLs to account for these diverse circumstances recognising the need to balance this against the loss of national consistency and the potential disproportionate variance in FRS staff's ability to strike across the country.

Q15. To what extent do you agree or disagree that the approach to setting an MSL described in Option 1 would be a proportionate requirement to cover essential services?

Tend to Disagree

While a flat percentage MSL provides consistency and equity in FRSs staff's ability to strike it does not consider the varying operational risk profiles and therefore local public safety.

CFA believes that a proportionate approach would be to ensure that the essential services and associated resources should be available to mitigate the local operational risks to an agreed level of tolerability.

Q16. Which of the following percentage of staff do you feel would be appropriate as a MSL if Option 1 was used?

More than 50%

CFA stress that any percentage of staff set within the MSL should be established by reference to the local risk profile and the resources necessary to maintain those risks at a tolerable level. For example, the Fire Authority area has a unique industrial high hazard profile with 28 upper-tier COMAH sites. Each site and hazard scenario has an Emergency Response Plan (ERP) including the pre-planned deployment of operational resources. In some instances, the associated Worst Case Planning Scenarios (WCPS) dictate a response of 80% of our optimum resource configuration. Consequently, anything less creates increased risk to firefighters, the surrounding community and the local economy.

Should this approach be unsupported then CFA strongly believes that the Government must ensure that there is sufficient rationale underpinning the choice of any percentage level for Option 1 that is clearly understood by the trade unions, their membership, and the wider community.

Q17. Which of the following percentage of appliances do you feel would be appropriate as a MSL if Option 1 was used?

More than 50%

See response to Q.16

Q18. Please use this space to outline any benefits you perceive may arise from implementing the minimum service level outlined in Option 1.

Option 1 offers a simple approach to setting MSLs that also provides a consistent nationwide benchmark for MSLs, whilst ensuring the FRS staff's ability to strike does not vary between FRSs.

Q19. Please use this space to outline any drawbacks or difficulties that may arise from Option 1. We would value any alternative suggestions or improvements to this option to ensure the creation of a viable, adequate, and proportionate minimum service level during strike action.

The primary drawback of Option 1 is that an MSL based on a flat percentage of staff or appliances does not sufficiently consider variance in the local risk profiles and circumstances between FRSs and will not be sufficiently targeted to address risk. The effectiveness and practicability of Option 1 will vary between on-call and wholetime FRSs and between urban and rural FRSs. Providing CFAs with the flexibility to adapt their resource provision to local circumstances is essential to ensuring that Option 1 will be able to mitigate local fire and rescue risks.

Questions for Option 2 – Staffing levels must be geared to respond to specific risks, including a minimum standard to respond to a Major Incident

Q20. To what extent do you agree or disagree that Option 2 would be an adequate approach to setting a minimum service level to mitigate fire and rescue risks during times of strike action?

Tend to Disagree

As a standalone option, Option 2 will not provide an adequate approach to setting an MSL to mitigate fire and rescue risks during periods of strike action. FRSs would require close to 100% of staff when responding to a major incident alongside having sufficient capacity to maintain business-as-usual activity, so this option would not be viable as a baseline MSL. However, CFA would support the principle of major incident response being incorporated into other options as previously set out.

Q21. To what extent do you agree or disagree that the approach to setting an MSL described in Option 2 would be a proportionate requirement to cover essential services?

Tend to Disagree

An MSL that is applied to continually enable a major incident response alongside maintaining business-as-usual would be disproportionate, as it would only be used in extreme, infrequent circumstances. Furthermore, mandating full staff and appliance coverage to respond to a major incident would seem to be a restriction on FRS staff's ability to strike, and would effectively be akin to a ban on strike action.

Q22. Please use this space to outline any benefits you perceive may arise from implementing the minimum service level outlined in Option 2.

The incorporation of a major incident response protocol into a wider MSL provision is essential to replace the current voluntary major incident agreements between FRSs and the unions, as this is highly likely to disappear given the strong opposition to the Strikes (Minimum Service Levels) Bill from trade unions.

Q23. Please use this space to outline any drawbacks or difficulties that may arise from Option 2. We would value any alternative suggestions or improvements to this option to ensure the creation of a viable, adequate, and proportionate minimum service level during strike action.

An MSL geared to specific risks as currently outlined in Option 2 will be difficult to determine and manage, as the appropriate staff or appliance level will be highly dependent on the nature of the incident, potential concurrency of incidents, and will vary across the country.

Questions for Option 3 – Local leaders and organisational input into what the MSL is for the FRS in collaboration with Home Office/ Secretary of State, i.e., not a national level but based on local priorities and pressures

Q24. To what extent do you agree or disagree that Option 3 would be an adequate approach to setting a minimum service level to mitigate fire and rescue risks during times of strike action?

Strongly Agree

What an effective MSL looks like will differ for every FRS around the country, so any approach to setting MSLs will benefit from incorporating local knowledge and leaving scope for adaptation based on local priorities and pressures. Option 3 provides an adequate approach to setting a MSL that will fully respond to the variance across FRSs in terms of resources, geography, and risk. It will be able to draw on the expertise of local organisations and CFOs who are best placed to understand the risks and demands facing communities during periods of strike action, and the appropriate deployment of FRS resources accordingly.

Q25. To what extent do you agree or disagree that the approach to setting an MSL described in Option 3 would be a proportionate requirement to cover essential services?

Tend to Disagree

Although CFA consider the appropriate approach is to set MSLs a way that is responsive to local risk profiles and circumstances, we do acknowledge that Option 3 may have a disproportionate impact on FRS staff's ability to strike. This would also lead to significant variance in MSL provision between individual FRSs.

Q26. Please use this space to outline any benefits you perceive may arise from implementing the minimum service level outlined in Option 3.

Option 3 provides a more customisable approach than setting a blanket national percentage across FRSs in Option 1, and will therefore be more responsive to local contexts, including geography, risk, workforce structure, and specialist skillsets and appliances.

Q27. Please use this space to outline any drawbacks or difficulties that may arise from Option 3. We would value any alternative suggestions or improvements to this option to ensure the creation of a viable, adequate and proportionate minimum service level during strike action.

There are many benefits to an approach to setting MSLs that seriously considers local risk profiles and circumstances. However, at present, there is no existing national guidance for benchmarking MSLs, which means that Option 3 could lead to significant local variance in setting MSLs and by extension public safety and FRS staff's ability to strike.

Questions for Option 4 – MSL is in place and set by Secretary of State / Home Office and Chief Fire Officers and their organisation decide specifics for local area

Q28. To what extent do you agree or disagree that Option 4 would be an adequate approach to setting a minimum service level to mitigate fire and rescue risks during times of strike action?

Strongly Agree

Option 4 offers an approach to setting MSLs that combines a nationally consistent standard with sufficient scope for local flexibility to mitigate specific fire and rescue risks. To an extent, it addresses some of the issues with Option 1 not being sufficiently risk or organisationally based. Option 4 should be amended to include a process whereby the Secretary of State sets a percentage MSL, for example 75% of staff or appliances where relevant, to apply nationwide, but allows CFOs the opportunity to customise the specifics of this figure to account for the specialist teams and appliances within their FRS, and the geography and risk profile of their area.

Q29. To what extent do you agree or disagree that the approach to setting an MSL described in Option 4 would be a proportionate requirement to cover essential services?

Strongly Agree

By setting MSLs centrally but allowing for local flexibility, Option 4 provides a level of national consistency across FRSs and ensures that FRS staff's ability to strike does not vary significantly between FRSs in a way that could be disproportionate.

Q30. Please use this space to outline any benefits you perceive may arise from implementing the minimum service level outlined in Option 4.

See CFA response to Q.28

Q31. Please use this space to outline any drawbacks or difficulties that may arise from Option 4. We would value any alternative suggestions or improvements to this option to ensure the creation of a viable, adequate and proportionate minimum service level during strike action.

The primary drawback of Option 4 is that it does not sufficiently define how MSLs are to be set and it is, therefore, unclear how this option would function in practice. This option must be accompanied by clear national guidance and benchmarks for MSLs and ensure that CFOs/Authorities have the authority to adapt a MSL to reflect local risks, circumstances and priorities.

Questions for Option 5 – Maintain cover on high-risk days/hours

Q32. To what extent do you agree or disagree that Option 5, applied in addition to each of the other options outlined in this consultation, would be an adequate minimum service level to mitigate fire and rescue risks during times of strike action?

Option 1: Tend to Disagree

Option 2: Tend to Disagree

Option 3: Tend to Disagree

Option 4: Tend to Disagree

CFA are uncertain as to the additional benefits that Option 5 represents.

CFA favours Option 4.

Q33. To what extent do you agree or disagree that the approach to setting an MSL described in Option 5 would be a proportionate requirement to cover essential services?

Strongly Disagree

Setting an additional MSL for certain hours or days would introduce an element of unnecessary level of complexity that would only serve to confuse staff and the community. Local risk assessment (CRMP) will incorporate temporal analysis and therefore Option 4 would inherently incorporate any temporal considerations in setting the appropriate levels of risk mitigation.

Q34. Please use this space to outline any benefits you perceive may arise from implementing the minimum service level outlined in Option 5.

The primary advantage of Option 5 is that it recognises the need to adopt aspects of the approaches to setting MSLs outlined in Options 1–4 in order to create a more coherent and functional MSL for FRSs.

Q35. Please use this space to outline any drawbacks or difficulties that may arise from Option 5. We would value any alternative suggestions or improvements to this option to ensure the creation of a viable, adequate, and proportionate minimum service level during strike action

This option would not be adequate to mitigate the various fire and rescue risks.