

Ballot thresholds in important public services

Questions for consultation

1. Do you agree these¹ are the key impacts industrial action would have in these sectors? Why/why not?

This response is in respect of fire and rescue services only. The consultation sets out what it describes as “key functions” and it is noted that these are the ‘traditional’ type of emergency response. “Response” is however only one facet of fire and rescue authorities’ service to the public.

Buckinghamshire & Milton Keynes Fire Authority (BMKFA) undertook analysis to support the adoption of its current Public Safety Plan 2015 -2020². The analysis showed that BMKFA’s busiest full-time and on-call fire appliances (fire engines) are typically used for responding to incidents for less than 3.5 hours and 1.5 hours respectively in any 24-hour period.

With the reduction in the number of incidents (reflected nationally³) it would be easy to overstate the key impacts of industrial action on the fire and rescue service at the expense of ignoring the effect of industrial action on other statutory functions undertaken by fire and rescue authorities. The consultation appears to have done this.

In line with its statutory obligation to promote fire safety and give advice about the prevention of fire and the prevention of death or injury from fire, BMKFA has capacity to deliver around 8,000 home fire risk checks (HFRCs) to households across Buckinghamshire and Milton Keynes, to offer home fire safety advice and fit smoke alarms if needed. A key impact of industrial action would be, and has been, to thwart such activity and therefore make the public less safe.

Furthermore, BMKFA, along with other innovative fire and rescue authorities intends to take on a wider agenda of activities to help to make people safer in their homes – particularly elderly people and vulnerable adults - not restricted to keeping the public safe from the risk of fires. Industrial action, including action short of strike, would prevent such activity.

The proposals in the Trade Union Bill do not differentiate between the balloting thresholds and notification periods for industrial action comprising strike action and those for industrial action short of strike. Currently, once a ballot has been successful, action short of strike can be used by unions to have an impact on the fire and rescue service just as detrimental to public safety as a strike.

¹ i.e those set out at paragraphs 3 and 4 of “Consultation on ballot thresholds in important public services, July 2015” in respect of “fire services”(sic).

² 17 December 2014 date for adoption and hyperlink to PSP - [BMKFA Public Safety Plan 2015-2020](#)

³ Link to Knight Review - [Facing the future - Publications - GOV.UK](#)

Industrial action need not comprise strike action for it to stop making the public as safe as possible. For example, BMKFA has been working closely with its partners in the South East Counter Terrorism Unit which covers the police services for Thames Valley, Hampshire, Sussex, Surrey and Kent and has an officer seconded to it representing the eight fire and rescue authorities of the South East region.

BMKFA is therefore acutely aware that under the extant ballot the Fire Brigades Union (FBU) in furtherance of its dispute over pensions, has maintained its action short of strike to include "not participating in duties associated with Marauding Terrorism and Firearm Attacks (MTFA) incidents".

The menu of options available under the current ballot requirements for action short of strike enabled the FBU to call upon its members working in BMKFA's neighbouring authorities to not cross their employers' borders into Buckinghamshire and Milton Keynes to support statutory mutual aid arrangements to save and protect lives and property.

BMKFA developed with its fire-fighters a 'staff bank' system, outside of the NJC national terms and conditions, to enable greater live-saving response capability. It also developed, again outside of the NJC national terms and conditions, a response capability to medical emergencies so that its fire-fighters can attend faster than the nearest available NHS ambulance to save people's lives. Due to the reliance on goodwill of employees both these elements of service delivery become immediately precarious when a ballot includes innominate industrial action short of strike.

2. What other impacts are there of strike action in

a) Fire services,

b) Health services,

c) Education services,

d) Transport services,

e) Border Force, or

f) Nuclear decommissioning?

If relevant, please include specific examples of your experience of strike action taken in these sectors.

This response is in respect of fire and rescue services only. Periods of strike action have had impacts in all areas of BMKFA, both operational and support services. Support staff were used to support planning for the strikes and to support resource management during the strikes. Despite being stretched for resources, non-striking employees continued to deliver business as usual and

progress significant service improvement projects with limited impact on key implementation milestones. However, prolonged and enduring strikes would inevitably take their toll longer term.

Strike action had a considerable effect on BMKFA's payroll services due to the requirement to write to all staff and calculate and implement the deductions to staff following the strike action, and facilitate the ability of striking workers to "buy back" periods during which they took strike action to be reckoned as pensionable service.

BMKFA had to cancel training courses planned to be delivered on dates which were affected by strikes. As this was mandatory training (driving courses and breathing apparatus refreshers) it had to be re-programmed before the end of the year. This had a subsequent knock on effect on to development training programmes which needed to be amended to compensate.

In the lead up to every period of industrial action considerable effort and resources need to be deployed in reminding employees of BMKFA's expectations as to acceptable behaviours. Regrettably when employees fall short of these expectations this has a further impact in the need to divert resources into the disciplinary processes that must inevitably follow allegations of misconduct.

Furthermore, other internal resources had to be diverted both in respect of response planning during periods of industrial action and in relation to the actual management of response activities during these periods. This had the effect of taking away many individuals from their core roles which ultimately had an impact upon quality.

In respect of the foregoing paragraph, episodes of discontinuous strike action can be particularly draining due to the need for renewed and dynamic contingency planning in advance of each and every strike period.

Whilst it has not featured in the consultation, there would be a strong argument for the minimum period of notice for industrial action to be longer than the fourteen days proposed. 4 weeks from notification to taking action would alleviate the intense pressure of making adequate and cost effective provision, including seeking support from BMKFA's employees not to participate in the industrial action, to try to ensure that public safety is not compromised. The proposals would assist, however, even with the proposed increase to 14 days, the planning timetable is in effect less than 10 working days.

Strike action also had the effect of some partner agencies perceiving the fire and rescue service as unreliable. This could lead to both short and longer term assumptions being made around partnerships in general and indeed current and future initiatives around joint working as well as other areas such as co-responding. This could be damaging especially where fire and rescue services

are looking to broaden their range of safety services to the public and have detrimental impact upon 'the brand'.

3. What factors do you think are important in defining 'important public services'?

Protection against loss of life/ serious injury

Maintenance of public safety and national security

Enabling economic activity across a significant area of the economy

Enabling significant numbers of people to get to their place of work

Others (please specify)*

*Enabling local economic activity

*Prevention of damage to property and the environment

From the perspective of a fire and rescue service primacy would be placed on protection against loss of life/serious injury and the vital role in meeting this aim that its employees undertake in attending road traffic collisions; fires; medical emergencies and other emergencies.

However fires can have a devastating effect on a local economy⁴. It has been stated by the Chief Fire Officers' Association that, *"In private companies it is estimated that 60% of businesses that suffer a fire never recover and eventually go out of business. If a company ceases trading jobs are lost, the local area suffers commercial disruption due to the economic loss within that community and ultimately families may break up due to the strain placed upon them."*⁵

According to research published in 2004 by the Centre for Economics and Business Research ('CEBR')⁶ *'The British economy has lost £1 billion in GDP and 5,000 full-time jobs through preventable fires in commercial warehouses over the last five years'*.

In light of the potential effects of fires in business premises BMKFA has maintained its policy of attending all automatic fire alarms which typically might

⁴ 'The economic cost of fire: estimates for 2008 Fire research report 3/2011' DCLG
<http://webarchive.nationalarchives.gov.uk/20121108165934/http://www.communities.gov.uk/documents/corporate/pdf/1838338.pdf>

⁵ 'A guide to automatic water suppression systems (AWSS) and their practical application.' CFA, 2008
https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&cad=rja&uact=8&ved=0CCEQFjAAahUKewiV4eb_i7XHAhXFItSKHYZJCCM&url=https%3A%2F%2Fwww.cfoa.org.uk%2Fdownload%2F13371&ei=WG_UVZXVBMWt7gaGk6GYAg&usq=AFQjCNEQWAZled7umd3bBw-y42K9l-Q7lg

⁶ 'Economic Impact of Warehouse Fires' CEBR 2004
<http://www.cebr.com/reports/economic-impact-of-warehouse-fires/>

be activated when premises are unoccupied and with no direct risk to life or risk of injury to the public. BMKFA is in fact the only fire and rescue authority in England and Wales that does so.

In this regard BMKFA provides an 'important public service' in enabling economic activity within its area rather than "*across a significant area of the economy*". Defining *important public services* should reflect what's important to a) the local taxpayers and local businesses that collectively pay for the public service; and b) the local electorate who mandate the scope of the public service through BMKFA's Public Safety Plan.

The fire and rescue service also has a role in protecting the environment from damage. See for example the damaging effects on flora and fauna in the Swinley Forest fire in 2011.⁷

It is not clear from the consultation if it is intended to give these factors legislative effect alongside the job descriptions of fire-fighter and control room personnel.

Employees of fire and rescue authorities in the roles of fire-fighters and fire control staff are for historic reasons employed on terms and conditions agreed without the direct influence of the employer; and recent industrial action has therefore been on national issues and with national effect.

However, if industrial action were to be taken locally, unless the potential impact on the local economy, property, or the environment is included in any statutory definition, it would be possible for BMKFA employees balloted for industrial action to be in scope of the regulations by virtue of their job description; but remain outside of the regulations by virtue of not providing "an important public service" where a ballot is for action short of strike.

4. Do you agree these are occupations and functions in

a) Fire services,

b) Health services,

c) Education services,

d) Transport services,

e) Border security, or

f) Nuclear decommissioning

⁷ <http://www.bbc.co.uk/news/uk-england-berkshire-13292400>

the Government should consider when defining those subject to the 40% important public services threshold? When answering, please consider those key in avoiding the adverse impacts discussed above.

Yes. In respect of the fire and rescue services, 'fire-fighters' and 'fire control personnel' are the appropriate occupations and the regulations should be drafted with the effect that anyone employed in those roles should be automatically deemed to be undertaking 'important public services' without further qualification or criteria or interpretation through regulations.

The sequence of the wording of the consultation: "What are 'important public services' in these sectors? [i.e in the "fire service" sector]; followed by "Which occupations and functions should be subject to the 40% important public services threshold?" suggests a possibility that regulations might provide that fire-fighters and fire control personnel are not at all times under their contracts of employment providing *de facto* important public services (as yet to be defined).

5. What other occupations and functions should the Government consider within these six sectors?

In respect of the fire and rescue services, none.

6. (If relevant) Please explain why the additional occupation or function should be covered.

N/A.

7. Do you agree with the Government's proposed approach to ancillary workers? Why/ why not?

Yes.

Industrial action at BMKFA with the greatest impact on public safety has related to trade disputes beyond its direct control. This is because periods of industrial action have concerned either a) pay and conditions of fire-fighters currently employed by BMKFA on terms and conditions agreed nationally through the NJC, or b) pension entitlements of fire-fighters.

The vast majority of BMKFA employees (covering full-time and part-time) by a ratio of 4:1 are employed as fire-fighters. However as indicated in the consultation⁸ the role of support staff in ancillary roles is vital and was proven to be invaluable in BMKFA being able to maintain a service and to support neighbouring fire and rescue authorities during periods of strike.

⁸ paragraphs 19 and 20 "Consultation on ballot thresholds in important public services, July 2015"

However the fundamental issue of public safety being undermined by industrial action will not be addressed by the approach.

First, the proposals relate solely to the level of participation in a ballot of union members eligible to vote in the ballot and neither the 50% nor the 40% are expressed as a percentage against the level of fire-fighters employed by BMKFA and eligible to be, but are not, members of the union calling a ballot.

In 2014 BMKFA ceased to deduct the payment of union subscriptions via "check off" from its employees' salaries. However, it does have a historical analysis of union membership amongst its fire-fighters and fire control personnel to illustrate the point that membership is far from universal.

Secondly, any member of the vital ancillary staff could choose to withdraw their labour during a lawfully balloted strike under the current law and under the proposed changes. Under current legislation the legal remedies available to an employer in such a scenario are ineffectual as any protection from dismissal extends not only to members of a union calling the strike, but to employees who are not a member of any union (typically ancillary staff).

A key change to address the issue would be for a legal responsibility to be placed on trade unions to ensure that some form of skeleton staff arrangement is kept available, which will ensure that vital systems and equipment are maintained, as well as being able to respond to emergencies which threaten public safety.

In recent periods of discontinuous strike action, BMKFA and its senior officers were incessantly accused of endangering the lives and property of the residents of Buckinghamshire and Milton Keynes by representatives of the very union which had induced its members to go on strike and thereby reduce response capability.

It is worth noting that it has been a criminal offence since 1875⁹, and most recently under section 240 of the Trade Union and Labour Relations (Consolidation) Act 1992, for an employee to deliberately breach an employment contract 'knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be (a) to endanger human life or cause serious bodily injury, or (b) to expose valuable property, whether real or personal, to destruction or serious injury'.

National arrangements under the NJC and collective agreements have proven to be inadequate in ensuring the safety of the public and property in this regard. It would seem logical therefore for some legislative incentive to be introduced for unions to be made to ensure a base level of public protection during industrial action. This would have the fortuitous effect of also providing a defence to

⁹ Conspiracy and Protection of Property Act 1875

personal criminal liability to which the union exposes each of their members, when they induce them to breach their contracts by striking.

8. Please give examples of ancillary workers in the six sectors discussed that you think should be subject to the 40% important public services threshold.

As mentioned above in respect of **Q7** historical evidence is also of low union membership in respect of ancillary staff. Under the proposed regulations the effect of either the 50% or the 40% thresholds is likely to be neutral. The greatest effect will remain the protections afforded under section 238A of the Trade Union and Labour Relations (Consolidation) Act 1992 which makes no distinction between union members and non-union members.

In BMKFA all ancillary staff are on terms and conditions determined locally with the employer and it runs "lean" in terms of ancillary staff. In terms of making and keeping the public safe, all of BMKFA's ancillary staff are integral to the delivery of a fire and rescue service, and even more so during periods of industrial action. By implication all of its ancillary workers should be in scope of the proposals.

9. (If relevant) Please explain why the ancillary worker(s) you have cited should be covered.

As explained in the second paragraph under **Q8** above.

10. Do you agree with the Government's proposed approach to private sector workers? Why / why not?

Yes.

When BMKFA consulted on its draft Public Safety Plan, BMKFA asked the public whether it wished it to "consider alternative delivery models for some or all of [its] services. This will embrace consideration of opportunities to deliver services more effectively and efficiently through private sector or employee models of ownership."¹⁰

BMKFA cited as examples the privatisation of the UK Helicopter Search and Rescue Services previously operated by the military¹¹; and that emergency services in Denmark have been successfully delivered via private contractual arrangements for many years.¹²

¹⁰ Consultation version of the Public Safety Plan 2015-20
<http://bucksfire.gov.uk/news/five-year-blueprint-approved-fire-authority/>

¹¹ <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05861>

¹² <https://www.falck.com/en/press/news/2011/fire-service-is-cheap-in-denmark>

In light of feedback BMKFA resolved not to pursue those options for the lifetime of its current Public Safety Plan. That said, if a fire and rescue authority chooses to deliver fire and rescue services via a private sector provider, it would be inappropriate for a distinction to be drawn in the balloting requirements for the staff employed by the service provider.

The duty to provide statutory fire and rescue services rests with a fire and rescue authority which precepts for that purpose. If it chooses to buy in the service from a contractor the public should not be prejudiced by being exposed to lesser legal protection.

11. How common are disputes involving some workers who would fall within the scope of the 40% important public services threshold, and others who would not?

- **Frequent?**
- **Infrequent?**
- **Never?**
- **Not sure?"**

As stated in response to **Q7** Industrial action at BMKFA with the greatest impact on public safety has related to trade disputes beyond its direct control. This is because periods of industrial action have concerned either a) pay and conditions of fire-fighters currently employed by BMKFA on terms and conditions agreed nationally through the NJC, or b) pension entitlements of fire-fighters.

BMKFA's experience the answer would be **Frequent** (unless the question is premised on ancillary workers already being excluded) as it relies on ancillary staff to maintain its important public service and they have therefore been drawn into, and inextricably involved in, the disputes.

However in terms "*trade disputes*" as defined under the Trade Union and Labour Relations (Consolidation) Act 1992 to which BMKFA employees have *directly* been involved and balloted by their unions, for the reasons set out above, these have been in relation to employees employed as fire-fighters. In which case the answer would be **Infrequent/Never** if fire-fighters will be wholly in scope of the definitions in the proposed regulations.

12. Please give examples of a dispute that has or could include only a small proportion of workers undertaking "important public services" (using the definition used in this consultation).

In the definition used in this consultation "important public services" is ambiguous in its application to "fire services" (sic). If it is intended to qualify the occupations of fire-fighters and fire control personnel by the application of the factors listed in **Q3** it appears that industrial action that would result in danger

or risk to property or the environment and consequential economic loss locally would not be subject to the constraints of the proposed regulations.

That would leave it possible for fire-fighters to be balloted, without the proposed constraints, for industrial action short of strike comprised of refusing to attend any fires irrespective of size where there was no imminent corporeal risk.

13. Do you agree that the Government should require a ballot to be run under the 40% important public services threshold if a majority of workers involved in the dispute are subject to the 40% threshold? Why/why not?

Yes.

However for the reasons stated in the preceding responses, it is hoped that fire-fighters and fire control personnel working in the fire and rescue service will automatically be deemed to be undertaking "important public services" in the subsequent regulations, without the need for the latter to be refined by reference to further criteria.

14. What are the practical and administrative considerations a trade union would have to make to calculate whether a ballot ought to be conducted under the 40% important public services threshold?

If the regulations are drafted so that the occupations of fire-fighter and fire control personnel employed by, or on behalf, of a statutory fire and rescue authority equate to 'services' and those services for the purposes of the regulations are automatically deemed 'important public services', there would be no additional considerations for a trade union.

Tackling intimidation of non-striking workers

Questions for consultation

Question 1:

Most of this consultation focuses on specific proposals. Before turning to this detail, do you have any other evidence of intimidatory behaviour, directed either at non-striking or striking workers, that you believe should be considered as part of this consultation? If so, do you have any estimate of the economic impact of this?

All of the evidence that BMKFA has relates to intimidatory behaviour directed at *non-striking workers*. It is "other evidence" insofar as the examples cited¹³ all relate to direct physical actions whereas BMKFA's evidence is of acts undertaken

¹³ i.e. those set out in paragraph 6 of "Consultation on tackling intimidation of non-striking workers, July 2015"

through social media. BMKFA submitted an abundance of evidence to the Carr Review¹⁴ and also to Thames Valley Police.

BMKFA would be agreeable to submitting this evidence direct to the Department for Business Innovation & Skills. BMKFA does not have an estimate of the economic impact and it would be difficult to determine a causative effect.

Question 2:

The Government is interested in whether there are any further gaps in the legal framework (see Box 1 below) in relation to intimidation of non-striking workers and third parties. How could the framework be strengthened - for example, should there be new criminal sanctions such as an offence of intimidation on the picket line?

There is already an array of potential criminal offences. The addition of a specific criminal offence of "intimidation on the picket line" to the general existing public order legislation is unlikely to assist.

The consultation documents refer to evidence supplied by the Metropolitan Police Service of behaviours during the 2012 London Fire Brigades strike. All of these behaviours are already criminal offences.

There are even specific criminal offences under the Emergency Workers (Obstruction) Act 2006 (not cited in the consultation) that, although not contemplated by Parliament when it was introduced¹⁵, could assist in protecting non-striking fire-fighters in the scenarios cited.

The issue does not appear to be a lack of legal powers rather than the use of discretion of the enforcing authorities. This cannot be addressed in legislation.

No data is included in the consultation that illustrates, where incidents for which the police have evidence that offences may have been committed, a breakdown of where these have resulted in arrests, offences charged, pleas, or convictions.

It is accepted that the enforcing authorities have to balance competing interests and then prioritise the effective deployment of resources. For example, on 9 December 2014 a national FBU march comprised of up to 3,000 people, although escorted by the police, became an unlawful picket of BMKFA's Aylesbury fire station and brigade headquarters with impunity.¹⁶

¹⁴ Link to Carr Report - [Carr Review Report.pdf](#)

¹⁵ 'Memorandum to the Justice Committee Post-legislative assessment of the Emergency Workers(Obstruction) Act 2006' MoJ, 2012
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/238213/8296.pdf

¹⁶ <http://www.fbu.org.uk/news/2014/12/firefighters-complete-24-hours-strike-march-thousands-support-sacked-colleague-ricky-matthews/>
see FBU report and its FBU video evidence at 2' 54"; and from 3'11" to 3'34"

BMKFA makes no distinction between bullying or intimidatory behaviour by employees against other employees advance of, and during, periods of industrial action and how it deals with that behaviour at any other time. BMKFA has dealt with these as disciplinary issues under the current employment law framework and any other fire and rescue authority can sanction its employees including dismissal for gross misconduct even if in these unacceptable behaviours relate to periods of protected industrial action.

The choice of employers to apply such sanctions to employees exhibiting the types of behaviour cited in the consultation is likely to be more effective in tackling intimidation of non-striking workers than the creation of further criminal offences which create reliance on police discretion, CPS discretion and evidentially a higher burden of proof.

Question 3:

The Government is legislating to make a number of key aspects of the Code legally enforceable, such as the appointment of a picketing supervisor. Are there other practices that should be directly legally enforceable - for example, training or a requirement for all pickets to be properly identifiable in the same way as the supervisor? Please explain your views

No.

The right to picket is set out with parameters in section 220 of the Trade Union and Labour Relations (Consolidation) Act, in that it is lawful for a person in contemplation or furtherance of a trade dispute to attend (a) at or near his own place of work, or (b) if he is an official of a trade union, at or near the place of work of a member of the union whom he is accompanying and whom he represents, for the purpose only of obtaining or communicating information, or peacefully persuading any person to work or abstain from working."

If its employees were to stray beyond those parameters BMKFA would deal with issues under its own misconduct and disciplinary procedures. As stated in its response to **Ballot thresholds in important public services: Q2** as a responsible employer BMKFA reminds its employees of expectations as to conduct in anticipation of industrial action. As stated at **Q10** the issues that have caused greatest concern are actions by third parties and for which existing sanctions apply, but for which BMKFA is reliant on the action of external agencies.

Question 4:

Do you have any figures that would enable us to estimate any costs to unions generated by making aspects of the Code legally enforceable?

No.

Question 5:

What are your views on the Government's proposal to require unions to publish their plans? What information should unions be required to provide? Please set out the reasons for your answer

One of the aims is expressed to be to allow better policing with the requirement for the police to be notified. Although not expressed within the consultation, presumably the requirements will be similar to those in respect of notification of marches under the Public Order Act 1986 and therefore should not be onerous on the organisers of pickets.

The police already have powers to intervene in a public assembly under section 14 of the Public Order Act 1986 if they reasonably believe the purpose of the persons organising a public assembly is the intimidation of others with a view to compelling them not to do an act they have a right to do. A 'public assembly' is defined as an assembly of two or more persons in a public place which is wholly or partly open to the air and therefore would already encompass a picket.

As the current law is dependent on police enforcement and criminal sanction the proposals to create a regulatory and enforcement role for the Certification Officer with civil powers would be more likely to be effective.

Question 6:

Do you have any figures that would enable us to improve the estimates in the Impact Assessment of the cost to unions of publishing their plans?

No.

Question 7:

What are your views on the Government's proposal to strengthen accountability?

No view.

Question 8:

Do you have any other suggestions how union accountability and/or transparency could be improved?

Where union officials set up 'hardship funds' and encourage donations to accounts it would not seem onerous to require the relevant union to ensure that these are properly accounted in the annual return form (AR21) to the Certification Officer. This would be in the interests of the donors and the intended beneficiaries.

Question 9:

Do you have any figures that would enable us to improve the estimates in the Impact Assessment of the cost to unions to report on industrial action in their annual reports?

No.

Question 10:

How should the Code be updated to be more useful for parties affected by industrial disputes? Please explain your answer.

The proposals to include reference to the use of social media in the Code of Practice would be a useful reminder given that the current Code predates the ubiquity of social media. However, as social media can be used with virtual anonymity to publish messages intended to intimidate and threaten non-striking employees, strengthening the Code itself in that respect would likely be ineffectual for the employer and its non-striking employees.

During periods of strike action BMKFA has arranged for its fire engines to be removed from fire stations and located in premises owned by third parties so as to avoid any potential conflict with pickets and non-striking fire-fighters crewing the fire engines. This method of operation is preferred by BMKFA's fire-fighters who choose not to strike and upon whom BMKFA relies to provide a front line response during strikes.

The method is effective in protecting non-striking fire-fighters from unwanted attention to the extent that in advance of the most recent period of discontinuous strike action, the locations of the premises to be used during BMKFA's contingency arrangements were published in a tweet by the Southern Region FBU Executive (which was re-tweeted by the Buckinghamshire FBU Secretary).

Whilst BMKFA has no reason to believe that any of its employees picketing at their usual place of work would behave other than in an exemplary manner, it is unlikely that updates to the Code would change BMKFA's approach. Remedies for breaches of the Code will always be reactive and rely upon legal proceedings. Such proceedings would be a less effective use of public money compared to the precautionary avoidance measures used by BMKFA.

In respect of any criminal offences, BMKFA remains wholly reliant on the police and the Crown Prosecution Service (CPS). As a combined fire and rescue authority¹⁷ it does not have the powers of county council fire and rescue authorities to institute criminal proceedings¹⁸ for the types of offences cited in the Code or in relation to social media.

¹⁷ As defined in the Fire and Rescue Services Act 2004

¹⁸ Under section 222 of the Local Government Act 1972

It is noted¹⁹ that the Department of Business Innovation and Skills plans to engage with the CPS and the police to better understand the use and efficacy of the current criminal law and ensure that existing powers are used more effectively.

BMKFA provided evidence to the police of publications in social media aimed at senior officers during recent industrial action that it considered to be criminal offences under section 1 of the Malicious Communications Act 1988; sections 127(1) and 127(2) of the Communications Act 2003; and section 2 of the Protection from Harassment Act 1997. The response from the police indicated a less than optimum appreciation of a) legal elements of the substantive offences and b) the CPS charging guidelines²⁰. The use of discretion by these agencies is referred to previously in the response to **Q2**.

Hiring agency staff during strike action: reforming regulation

Questions for consultation (1 and 4 omitted)

2. The impact assessment for this consultation assumes that, between 17% and 27% of working days lost due to industrial action will potentially be covered by temporary agency workers, based on the limit of availability of suitable temporary agency workers, and the fact that some stoppages involve a large number of workers on a particular day. Do you think this assumption, as set out in the impact assessment, is reasonable? Yes/No? Please give your reasons.

BMKFA actively monitors its assumptions made under its workforce planning models. It is moving towards a reduction in employees but intends to ensure that they will have more diverse and specialist skills in all areas of public safety. It is therefore increasingly unlikely that agencies will be able to offer 'off the shelf', in any volume, the employees with the skillsets that BMKFA would need.

3. The impact assessment assumes that the current options for recruiting temporary labour to provide cover during industrial action are used infrequently, due to the additional costs and administrative burden of hiring staff directly, or contracting service providers at short-notice. Do you think this assumption is reasonable? Yes/No? Please give your reasons.

BMKFA has for recent strikes been able to provide cover wholly using its own employees. It would therefore be presumptuous to comment on the factors taken into account by fire and rescue authorities which provided cover by other means.

¹⁹ paragraph 38 of "Consultation on tackling intimidation of non-striking workers, July 2015"

²⁰ http://www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/index.html