



Llywodraeth Cymru  
Welsh Government

# Local Government (Wales) Measure 2009

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## Fire and Rescue Services Support and Intervention Protocol

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# **Fire and Rescue Support & Intervention Protocol**

## **1. Introduction**

Section 21 of the Fire and Rescue Services Act 2004 (the 2004 Act) provides that Fire and Rescue Authorities (“FRAs”) must have regard to the Welsh Ministers’<sup>1</sup> Fire and Rescue National Framework (the “National Framework”), which sets out priorities, objectives and guidance for FRAs.

The Local Government (Wales) Measure 2009 (the “Measure”) places responsibility on FRAs for managing and improving their own performance, requiring them to set, deliver and monitor improvement objectives, identify any specific governance and performance challenges and seek to address and manage these. The Measure both reformed FRAs’ duties as regards improvement and Welsh Ministers’ powers to provide support and to intervene. It also introduced consequential amendments to section 24 of the 2004 Act.

Both the 2004 Act and the Measure contain powers for the Welsh Ministers to provide formal direction for and to intervene in FRAs, and in the case of the Measure, to provide formal support arrangements prior to such direction/intervention.

Intervention is usually a last resort or for emergencies only. In the case of the 2004 Act, intervention powers only apply where the Welsh Ministers consider that a FRA is failing or likely to fail to act in accordance with the National Framework (see section 22).

Support powers under the Measure apply where the Welsh Ministers consider support is likely to assist an FRA to comply with Part 1 of the Measure. Direction/intervention powers apply where Welsh Ministers consider that an FRA is failing/likely to fail to comply with Part 1 of the Measure, despite the provision of or prior offer of assistance/support.

This Protocol is prepared under section 23 of the 2004 Act and seeks to outline if, how, and when such powers of intervention and support may be exercised by the Welsh Ministers.

This Protocol has been subject to public consultation and complies with the requirement of section 23(4) of the 2004 Act. It replaces the previous intervention protocol which was published in March 2007.

## **2. Roles and Responsibilities**

The Wales Programme for Improvement (the “WPI”) (which is the working title for statutory improvement planning guidance and improvement planning arrangements in Wales) provides a framework whereby Welsh improvement

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<sup>1</sup> Section 21 refers to obligations upon the Secretary of State but section 62 of the FRA Act 2004 provides that such references to the Secretary of State should be read as if they were references to the National Assembly for Wales in their application to Wales. Functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of the operation of section 162 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

authorities (including FRAs) are responsible for improving and managing their own performance.

The Measure gives powers to FRAs to collaborate. If an FRA considers that collaboration would help it discharge its duties under the Measure it must seek the exercise of those powers. This collaborative approach to improvement is particularly relevant when specific governance or performance challenges are identified.

Identifying and dealing with performance issues requires effective co-operation between all those involved, openness and transparency. It follows that all partners, that is the Welsh Ministers, the Chief Fire and Rescue Adviser, the Wales Audit Office (WAO), peer assessors and the three FRAs in Wales, should share any relevant information on FRA performance; ensure that a joined-up national overview of the performance of the fire and rescue sector is available; and, in particular, raise cases of possible concern. In such cases partners will also discuss and agree the range of possible approaches to support and the respective roles of each in providing or commissioning that support. Individual responsibilities are outlined below:

**FRAs are responsible for:**

- Having regard to the National Framework in carrying out their functions;
- Making arrangements to secure continuous improvement in the exercise of their functions;
- Conducting robust self-assessments of performance;
- Identifying local improvement objectives and managing performance;
- Accounting for and reporting performance publicly; and
- Collaborating on improvement, and seeking support from partners where and when appropriate.

**The Welsh Ministers are responsible for:**

- Preparing a National Framework which:
  - Sets out priorities and objectives for FRAs in connection with the discharge of their functions;
  - May contain guidance to FRAs in connection with the discharge of their functions; and
  - May contain other matters relating to FRAs or their functions that Welsh Ministers consider appropriate;
- Keeping the National Framework under review;
- Reporting on the extent to which FRAs are acting in accordance with the Framework and any steps taken by the Welsh Ministers for securing this;
- Managing and developing overall policy on support and intervention, in consultation with national and local partners;
- Providing support to FRAs in appropriate cases;
- Considering the possible use of Welsh Ministers' powers of intervention in relevant cases; and
- Managing any interventions where they occur.

## **The Wales Audit Office is responsible for:**

- Co-ordinating its own work and that of other regulators;
- Inspecting, evaluating and reporting on FRAs' compliance with their duties under the Measure;
- Carrying out special inspections of FRAs which may not be complying with their duties under the Measure or the duty under 21(7) of the 2004 Act to have regard to the National Framework in carrying out their functions; and
- Making appropriate recommendations to FRAs and to the Welsh Ministers.

**The Chief Fire and Rescue Adviser** has inspector status under Section 28 of the 2004 Act. Under this provision the Chief Fire and Rescue Adviser (and any Assistant Adviser or officer appointed by Welsh Ministers) can obtain information as to:-

- The manner in which fire and rescue authorities are discharging their functions;
- Technical matters relating to those functions.

Section 16 of the Measure recognises a person appointed under Section 28 of the 2004 Act as a relevant regulator under Part 1 of the Measure.

In practice the Chief Fire and Rescue Adviser will:-

- Review available data and information, including FRAs' Improvement Plans, WAO Improvement Reports, and benchmarking data;
- Consider whether evidence indicates the need for further/more detailed review;
- Undertake such reviews and provide information and findings to Welsh Ministers, FRAs and the WAO.

## **3. Principles**

### ***Self-evaluation***

Support and intervention are both aimed at resolving governance or delivery weaknesses within a FRA. The difference is that support is provided by agreement, and full local autonomy is retained. Intervention entails Welsh Ministers directing the FRA to act in some way, imposing constraints on how it exercises its functions, or in extreme cases removing those functions altogether and conferring them on another organisation or on commissioners appointed for that purpose.

Support and intervention are both concerned with circumstances in which a FRA is consistently or repeatedly failing (for whatever reason) to discharge certain of its broader legal duties effectively or is at clear risk of doing so.

FRAs are primarily responsible for improving their own performance. Where improvement does not occur, FRAs must identify, consider and put in place measures to rectify shortcomings themselves, and must be given reasonable

opportunity to do so. They are also entitled to seek and receive appropriate support and advice from the Welsh Ministers. This would usually be through the Chief Fire and Rescue Adviser.

Prevention is almost always better than the cure. The Welsh Government seeks a mature and transparent approach which allows FRAs to resolve their own problems, with or without external help. These are better than more directive or imposed approaches which involve formal directions or intervention. The latter are a last resort and/or to be used in urgent situations only.

In particular, the following approaches should serve to reduce or eliminate any need for intervention:

- Consistent and effective performance management arrangements;
- Consistent and robust arrangements for assessing risk in communities;
- Consistent and effective engagement between officers and members;
- Strong accountability to local people, which provides constant challenge and drives improvement in priority areas;
- Sharing and adopting good practice and knowledge between FRAs inside and outside Wales;
- Developing, adopting and acting on rigorous, robust and comprehensive self-assessment arrangements (including public accountability, and peer challenge). This is essential to understanding actual or potential weaknesses and areas for improvement; and
- Clear links between the FRA's strategic plans and the priorities outlined in the National Framework.

An approach based on self assessment and challenge followed by an appropriate response would demonstrate that a FRA is open, transparent and embeds a culture of organisational learning, thereby providing assurance to the public, Welsh Ministers and Regulators. It should preclude any need for formal intervention other than in genuinely exceptional or emergency cases.

The above approach should enable FRAs to prevent, detect and/or correct any problems before they become serious enough to merit outside involvement.

### ***External help***

Where self help does not happen or does not work, the relevant sections of this Protocol will apply.

In extreme cases, where an FRA is unable to achieve the required improvements the Welsh Ministers may decide to intervene. The overriding and common interest of the Welsh Ministers, the Chief Fire and Rescue Adviser, and the FRAs themselves, is to resolve any governance or delivery problems as quickly, efficiently and sustainably as possible; and in the case of formal intervention, to restore full autonomy to a FRA at the earliest possible opportunity.

The Measure requires the Welsh Ministers to offer support before they can intervene in the running of an FRA, except in urgent cases. The Welsh Ministers

will adopt the same principle relating to intervention under the 2004 Act, despite there being no statutory duty to do so. Of course, support is a two way process and it assumes that FRAs themselves will work constructively and diligently to identify potential problems and, where appropriate, seek support in addressing them.

Support is available from the Chief Fire and Rescue Adviser to all FRAs on request using the process described later in this Protocol, subject to available resources. Support may also be offered by other FRAs and public sector bodies, or through the identification and procurement of external advice and assistance.

Seeking external support will in no way be seen as an admission of fault or failure, nor a means of assigning blame; it rather provides assurance to partners of a FRA's self-awareness and commitment to improve, and its ability to recognise the limitations of its performance. This is a strength. On the other hand, failure to be open and transparent, denying the existence of problems and/or refusing to seek help in solving them is a recognised and often serious corporate weakness.

#### **4. Sharing Intelligence and Coordinating Support**

Identifying problems before they become serious, and forestalling any need for intervention, is a national as well as a local issue. The WAO, the Welsh Government, the Chief Fire and Rescue Adviser and peer assessors possess a wide range of information about actual or potential problems, and a wide range of powers to deal with them. It is essential that they co-ordinate their efforts to sustain the principles underlying this Protocol.

The FRA Improvement Planning Steering Group has a key role in delivering this co-ordinated approach. Its membership consists of Welsh Government officials, the Chief/Assistant Fire and Rescue Adviser, officers from the three FRAs in Wales, the WAO and the Welsh Local Government Association (on an ad hoc basis and at the request of FRAs). These are the key partners in the support and intervention arrangements set out in this document. The Group has a dual role:-

- To contribute to the development of policy proposals, guidance and tools to support improvement and performance arrangements for FRAs in Wales.
- To share intelligence on individual FRA's performance and discuss the need and opportunity for support.

The Group will meet twice a year to discuss the findings of published reports from external regulators, review all other available evidence, and consider any emerging 'early warnings' that might imply a cause for concern within a particular FRA. The Group will, in particular, consider the strength and robustness of an FRA's procedures for self-evaluation and, where appropriate, the results of such evaluation. The timing of these meetings will be agreed with FRAs and other partners to ensure they coincide with the publication and availability of relevant improvement/performance information.

The Improvement Planning Steering Group will:-

- Ensure a coordinated, consistent and evidenced-based approach to support and intervention. It will seek to challenge any pre-conceived perceptions or emerging 'soft' intelligence about particular services or FRAs, with a view to utilising available data and evidence in order to reassure or respond to concerns that might be raised. Similarly, where concerns remain it will seek to ensure a coordinated and consistent response.
- Seek to identify any common improvement challenges faced across FRAs as a whole and consider how such issues might be addressed through future policy developments.
- Seek to ensure emerging or good practice is identified, in particular to ensure that FRAs with particular challenges may be guided to, and may learn from, those that have successfully managed similar challenges.
- Seek to build a consensus about problems and possible solutions. Individual members of the Group will seek to implement that consensus, and to take any action which it suggests, within the limits of their own powers, budgets and accountabilities.

The Group will not:-

- Be concerned with the routine co-ordination of local inspection, audit and regulation work under section 23 of the Measure.
- Have the power to bind or direct its members in the absence of consensus.

When considering any early warning or perceived concern regarding an individual FRA, the Group will seek to identify an appropriate response, and may reach the following conclusions:

- No support required (concern is not significant or substantiated and/or the FRA is aware of the problem and is putting mechanisms in place to improve);
- Further information is required, from the FRA or elsewhere, before a conclusion can be reached;
- Support required - provision of support through the Chief Fire and Rescue Advisor or other FRAs/public sector organisations.

All three FRAs are represented on the Group. The approach outlined here requires openness, trust and understanding between all partners. It will be open to any FRA to raise a possible need for support with any of the partners represented on the Group in confidence. An FRA is of course entitled to seek support directly from the Welsh Ministers or any other organisation outside the specific arrangements established under this section of the Protocol. However, the expectation is that, in the spirit of openness and transparency, where an FRA requests support directly from the Welsh Ministers or other organisations, details will be provided at the next meeting of the Group. Such a request will only be shared between Group members with the agreement of the FRA, and with the sole aim of informing and assuring Group members that support activity is being provided and, where relevant, to enable further development and scoping of the support provided. Such information would not be disclosed to other FRA officers, or other third parties outside the Group, except with the FRA's specific consent.

Equally, where emerging issues and/or possible support needs have been identified by the Group, the Group will normally invite an FRA to participate in confidential discussions, and the information sharing arrangements set out above would also apply. An FRA would be free to accept or decline such a request.

Any offer of support to a FRA would be subject to negotiation and agreement with the FRA. However, if an offer of support or an invitation to discuss possible support is declined and the same problems worsen to the extent that the FRA is in breach of relevant duties, it would be open to the Welsh Ministers to intervene without making a further offer of support.

## **5. Evidence for Support and Intervention**

It is impossible to give a detailed list of what evidence for support and intervention might entail, but in broad terms the sorts of issues identified in Annex A and B might well give rise to the need for support or intervention.

## **6. Support**

It is **always** better to provide support at an early stage. This prevents problems from becoming critical, potentially maintains local autonomy and avoids the need for costly and disruptive intervention.

FRAs can request support in any circumstances, not just via the Improvement Planning Steering Group. However, FRAs are encouraged to do so as soon as they become aware of problems in complying with relevant duties, and that they are unlikely to be able to resolve these promptly and effectively on their own. The Welsh Ministers are required by law to consider all requests for support reasonably and on their merits. If support cannot be provided, the Welsh Ministers will give a clear and reasoned account of the basis for this decision.

There are many informal ways in which support can be provided, but this document will focus only on formal requests/offers of support.

Support can take many forms. It might include coaching, training and mentoring, consultancy, peer challenge, best practice transfer, and collaborative solutions. The exact form will be tailored to the circumstances of each case, and subject to detailed discussion and agreement with the FRA in need of such support.

Support can be provided by the Chief Fire and Rescue Adviser, another FRA, or other agencies as appropriate and as agreed.

For prolonged engagements, a funding contribution from the FRA may be sought. Exact funding mechanisms will be discussed and agreed with the FRA at the beginning of the process.

Support can also take positive rather than remedial forms. In particular, if a FRA believes that a particular Welsh Government policy, programme or legislation is impeding its ability to improve, it is free to raise that with the Welsh Ministers and to suggest appropriate changes.



Support is not necessarily a precursor to intervention, and can be provided in circumstances where intervention would not be appropriate. Indeed the Welsh Ministers are required to offer support before they can intervene, except in urgent cases. However, should support not prove successful, then intervention may be considered as an option. Support can also be provided alongside intervention, for instance to help build local capacity before ending an intervention.

The Welsh Ministers have powers in section 28 of the Measure to 'do anything' to support improvement. But as a matter of law the power does **not** allow Ministers to compel an FRA or anyone else to accept an offer of support, or to do anything else. Support **cannot** be provided unless the FRA concerned requests it or agrees to accept it.

### ***Providing support***

As noted, the form and duration of support will be the subject of agreement between the Improvement Planning Steering Group and the FRA concerned. If no agreement can be reached, no support will be provided.

An FRA which accepts an offer of support should engage positively with it. That may include ensuring that members and officers contribute fully, and developing and implementing plans to adopt any changes or reforms that the support programme suggests.

The Improvement Planning Steering Group will monitor and evaluate the effectiveness of all packages of support delivered. This will both allow general lessons to be drawn about providing support, and particular conclusions about whether support should be continued, or whether an intervention would be more appropriate.

## **7. Intervention**

Intervention is a last resort. The WPI promotes local accountability and places local discretion and flexibility at the heart of improvement planning.

However, statutory powers are available to the Welsh Ministers for intervention in certain circumstances. The Welsh Ministers will only use their powers where appropriate and proportionately to the seriousness of the failure. They cannot and will not take such decisions lightly.

Except in urgent and/or critical cases, the Welsh Ministers will only intervene where an offer of formal support has been declined; where an FRA has not engaged with the support provided; and/or where support has failed to resolve the problems concerned.

In principle, an FRA that is subject to intervention will be expected to bear the associated direct costs – for instance the costs of appointing recovery boards or commissioners (see below). The exact funding mechanisms will be discussed with the FRA at the beginning of the process.

Clear terms of reference will be drawn up for all interventions. They will set out the accountability, reporting and information sharing arrangements and, critically, the roles and remit of any individuals/bodies appointed by the Welsh Ministers, the FRA itself and partners including regulators during a period of intervention. Where possible, standard terms of reference will be used. These terms will be agreed between partners prior to any intervention – except in urgent cases where time does not permit this. Terms of reference will be subject to review as an intervention progresses.

The Welsh Government will manage all interventions and will provide appropriate policy, secretariat and administrative support.

A FRA which is the subject of intervention can continue to receive support under the terms of this Protocol.

Intervention may be accompanied by an enhanced audit or inspection programme that is valuable in monitoring progress and supporting recovery, and relevant programmes or inspections should be co-ordinated to that end. However, they do not constitute part of the intervention, and responsibility for them remains with the relevant inspectorate audit or regulatory body, not with the Welsh Government.

### ***Intervention in cases of urgency***

Urgent or critical cases are those where there is conclusive evidence that an FRA has or may shortly become unable or unwilling to manage its own affairs at all. Actual or potential risks to services and their users and to the proper use of public money are aggravating factors in this regard.

The Welsh Government officials will discuss cases of possible intervention, and the form of any intervention with the WAO, the Chief Fire and Rescue Adviser, the Welsh Local Government Association, and with the FRA concerned if possible. However, time constraints may mean that such discussions are not possible in all cases, especially in those which are urgent or grave. The Welsh Ministers have a duty to act immediately once problems requiring intervention are identified. As a minimum, it should be possible to notify partners beforehand and in confidence.

If time allows for consultation, then early discussion will be undertaken with partners, to consider the evidence of the FRA's failings and to share intelligence.

The Welsh Ministers will publicly state their intentions, via means such as a Ministerial Statement, as soon as this is possible and practicable.

### ***Consultation prior to intervention under the 2004 Act***

However, for the purposes of securing that an FRA acts in accordance with the National Framework, the Welsh Ministers may by order (a section 22 order under the 2004 Act) require the FRA to do something, to stop doing something or not to do something. Such an order may only be made if the Welsh Ministers consider that making the order will promote public safety or the economy, efficiency and

effectiveness of either the FRA concerned or in connection with the functions of FRAs generally.

In these cases, the Welsh Ministers will, as a minimum, consult representatives of the FRA affected, any other FRAs or public sector bodies on whom there may be a resultant impact, and the WAO.

In cases of urgency, consultation may be limited to those FRAs directly affected. However FRAs should be aware there will be a limited period of time to respond depending on the severity of the issue.

### ***Forms of intervention***

Welsh Government officials will seek to establish the most appropriate package of measures to address any failings.

The form and extent of any intervention must aim to resolve the problem as effectively and quickly as possible. Like the provision of support, intervention must be tailored to the circumstances. That means that the intervention should address; (a) the nature of the problem, (b) the risks attached to it (especially direct risks to service-users), (c) the capacity / willingness of the FRA to engage with the intervention and (d) the likelihood of a successful early end to the intervention.

There are several models of intervention available:

- Firstly, there are supportive models, in which a FRA is required to work with a recovery board or similar but is otherwise free to take its own decisions. In general terms, this model would be more appropriate where (a) the problems are clearly identified and self-contained; and/or (b) the risks to service-users are relatively low; and/or (c) the FRA appears to have the capacity and willingness to engage fully and effectively with the intervention. If the FRA has used its best efforts to meet its duties but has failed for whatever reason to do so effectively then this model will often be the most appropriate.
- Secondly, and where the opposite applies, a more directive form of intervention could be more appropriate. Such an intervention could involve removal of functions and appointment of commissioners or similar. This is the most severe form of intervention and is only appropriate where there have been sustained and critical failures of governance or delivery, where other forms of support or intervention have not worked, and/or where the FRA has been unwilling to engage with such other forms of intervention or support and with the need for improvement more generally.
- Finally, it is possible for an intervention to require an FRA to take a specific action to address a known, serious but self-contained problem or to formulate a plan for doing so. Isolated problems would not normally be a basis for intervention, so this model of intervention is expected to be rare; but it might be appropriate to deal with urgent issues.

The exact form of intervention will depend on the circumstances of each case and on the FRA's capacity and willingness to address the problem. The intervention may combine aspects of more than one model or may evolve as recovery proceeds (for instance, the appointment of commissioners may be

followed by a recovery board as and when improvement is sustainable). There is no 'hierarchy of intervention' in which more serious failings automatically merit a more stringent intervention; the test is only to identify what arrangements are most likely to resolve the FRA's particular problems as quickly and sustainably as possible.

Where Welsh Government officials request information from a FRA in order to help define the most appropriate intervention solution, the FRA will be required to provide an accurate and timely response and co-operate with any action proposed.

Where intervention involves external appointment, e.g. to advisory boards, this will be done on the basis of agreed criteria before possible candidates are approached. It will normally be neither possible nor necessary to follow a full public appointments procedure. However, all such appointments will be made on the basis of standard terms and conditions which regulate conduct in line with the Nolan principles.

### ***Ending intervention***

It is in everyone's interests to bring an intervention to an end as soon as possible. An intervention will end as soon as it is clear that a sustainable recovery has been made and that an FRA is capable of operating autonomously. Ending an intervention will not necessarily mean that all identified faults have been completely eradicated – just that an FRA can deal with any remaining concerns itself or with support.

For most interventions it will be helpful to scale down the level of involvement before bringing it to a complete end. This will allow the early restoration of some autonomy and for the sustainability of that restoration to be assessed in a controlled environment.

At the end of an intervention the Welsh Government and partners will commission an evaluation (normally from an independent third party such as an academic expert) to inform and shape future interventions. The evaluation will also consider 'lessons learnt'-why certain things went wrong at an FRA and what could have been done by the FRA or partners to manage or prevent such (governance or performance) issues. The findings will be published unless the intervention relates to particularly sensitive matters, including the identification of individuals/personal details.

## Evidence for support or intervention

The 2004 Act (section 22) contains a provision for the Welsh Ministers to intervene where an FRA fails or is likely to fail to act in accordance with the National Framework. The law on support and intervention in matters of corporate governance and performance management is contained in Part 1 of the Measure.

The corporate duties (to make arrangements to secure improvement) in the Measure are broad and purposive. They deal with how and to what ends FRAs should operate – rather than prescribing what FRAs should do in specific or absolute terms. But even there, the law generally recognises that the performance of a FRA in discharging those duties may depend on the context and the challenges that it faces. It follows that the need for support and intervention is equally based on broad criteria.

It is impossible to give a detailed list of what that support and intervention might entail, but in broad terms the following sorts of issues might well give rise to the need for support or intervention.

**Under the 2004 Act** a failure or likely failure to act in accordance with the National Framework (section 22(1)). This may involve failure to deliver core duties under sections 6, 7 and 8 and duties included in orders made under section 9 of the 2004 Act. Note that failure in this context does not only mean failure to make any such provision. It can also mean providing the services in a consistently and unreasonably inadequate or ineffective way, and/or failing to identify and correct weaknesses in provision.

It may also include failure to implement the other priorities set out in the National Framework including effective collaboration arrangements, effective planning by allocating resources to priorities, showing how these measures make a difference, and seeking innovation and new ways of working. Failure might include:-

- Failure to plan the delivery of services on the basis of risk, and ensuring public knowledge of the range of services available;
- Failure to work with key stakeholders to improve fire safety outcomes;
- Failure to put arrangements in place to reduce the incidence and impact of fires;
- Failure to provide effective co-ordination of emergencies; and
- Failure to provide the appropriate resources, equipment and training to ensure the safety of all staff and citizens.

**Corporate failure, under the Measure:** a clear sense or aspect of failure ‘to make arrangements to secure continuous improvement’. This might include actual or potential failures to discharge any of the duties in Part 1 of the Measure, especially if such failure appears to be consistent or systemic, and/or based on problems of organisational process, capacity or culture. It would normally also be reflected in adverse findings and recommendations by WAO or, less frequently,

inspectorates. It will often consist of linked failures of different aspects of governance and delivery, especially if these have become or risk becoming self-perpetuating 'vicious circles'. Annex B sets out some of the apparent sources of corporate failure in more detail.

The following circumstances would not of themselves *normally* merit support or intervention:

- Missing individual targets or failing fully to meet improvement objectives. Service delivery is subject to numerous pressures, many of which can be beyond an FRA's control. Only where such shortfalls substantiate weaknesses within a FRA's internal arrangements could this lead to support or intervention. In times of austerity, maintaining current standards whilst managing with less, or prioritising improvement objectives to ensure best outcomes for citizens, can be viewed as a legitimate approach to making arrangements to secure continuous improvement.
- Complaints (eg to a FRA itself, to the Ombudsman or to police), legal action and other forms of redress in individual cases. While maladministration is of course a serious matter from the perspective of the person suffering it, it does not necessarily imply that the organisation as a whole is failing in its duties. However, a persistently high level of complaints may suggest wider weaknesses of process or culture – as may a demonstrated and consistent reluctance to address complaints or to provide appropriate redress.
- Adverse audit or inspection findings. FRAs should be able to deal with such findings themselves. However, a formal recommendation from an inspector, auditor or regulator (including a recommendation about support or intervention) should be accepted unless there are compelling reasons not to do so.

## Sources of Corporate Failure

### Introduction

This annex describes some problems of corporate and service management in FRAs which might suggest that a FRA is in need of support or intervention.

### Unpacking the basic duty

The starting point for this analysis is the basic duty in section 2 of the Measure: “A [FRA] must make arrangements to secure continuous improvement in the exercise of its functions.”

A FRA which appears to fail to discharge this duty, or to be at risk of doing so is liable to receive support, or to be subject to intervention, under sections 28 and 29 of the Measure.

The rest of Part 1 of the Measure explains and expands on this duty. It would be reasonable to say that the duty can be separated into four required elements, all of which need to cohere and interact effectively if a FRA is to meet the basic duty, secure improvement and avoid “failure”:

- Establishing a clear, valid and widely-understood conception of what ‘improvement’ is (ie short- medium and long-term organisational objectives);
- Designing and maintaining a set of political, administrative, accountability and resource management arrangements which appear likely to make optimum sustainable progress towards these objectives;
- Operating those arrangements consistently, efficiently and effectively;  
- and if all of this happens...
- Actually securing improvement, or as much as reasonably possible, as a result.

Note that there is no duty actually to improve in the Measure, but consistently securing improvement is powerful empirical evidence that suitable arrangements are in place.

Equally, it is possible to identify in broad terms the sorts of circumstances which might lead to failure, for example, if an FRA has:

- Inadequate or invalid strategic objectives (i.e. no clear, agreed and understood definition of “improvement”);
  - Incomplete or unfit internal arrangements for pursuing and monitoring improvement;
  - Dysfunctional arrangements – which may be well-designed but which do not or cannot operate as intended, for instance fragile or absent corporate systems and processes that would provide the context in which arrangements could exist or flourish;
- ...any of which might lead to

- Not securing the improvement sought, or not securing as much improvement as reasonably possible in the circumstances. Again, not securing improvement or not meeting targets is not of itself a failure. But if that happens persistently it may well suggest that arrangements were inadequate in some way.

Many if not most of these problems may interact or be causally connected. For instance, a lack of strategic clarity might lead to poor resource allocation and/or operational management being inadequately focused on securing priority outcomes (which might in turn compound instability, creating a vicious circle). It is this sort of combination which would normally give grounds for concern and ultimately external involvement. The presence of isolated or self-contained problems normally would not. But that of course is no argument for ignoring such problems; indeed, it is an argument for preventing, detecting and correcting them before they create or interact with any other such problems.

The sections below highlight some of potential problems that may indicate that an FRA is failing to secure continuous improvement. The problems are grouped by reference to the types of circumstances outlined above. The list of potential problems is not intended to be exhaustive and should not be relied on as a checklist of good (or bad) governance. But the presence of any of these features should be a cause of concern. If there was evidence of a causal connection between more than one such feature this would increase the cause for concern. This Protocol should be invoked (whether by the FRA or by the Welsh Ministers) as soon as any such evidence comes to light.

### **Inadequate or invalid objectives**

- Strategic vision too vague, anodyne or unrealistic; not meaningfully deliverable;
- Strategic vision too specific, lacking wider sense of context, coherence or long-term view;
- Objectives not subject to adequate periodic review or revision;
- Objectives changed too frequently; instability and impatience;
- Insufficient member involvement in developing or revising objectives;
- Insufficient partner involvement in developing or revising objectives, conflicting or non-complementary partner objectives;
- Insufficient public engagement in developing or revising objectives; or
- Strategic objectives not manifested in business/operational/station plans; not understood / accepted at all levels throughout the organisation.

### **Incomplete or unfit arrangements**

- Performance management and reporting incomplete or too infrequent, neglecting important sources of evidence;
- Too much / too little emphasis on particular sources (e.g. performance data, regulatory reports, benchmarking); tendency to monitor processes or outputs rather than outcomes;
- Performance management and reporting not aligned with strategic objectives (e.g. emphasis on service performance rather than outcome attainment);



- Human, financial and asset management not aligned with strategic objectives, as above;
- Insufficient involvement of members in monitoring and challenging performance;
- Inadequate consideration of collaboration; unduly short-term or narrow view of risks, costs and benefits;
- Over-emphasis on collaboration; pursuing opportunities as ends in themselves within insufficient regard to risks, costs and benefits; or
- Lack of feedback from monitoring delivery into planning of future objectives, targets and budgets.

### **Dysfunctional arrangements**

- Confirmation bias: tendency in organisational culture to emphasise evidence of success and discount criticism (including public, political or regulatory criticism) or other evidence of failure;
- Breakdown in key relationships (e.g. member/officer, corporate/front-line or FRA/partner);
- Under-funding, un-managed overspends, inefficiency; poor value for money; or
- Key vacancies unfilled for extended periods and/or high levels of staff turnover or absence.

### **No or insufficient improvement**

- Inability to achieve outcomes or to demonstrate such achievement;
- Persistent under-performance in key service areas (whether by reference to Performance Indicators, regulatory findings or otherwise), unexplained by challenges or constraints in the operating context; or
- Consistently high levels of complaints in key service areas or other measures of user dissatisfaction.