Neutral Citation Number: [2019] EWHC 1967 (Admin)

Case No: CO/2286/2018
CO/2287/2018
CO/2300/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/07/2019

Before:

MR JUSTICE GARNHAM

- -

Between:

The Queen

(on the application of

(1) Shropshire and Wrekin Fire Authority

(2) Hereford and Worcester Fire Authority **Claimants**

(3) Cambridgeshire and Peterborough Fire Authority)

- and -

The Secretary of State for the Home Department **Defendant**

- and -

Police and Crime Commissioner for Cambridgeshire **Interested Parties**

Police and Crime Commissioner for West Mercia

Peter Oldham QC & Leo Davidson (instructed by **LGSS Law**) for the **Claimants**
David Pievsky & Natasha Simonsen (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 5th & 6th June & 22nd July

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Approved Judgment

Mr Justice Garnham:

Introduction

1. What does the expression "in the interests of economy, efficiency and effectiveness" mean? In particular, in order to show that a proposal is "in the interests of economy, efficiency and effectiveness" within section 4A(5) of the Fire and Rescue Services Act 2004, is it necessary to show that it is in the interest of each of those objectives, or can those three matters, the "3Es", be considered "in the round"? That is the primary question raised by these proceedings.

2. On 26 March 2018, the Home Secretary provided a written ministerial statement to the House of Commons, setting out her decision to approve a proposal to transfer the governance of the Cambridgeshire Fire and Rescue Service ("FRS") to the Police and Crime Commissioner ("PCC") for Cambridgeshire, and the governance of the Shropshire FRS, and the Hereford and Worcester FRS to the PCC for West Mercia.

3. By these judicial review proceedings, those three fire authorities challenge those decisions. On 3 October 2018, Farbey J granted permission to proceed to judicial review on two grounds, namely that:

    (1) the Secretary of State had failed to apply the correct statutory test. Section 4A of the Fire and Rescue Services Act 2004, provides that the Secretary of State can only make an order making a PCC a Fire Rescue Authority ("FRA") if to do so is in the interests of economy, efficiency and effectiveness. Properly construed, that expression requires that the order must be in the interests of economy and efficiency and effectiveness.

    (2) the Secretary of State adopted an irrational approach, or mis-directed herself, in failing to obtain an independent assessment in relation to the issue of public safety.

4. I had the benefit of written and oral submissions in support of the three Claimants from Peter Oldham QC and Leo Davidson; the Secretary of State was represented by David Pievsky and Natasha Simonsen. When a draft of this judgment was sent to counsel for typographical correction, I received a careful and courteous letter from Mr Oldham inviting me to permit further submissions on the consequences that should flow from my decision on the proper construction of the statute. I am well aware of the strict limitations the court imposes on responses to receipt of draft judgments (see *Egan v Motor Services (Bath) Ltd* [2007] EWCA Civ 1002) but, as both parties agreed, prior to formal hand down of a judgment, this is a matter for the exercise of judicial discretion. In my judgment, on the particular facts of this case, it was appropriate to hear brief additional submissions. I did so on 22 July 2019 and those submissions are addressed in this judgment.

5. I am grateful to all counsel for their careful and helpful submissions throughout this case.

The Statutory Scheme

6. Section 4A of the Fire and Rescue Services Act 2004 ("the 2004 Act") was inserted by schedule 1 paragraph 5 of the Policing and Crime Act 2017 ("2017 Act"). It gives the Secretary of State a power to make a PCC a FRA. It provides as follows:

> "(1) The Secretary of State may by order provide—
>
> (a) for the creation of a corporation sole as the fire and rescue authority for the area specified in the order, and
>
> (b) for the person who is for the time being the police and crime commissioner for the relevant police area to be for the time being that fire and rescue authority.
>
> (2) In subsection (1) *"the relevant police area"* means the police area which—
>
> (a) is the same as the area of the fire and rescue authority created by the order, or
>
> (b) if the order creates two or more fire and rescue authorities, is the same as the areas of those authorities taken together.
>
> (3) The whole of an area of a fire and rescue authority created by an order under this section must be—
>
> (a) within England, and
>
> (b) outside the metropolitan police district and the City of London police area.
>
> (4) An order under this section may be made only if the relevant police and crime commissioner has submitted a proposal for the order to the Secretary of State.
>
> (5) An order under this section may be made only if it appears to the Secretary of State that—
>
> (a) it is in the interests of economy, efficiency and effectiveness for the order to be made, or
>
> (b) it is in the interests of public safety for the order to be made.
>
> (6) The Secretary of State may not make an order under this section in a case within subsection (5)(a) if the Secretary of State thinks that the order would have an adverse effect on public safety.

> (7) In this section *"relevant police and crime commissioner"* has the same meaning as in Schedule A1; and that Schedule makes further provision about the procedure for an order under this section."

7. Schedule 1 paragraph 4(1) provides as follows:

> *"4 Provision of representations to Secretary of State*
>
> (1) Sub-paragraphs (2) to (4) apply if, in response to a consultation by a relevant police and crime commissioner under paragraph 3(1)(a), a relevant local authority indicates that it does not support a section 4A proposal.
>
> (2) The commissioner must, in submitting the proposal to the Secretary of State, provide the Secretary of State with—
>
> (a) copies of each document provided by the commissioner for the purposes of paragraph 3,
>
> (b) copies of each representation made by a relevant local authority in response,
>
> (c) a summary of the views expressed by people in the commissioner's police area about the proposal, and
>
> (d) a summary of the views expressed about the proposal by persons consulted under paragraph 3(1)(c), and
>
> (e) the commissioner's response to those representations and views.
>
> (3) The Secretary of State must—
>
> (a) obtain an independent assessment of the proposal, and
>
> (b) have regard to that assessment and to the material provided to the Secretary of State under sub-paragraph (2) in deciding whether to make an order under section 4A in response to the proposal.
>
> (4) The Secretary of State must publish the independent assessment—
>
> (a) as soon as is reasonably practicable after making a determination in response to the proposal, and
>
> (b) in such manner as the Secretary of State thinks appropriate.

8. Paragraph 4(3) of Schedule A1 to the 2004 Act provides for an independent assessment of proposals for the exercise of that power:

> "(3) The Secretary of State must—

> (a) obtain an independent assessment of the proposal, and
>
> (b) have regard to that assessment and to the material provided to the Secretary of State under sub-paragraph (2) in deciding whether to make an order under section 4A in response to the proposal."

9. Paragraph 6(6) of Schedule A1 provides that:

> "(6) In this Schedule *"relevant local authority"* , in relation to a section 4A proposal, means a local authority—
>
> (a) whose area is the same as, or contains all of, the area of the fire and rescue authority proposed to be created by the order, or
>
> (b) all or part of whose area falls within the area of that fire and rescue authority."

The Background

10. In October 2017, the Secretary of State received a proposal from the Cambridgeshire PCC that he, the PCC, should take on governance of the county's FRS. Later that same month, the Secretary of State received a similar proposal from West Mercia's PCC, in respect of both the Hereford and Worcester FRS and the Shropshire FRS. Those proposals followed consultations conducted by the respective PCCs. On receipt of the proposals, the Minister of State for Policing and the Fire Service asked the Chartered Institute of Public Finance and Accountancy ("CIPFA") to review the two PCCs' proposals for the purpose of providing the independent assessment required by paragraph 4(3)(a) of Schedule A1 to the 2004 Act.

11. CIPFA's report in both cases recorded their instructions from the Minister of State to the effect that they should undertake an independent assessment of the proposals and set out their view as to whether the proposal met the statutory test. As set out in paragraph 1.6 of both CIPFA reports, "These tests cover, whether in our view, the proposal is in the interests of economy, efficiency and effectiveness (the 3Es) or public safety, and whether the proposal will have an adverse effect on public safety".

12. Both reports made clear that the Home Office had provided further clarification as regards CIPFA's remit on public safety. "It has been emphasised that our focus is on an independent assessment of the economy, efficiency and effectiveness and that, in terms of public safety, we are only expected to comment where we identify something on which comment is required".

13. Both reports also indicated that in considering the statutory test, in respect of economy, efficiency and effectiveness, CIPFA used the following definitions provided by the National Audit Office ("NAO"):

- Economy: minimising the cost of resources used or required (input)

- Efficiency: the relationship between output from goods or services and the resources to produce that (the process)

- Effectiveness: the extent to which objectives are achieved and the relationship between the intended and actual results of public spending (the outcomes).

14. In the Cambridgeshire case, CIPFA noted, at 4.82, that "the LBC sets out no differences between the…options in relation to economy". The report concluded as follows:

> "The Local Business Case
>
> Our main conclusions arising from our review of these critical success factors are…CSF 5 Reduces cost of effective governance…On balance we would concur that the estimated economic benefits are not an unreasonable estimate of the reduction in costs that could be achieved (my emphasis).
>
> The 3Es
>
> 5.5 We have set out broad conclusions in relation to economy, efficiency and effectiveness in Section 4 above (4.79-4.89). In summary:
>
> - **Economy** has received little attention in the LBC (*the Local Business case*) and there is an absence of quantified benefits in relation to any reduced costs of inputs. (emphasis added)
>
> - All of the savings in the LBC arise from **efficiency**, primarily in relation to the optimal utilisation of capital assets (CSF 1) but also in relation to the avoidance of costs under the Governance model (CSF 5). Whilst it appears the efficiency savings generated by the different options are closer than implied by the LBC (due to the issues surrounding methodology), the proposed Governance model does deliver some additional efficiency gains.
>
> - Given the current and planned levels of collaboration, all of the options have potential in relation to **effectiveness** but, in our view, the Governance model does appear to provide for a faster pace of collaboration which has the potential to deliver greater effectiveness, although this cannot be quantified.

5.6 Taking the 3Es together we have concluded that, on balance and subject to all the caveats listed in this report, a move to the Governance Model would be in the interests of economy, efficiency and effectiveness

5.7 Having reached that conclusion, we would add that the LBC presents no overwhelming case for the Governance model and that most of the proposed changes could be achieved under the other three options, subject to the willingness of all stakeholders to work together.

Public Safety

5.8 This independent assessment has not identified any issues on which comment is required under the terms of our reference."

15. In the West Mercia case, CIPFA noted in respect of economy that "the Governance model does appear to present some opportunities for economy". However, its conclusions on the 3Es were expressed as follows (emphasis added):

"The 3Es…

5.18 We have set out broad conclusions in relation to economy, efficiency and effectiveness in above (5.1-5.15). In summary, in our view:

- The potential savings identified in the LBC that can be attributed to **economy** have been significantly overstated by inclusion of an existing Police-Police collaboration project and the additional savings that might result from inclusion of the two Fire Services in West Mercia Police's current plans require further substantiation. (Emphasis added)

- Whilst there are significant issues regarding the savings identified in the LBC attributable to **efficiency**, it does appear that the proposals made in the LBC in relation to adoption of the Governance model would yield some degree of efficiency savings

- In relation to **effectiveness**, is likely that the Governance model could have a positive impact on the pace of collaboration. However, careful consideration is required to match scale and pace to risk.

5.19 We have been asked to comment specifically on the "proposed transition costs". In our view, whist some account has been made of transition (or implementation) costs in arriving at the net savings identified in the LBC,

> these are incomplete and, as a consequence, appear understated.
>
> 5.20 Notwithstanding these criticisms of the LBC, taking the 3Es together we have concluded that, on balance and subject to all the caveats listed in this report, a move to the Governance Model would be in the interests of economy, efficiency and effectiveness. (Emphasis added)
>
> 5.21 Having reached that conclusion, we would add that, given the shortcomings in the LBC identified in this independent assessment, the LBC presents no overwhelming case for the Governance model. In our view most of the proposed changes could be achieved under the other options, subject to the willingness of all the stakeholders to work together.
>
> **Public Safety**
>
> 5.22 This independent assessment has identified three operational issues where there are potential public safety concerns. There relate to the impact of change on Retained Duty Service staff and the possible consequences for network resilience, the impact of a move to a single command structure on operational resilience and the operational resilience consequences from a move to a single command centre.
>
> 5.23 Whilst all of those are issues that are covered at least in part within the LBC and all are recognised and noted as risks by the OPCC, they do have a direct bearing on implementation and transition. Hence, our view that implementation needs to match scale and pace to risk."

16. It is to be noted that in both cases, having set out their view on economy, efficiency and effectiveness separately, CIPFA considered the position "taking the 3Es together". It is apparent from the two reports that CIPFA identified no benefits in terms of absolute financial savings but regarded the composite test of economy, efficiency and effectiveness as having been met. Furthermore, in neither case did CIPFA detect any consideration which would have an adverse effect on public safety.

17. On 2 February 2018, submissions were prepared by Home Office civil servants, for the Permanent Secretary, the Secretary of State and the Minister of State, inviting consideration of the proposals from the two PCCs. In each case, official advice to the Ministers included the assessment "Economy – The case is neutral". Nonetheless, officials recommended that the Home Secretary should agree that each PCC's proposal appears to be in the interests of economy, efficiency and effectiveness, would not have an adverse effect on public safety; and agree to make an order that abolished the three existing FRAs and establish a PCC-FRA for the Cambridgeshire

PCC area and the West Mercia area as two separate PCC-FRAs, one for each existing PCC area.

18. The annex to the Cambridgeshire submission included the following under the heading "Overall Assessment….": "With a strong track record of PCC-led collaboration in the local area; the modest but achievable savings as a direct result of a change of governance…officials agree that the Cambridgeshire case is in the interests of the statutory tests". The submission in the West Mercia case includes a "Conclusion on Economy" in Annex H: "The Governance model does appear to present some opportunities for economy". Later when addressing "efficiency" the Annex to the submission notes: "to consider these savings are sufficient to cover the costs of implementation and provide some additional savings so as to conclude that there would be benefits to both economy and efficiency as a result of a transfer of governance. Do you agree?"

19. The Secretary of State accepted those recommendations. On 26 March 2018, she wrote to the PCC for Cambridgeshire approving his proposal, indicating that she considered that "it demonstrates that a transfer of governance would be in the interests of economy, efficiency and effectiveness and does not have an adverse effect on public safety". She referred to four options, one of which was to make no change. She said that the proposed "governance model option should achieve the greatest savings of the four available options".

20. The same day, she wrote to the PCC for West Mercia, in similar terms, approving his proposal to take on the governance of Hereford and Worcester FRS and Shropshire FRS. Also, on 26 March 2018, the Secretary of State announced her decisions in a written ministerial statement to the House of Commons, and the Minister of State for Policing and the Fire Service wrote to the Claimants and the relevant authorities informing them of the Secretary of State's decision. It is those decisions which are under challenge in these proceedings.

21. Pending the outcome of this challenge, the Secretary of State has agreed not to lay the orders before Parliament.

Ground 1: Submissions and Discussion

22. It is common ground that section 4A of the 2004 Act allows the Secretary of State to make an order transferring responsibility for governance of an FRS to the PCC if it appears to the Secretary of State that it would be in the interests of economy, efficiency and effectiveness for the order to be made: (s4A(5)(a)).

23. It is also common ground that, since Cambridgeshire County Council, Peterborough County Council, Herefordshire Council, Shropshire Council, Telford and Wrekin Council and Worcestershire County Council (all of which are "relevant local authorities" within the meaning of paragraph 6(6) of Schedule A1 to the 2004 Act) objected to the PCCs' proposal, the Secretary of State was obliged to obtain an independent assessment of each proposal and was obliged to have regard to that assessment in deciding whether to make a s4A order (Schedule A1, paragraph 4(3)). The (then) Secretary of State did so, before making her decision.

The Claimants Arguments on Ground 1

24. There were four limbs to the Claimants' argument on ground 1.

25. First, Mr Oldham argued that, considering the terms of s4A alone, the relevant canons of construction establish that the proposal must be in the interests of, or positively benefit, each of the "3Es" before the Secretary of State can approve it. Second, he says comparison between section 4A and other parts of the 2004 Act demonstrates that Parliament's intention was that each element had to be satisfied separately. Third, he argues that the matter is put beyond doubt by comparison with other legislative references to the 3Es. Such comparison, he says, shows that Parliament has deliberately referred to the 3Es in ways which are intended "to denote either a requirement for the presence of each, or permission for the absence of one or more, or for them to be considered in combination, or in a number of other ways." Fourth, he submits that reference to Hansard is appropriate and makes clear Parliament's intentions. He develops those arguments as follows:

26. **As to the first limb** of the argument, Mr Oldham says that it is a fundamental rule of statutory construction that an enactment, which includes its syntax, is given its plain or normal meaning. He submits that the 3Es appear in a common place syntax: a list of three nouns, the first two separated by a comma and the second and third separated by the word "and". He says that the plain or normal meaning of the statutory words here is that the proposal should be in the interests of each of the 3Es. There is no contextual uncertainty. Accordingly, before a Secretary of State can approve the proposal she must be satisfied that it is in the interest of each of those criteria.

27. Mr Oldham argues that the Defendant's case, by contrast, depends on substituting or adding words, or obliterating them. He says the meaning of the 3Es in the present context is straightforward, whereas the Defendant's case depends on replacing the 3Es with a different expression, namely "value for money".

28. Mr Oldham submits that the 3Es are "common currency" and the expression appears in many enactments, including in the 2004 Act in its original form before the amendment which added section 4A. He says that each of the 3Es is a separate and technical term and should be given its technical meaning.

29. In explaining what the three words mean in the expression "economy, efficiency and effectiveness", he referred me to the definition of those words in the National Audit Office publication cited by CIPFA. He says that the definition of the three words set out there is an accurate one, although he does not accept the way in which the NAO goes on to assesses value for money is of any relevance to the question of statutory construction before me. In particular, he says the NAO document does not assist on the proper construction of the expression "in the interests of" in section 4A(5).

30. Referring to the written evidence in the present case from Mr Matthew Watts, the Acting Deputy Head of the Police Strategy and Reform Unit of the Home Office, he said that the parties are agreed that the 3Es are different concepts although they overlap.

31. **As to his second limb**, Mr Oldham invites comparison between section 4A and other parts of the 2004 Act (and the 2017 Act, which inserted it). In particular, he refers to section 2 of the 2017 Act where there are repeated references to agreements that may

be "in the interests of the efficiency or effectiveness" of a service. That, he suggests, demonstrates that each of the 3Es requires separate consideration.

32. **As to his third limb**, Mr Oldham contrasts section 4A with other legislation which refers to the 3Es, or two of the Es. He says that other legislation has referred to the 3Es in ways which Parliament could readily have adopted in section 4A if it had intended the result for which the Defendant contends, but it chose not to. He suggests the alternatives were to refer to "a combination" of the 3Es; to use the connector "or" instead of "and"; to make the 3Es as reference criteria; to make the 3Es matters to which the Defendant was to have regard; to make the decision consequent upon an examination of the 3Es; or to refer to only two Es rather than the 3Es.

33. Section 3 of the Local Government Act 1999, for example, imposes a general duty on certain authorities which are defined by section 1 as "Best Value Authorities". A Best Value Authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Other statutes adopt other drafting techniques. Thus, for example, the expression "have regard to a combination of economy, efficiency and effectiveness" is employed in section 9A of the Transport Act 1968, section 89 of the Transport Act 1985, section 141(1) of the Transport Act 2000, section 28(1) of the Police (Northern Ireland) Act 2000 and section 54(1A) of the Railways and Transport Safety Act 2003.

34. By contrast, paragraph 16 of schedule 1 of the Political Parties, Elections and Referendums Act 2000 refers to "carrying out an examination into the economy, efficiency or effectiveness (or if he so determines, any combination thereof) with which the Commission can use their resources in discharging their functions…".

35. He referred me to a number of other statutory provisions in which he said it is apparent the legislature treated the 3Es as distinct concepts. For example, Section 47(3) of the Public Audit (Wales) Act 2004 refers to the criteria of "cost, economy, efficiency and effectiveness". He argues that if "economy, efficiency and effectiveness" were a single concept, one would expect the section to refer to "cost and economy, efficiency and effectiveness". Similarly, section 105A(1) of the Local Government (Scotland) Act 1973 provides that "the Secretary of State may request the Commission to conduct or assist the Secretary of State in conducting studies designed to improve economy, efficiency, effectiveness and quality of performance" in a discharge by a local authority of certain functions. That, he said, demonstrates that the 3Es "are three separate things and not a single thing".

36. **Finally**, Mr Oldham seeks to rely on Hansard. He suggests that the criteria set out in *Pepper v Hart* [1993] AC 593, permitting reference to parliamentary material as an aide to construction, are met. Such reference is permissible where (a) legislation is ambiguous or obscure or led to absurdity, (b) the material relied upon consisted of one or more statements by a minister or other promoter of the bill, together if necessary with such other parliamentary material as is necessary to understand such statements and their effect, and (c) the statements relied upon were clear. Hansard may also be referred to, to supply context to identify the mischief at which legislation is aimed (see Bennion section 24.12).

37. Mr Oldham says those requirements are met and the Hansard material demonstrates a deliberate choice by the promoters of the Bill and by Parliament in deciding to refer to the 3Es when deciding between the connector "and" or the connector "or". He said those passages support a conclusion that a choice of the "and" was deliberate and significant.

The Defendant's Arguments on Ground 1

38. In response, Mr Pievsky submits that a decision to make an order under section 4A(5)(a) may be lawful even if the Secretary of State is unable to conclude it will lead to less money being spent overall. He says the natural and ordinary meaning of the words used in section 4A(5) is not the same as the literal meaning of the words used. The natural and ordinary meaning of the words used flows from their context. He says Parliament was using a phrase in order to convey a concept and that phrase means something different from the constituent words that make up the phrase.

39. The context here, he argues, is that economy, efficiency and effectiveness are well recognised indicators of measuring value for money in the context of public services. He says the three constituent elements of the phrase overlap and it is to the combination of economy, efficiency and effectiveness that public authorities must have regard.

40. Second, Mr Pievsky argues that, in any event, it does not follow that a proposal that will lead to a more effective and efficient use of public money cannot lawfully be considered to be in the interests of "economy, efficiency and effectiveness". That is particularly so if the case on economy is neutral or unclear rather than substantially and obviously negative. Something could rationally be regarded as being in the interest of the economy even if it is not shown that it will lead to spending less money overall.

41. Further, Mr Pievsky argues that the explanatory notes to the Act demonstrate that Parliament's overarching intention was to improve the "efficiency and effectiveness" of police forces, including by a close collaboration with other emergency services. The consequence, he said, is that Parliament plainly intended that the Secretary of State should be able to proceed under section 4A(5) if she thought the reforms would lead to the better use of public money, even if it might not lead to spending less money overall. He says that by contrast the Claimants' approach would lead to absurd conclusions.

42. As to reference to Hansard, Mr Pievsky does not accept that the appropriate admissibility criteria have been met. He says that section 4A(5) is not ambiguous or obscure and the Claimants do not identify a clear statement of a Minister which illuminates the meaning of s.4A(5). In any event, there is nothing in the passages quoted in the Claimants' skeleton which undermines the force of the Secretary of State's case on the true meaning of s.4A(5) and there is material elsewhere in the Hansard record which points to a different construction.

Discussion and Conclusions on Ground 1

Hansard

43. It is convenient to deal with the proposed reference to Hansard first.

44. The first passage in Hansard relied on by the Claimants (in HL Vol 774 starting col 1467) records a debate on why clause 2 of the 2017 Bill (which was to be enacted to refer to "efficiency or effectiveness") did not also refer to "economy", the insertion of which had been proposed. The Minister, in reply (col 1475), said that "financial implications" would "form part of" consideration of "efficiency and effectiveness". It is right to observe that she did not say that "economy" was part of the consideration of efficiency and effectiveness or that either the 2Es or the 3Es should be considered "in the round", but I reject the suggestion that this gets even close to a clear statement supportive of the Claimants' interpretation.

45. "Efficiency and effectiveness", the 2Es, were referred to again a little later in the debate on clause 2, referring to the basis on which collaboration proposals could be instituted. In an earlier draft, the Bill had used the conjunction "and" instead of "or" and this was corrected by Government amendment in the House of Lords. The Minister said (at column 1468):

> "The noble Lords, Lord Harris and Lord Rosser rightly ask why the duty applies when the collaboration agreement would be in the interests of efficiency or effectiveness rather than both. Collaboration can lead to service improvements through either increased efficiency or increased effectiveness. Consequently, it should not be a precondition of a collaboration agreement that it should improve both. If an initiative would improve the quality of the service but not save any money, for example, we would still want the emergency services to give effect to that project."

46. Mr Oldham says it is significant that there was no suggestion that the Es should be conflated in a general test; and that it appears the difference between "and" and "or" was deliberate. In my judgment, this sort of close textual analysis of the record is not what *Pepper v Hart* permits; what is required is a clear statement as to the meaning of, or the intention behind, the particular expression in question. As Mr Pievsky puts it, the Claimants here "are seeking to rely on what the Minister, at a particular point during the debates, did *not* say, in the context of discussion of a *different provision".* I agree that that is not sufficient.

47. Mr Pievsky refers me to what Mr Watts of the Police Strategy and Reform Unit ("PSRU") in the Home Office says in his statement. Mr Watts points to the second reading of the Bill, during which the Secretary of State referred to the benefits of the PCC model of governance. She spoke about the benefit of "finding efficiencies" and ensuring "value for money for the taxpayer" in the context of the 3Es. Similarly, Lord Keen referred to the Bill not "simply" being about "value for money for the taxpayer", implicitly suggesting that value for money was one of the benefits**.**

48. In my judgment there is here no clear, unambiguous explanation in the parliamentary material that would justify reference to Hansard by either party.

The Natural and Ordinary Meaning of the Words

49. The objective for any exercise of statutory interpretation is to determine the intention of the legislature. The starting point, and often the finishing point, for that exercise is the natural and ordinary meaning of the words used. In *Pinner v Everett* [1969] 1 WLR 1266 at 1273, Lord Reid said:

> "In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature, that it is proper to look for some other possible meaning of the word or phrase. We have been warned again and again that it is wrong and dangerous to proceed by substituting some other words for the words of the statute."

50. It follows that where the meaning is clear on the face of the statutory provision in issue, there is no need to resort to other canons of statutory construction. In *R v Bentham* [2005] UKHL 18, Lord Bingham said, at paragraph 10:

> "Rules of statutory construction have a valuable role when the meaning of a statutory provision is doubtful, but none where, as here, the meaning is plain. Purposive construction cannot be relied on to create an offence which Parliament has not created. Nor should the House adopt an untenable construction of the subsection simply because courts in other jurisdictions are shown to have adopted such a construction of rather similar provisions."

51. Thus, it is not appropriate to adopt a purposive construction, to seek a meaning that serves to promote the apparent objectives of the Act, if that is inconsistent with the plain meaning of the words used in the text of the statute.

52. Further warnings of the dangers of departing from the natural meaning of words was provided by Leggatt J (as he then was) in *ZY v Walsall Borough Council* [2014] EWHC 1918 (Admin). He said at paragraph 65:

> "65. That suggestion might have force if ascertaining the intention of Parliament involved a sociological inquiry into what was actually in the minds of individual legislators. However, that would be to mistake the nature of the interpreter's task. When courts identify the intention of Parliament, they do so assuming Parliament to be a rational and informed body pursuing the identifiable purposes of the legislation it enacts in a coherent and principled manner. That assumption shows appropriate respect for Parliament, enables Parliament most effectively to achieve its purposes and promotes the integrity of the law. In essence, the courts interpret the language of a statute or statutory instrument as having the meaning which best explains why a rational and

> informed legislature would have acted as Parliament has. Attributing to Parliament an error or oversight is therefore an interpretation to be adopted only as a last resort."

53. What is the natural and ordinary meaning of the words used depends, however, not just on the dictionary definition of each word but also the syntax of the expression used, its context and a proper understanding of any technical expressions deployed. In *AG v Prince Ernest Augustus* [1957] AC 436, Viscount Simonds said at 461:

> "For words, and particularly general words, cannot be read in isolation: their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use "context" in its widest sense, which I have already indicated as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern the statute was intended to remedy."

54. The essential principles were neatly summarised, if I may say so, by Nugee J in *G4S Plc v G4S Trustees Ltd* [2018] EWHC 1749 (Ch). The judge accepted the submissions of counsel as to the principles of statutory construction:

> "19. I was referred by both counsel to the principles applicable to statutory construction. I did not understand there to be any difference of substance between them. They were summarised … as follows: (1) the general objective of statutory construction is to ascertain the intention of the legislature; (2) the natural meaning of the words used is an important guide but literal meaning should not be applied in a vacuum; (3) statutes should be construed as a whole, so that save in exceptional circumstances similar words or the same words in an instrument should bear the same meaning; and (4) technical words are given their technical meaning (see *Bennion on Statutory Interpretation* 5th ed at 22.6):
>
> "If a word or phrase has a technical meaning in relation to a particular expertise, and is used in a context dealing with that expertise, it is to be given its technical meaning unless the contrary intention appears."

55. In my judgment, two preliminary points can be made on the facts of this case. First, Mr Oldham is right to say that the 3Es is not a synonym for "best value". Given the common usage of that term, if Parliament had intended that to be the test, it would have said so. Second, as Mr Oldham accepts, although the initial presumption of statutory construction favours the grammatical meaning (see Bennion section 9.4), an expression may be a compendious phrase. However, in my judgment, "the interests of economy, efficiency and effectiveness" is not a compendious term of art,

distinguishable from its constituent elements. Each of the words may have a technical meaning, but the whole of the expression does not. Parliament uses each of the constituent elements of that expression in different ways and different combinations and there is no necessary common meaning.

56. It is instructive, as Mr Oldham suggests, to consider how the 2017 Act went about amending the 2004 Act and other statutory provisions. Paragraph 5 of Schedule 1 inserted the expression in question (the 3Es) into the 2004 Act as part of a new section 4A. That paragraph introduced the same expression as part of a new section 4H (in relation to the delegation of a FRA's functions to a chief constable). Section 8 of the 2017 Act also introduced the expression into the Local Democracy, Economic Development and Construction Act 2009 when it added s107EB to that Act.

57. By contrast, sections 2, 3 and 4 of the 2017 Act repeatedly refer to "the efficiency *or* effectiveness" of emergency services. Section 11 of the 2017 Act inserted s28B into the 2004 Act. That required the Chief Fire and Rescue Inspector for England to submit a report each year to the Secretary of State on the carrying out of certain statutory inspections. That report had to include his assessment of "the efficiency *and* effectiveness" of fire and rescue authorities in England in the relevant period. It will be apparent, that sometimes Parliament chose to use the expression "economy, efficiency and effectiveness", sometimes "efficiency *or* effectiveness" and sometimes "efficiency *and* effectiveness". In my judgment that was not accidental.

58. In *Spillers Ltd v Cardiff* [1931] 2 KB 21, the House of Lords was concerned to determine the proper meaning of the word "contiguous". At page 42, Lord Heward CJ said this:

> "The truth is that the appellants in four cases (the respondents in the third) contend for the proper and exact meaning of the word. The respondents (the appellants in the third case) seek to apply the loose and inexact meaning. For the preference urged by the latter, their counsel adduced as their chief reason that the object of this Act is derating, and that in order to further that object, and bring about as much derating as possible, this meaning of the word should be accepted. We cannot think that this is an adequate reason. Another argument was hinted at, though the various counsel had not the hardihood to advance it - namely, that in the use of any language by the Legislature one should expect the loose and inexact, rather than the correct and exact. It is true that one who spends much time in this Court might be tempted in his haste to make some such assertion. But if he allowed cynicism to be tempered with sympathy for the harassed Parliamentary draftsman, he would reflect that it is only in regard to phrases of doubtful import that this Court is called upon to apply a toilsome scrutiny.
>
> … It ought to be the rule, and we are glad to think that it is the rule, that words are used in an Act of Parliament correctly and exactly, and not loosely and inexactly. Upon those who assert that that rule has been broken the burden of establishing their proposition lies heavily. And they can discharge it only by

> pointing to something in the context which goes to show that the loose and inexact meaning must be preferred."

59. That paragraph was approved by the Privy Council in *The Mayor of Plymouth v Taranaki* [1933] AC 680 at 682.

60. In my judgment, if words are to be assumed to be "used in an Act of Parliament correctly and exactly", then "economy, efficiency and effectiveness" does not mean the same as "efficiency and effectiveness", let alone "efficiency *or* effectiveness". The use of the word "and" as the connector in s4A is significant, and the addition of "economy" was intended to add something to "efficiency and effectiveness". Bennion section 21.3 provides that:

> "(i) There is a presumption that where the same words are used more than once in an Act they have the same meaning; and
>
> (ii) There is a presumption that where different words are used in an Act they have different meanings"

61. The text in Bennion goes on to comment that "it is generally presumed that the drafter did not indulge in elegant variation, but kept to a particular term when wishing to convey a particular meaning". In *R (Jackson) v Attorney General* [2005] UKHL 56 at [76], Lord Steyn referred to an explanation provided by first parliamentary counsel as to the unique function of legislation:

> "a Bill is not there to inform, to explain, to entertain or to perform any of the other usual functions of literature. A Bill's sole reason for existence is to change the law. The resulting Act is the law. A consequence of this unique function is that a Bill cannot set about communicating with the reader in the same way that other forms of writing do. It cannot use the same range of tools. In particular, it cannot repeat important points simply to emphasise their importance, or safely explain itself by restating a proposition in different words. To do so would risk creating doubts and ambiguities that would fuel litigation. As a result, legislation speaks in a monotone and its language is compressed."

62. In my judgment, therefore, the use of the word "economy" served to add to the test imposed by s4A. Mr Pievsky agreed in argument that had s4A(5) read "in the interests of (i) economy, (ii) efficiency and (iii) effectiveness", there would have been no doubt that the proposal must be shown to be in the interests of economy and of efficiency and of effectiveness. However, in my judgment, that is precisely the effect of the syntax deployed in s4A(5), and there is no good reason for adopting any other meaning.

63. It is right to say that, if the meaning of a statutory expression is unclear or ambiguous, the court will consider the purpose for which the provision was designed. In *R (Quintavalle) v Secretary of State for Health* [2003] 2 AC 687 Lord Bingham said at [8]:

> "The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. Such an approach not only encourages immense prolixity in drafting, since the draftsman will feel obliged to provide expressly for every contingency which may possibly arise. It may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

64. However, in my judgment, the meaning of the expression is clear; the proposal must be shown to be in the interests of economy and of efficiency and of effectiveness. It follows that, whilst the expression must be considered as a whole, the Act requires that individual consideration is given by the Secretary of State to each of the 3Es. Thus far in the analysis, I am with Mr Oldham.

Economy

65. An important element of that consideration, however, is the meaning of the word "economy" in this context.

66. The NAO publication, to which both parties referred, provides a useful starting point for the definition of economy as "Minimising the cost of resources used or required". But "minimising cost" does not necessarily mean a net decrease in cost. Instead, it imports a recognition that whilst some costs are to be expended, they are to be kept as low as is consistent with achieving the objective in view. Even the expression "spending less", used elsewhere by the NAO, does not necessarily mean a reduction in total cost; it may mean spending less than would otherwise be necessary to obtain the required advantage or the intended outcome, or spending the same to achieve more, so as to achieve a per capita saving. I cannot see that the word "economy", or that description of it in the NAO publication, means that a proposal must necessarily result in an overall fall in total expenditure.

67. Given the particular expression in issue in the present case, counsel for both parties, understandably, placed reliance on the decision of the House of Lords in *Bromley London Borough Council v GLC* [1983] AC 764. It is of relevance both as to the meaning of the word "economy" and the meaning of the 3Es expression.

68. In *Bromley*, the House was concerned with the issue of a precept to all London Boroughs to levy a supplementary rate to enable the Greater London Council ("GLC") to finance a reduction in bus and tube fares. The House had to consider the meaning of s1 of the Transport (London) Act 1969. At 814, Lord Wilberforce said:

> "The general duty of the GLC. is stated, in section 1, as being to develop and encourage measures which will promote the provision of "integrated, efficient and economic transport facilities and service for Greater London"
>
> There has been a good deal of argument as to the meaning of these words, particularly of "economic": no doubt they are vague, possibly with design. It has been strongly argued that the word means something like "on business principles" but for present purposes I will take it to mean "cost-effective," or "making the most effective use of resources in the context of an integrated system" – the meaning most favourable to the G.L.C." (my emphasis).

69. At 815G, he said:

> "…Part II of this Act, containing sections 4-15 is headed "The London Transport Executive." The executive is set up by section 4 "For the purpose of implementing the policies which it is the duty of the council under section 1 to develop." Sections 5 and 7 are critical for present purposes so I quote the relevant parts:
>
> "5 (1) Subject always to the requirements of section 7(3) of this Act, it shall be the general duty of the executive to exercise and perform their functions, in accordance with principles from time to time laid down or approved by the council, in such manner as, in conjunction with the railways board and the bus company, and with due regard to efficiency, economy and safety of operation, to provide or secure the provision of such public passenger transport services as best meet the needs for the time being of Greater London."
>
> Here we find another triad of words with "economy" instead of "economic". Again, much fine argument has been given to them. If it makes any difference, I would read the words "of operation" as related only to "safety" but, in any case, I think that the triad must be taken as a whole. They seem to me to point rather more clearly than does section 1 in the direction of running on business like or commercial lines, but it would be reading "economy" too narrowly to treat it as requiring the executive to make, or try to make, a profit. It does, on the other hand, prevent the L.T.E. from conducting its undertakings on other than economic considerations…"(Emphasis added here and below)

70. In my judgment, the last clause underlined has particular resonance in the present case.

71. At 825e, Lord Diplock said:

> "Bromley in their turn relied upon the requirement that in providing public passenger transport services the L.T.E. should have "due regard to efficiency, economy, and safety of operation." "Economy" in this context, it was suggested, meant that the L.T.E. was to do its best to cover the expenses of its operation by the fares it charged to passengers. That is to say, that it must maximise the income generated from the operation of its undertakings at least to the extent necessary to avoid an operating loss and to build up a general reserve. For my part, I am unable to accept that in the context of section 5(1) "economy" bears this meaning. In my view, which is in respectful disagreement with some of your Lordships, the words "of operation" apply to "efficiency" and "economy" as well as to "safety." If they applied to safety only, they would be otiose. What the whole phrase means is that the services must be operated efficiently, the buses and trains must be mechanically sound and run on time; they must be run economically, avoiding over-manning and the running of excessive numbers of buses or trains having regard to the number of passengers making use of the services: and they must be run safety, steps must be taken to prevent avoidable accidents."

72. At 832E, Lord Keith said:

> "So far, the executive would appear to be in no different position than were Birmingham Corporation in *Prescott* [1955] Ch 210 so that the principle of that case would apply it. The word "economy" in section 5(1) goes some distance to reinforce that view. It is not, in my opinion, to be read as linked to the words "of operation" though I think if of little importance whether it is or not. It conveys the idea of careful use of resources, so as to get the best out of them. The resources of the executive include the revenue producing capacity of its undertaking, and thus support is lent to the concept of running the undertaking on ordinary business principles."

73. Again, the underlined words seem to me particularly important in the present context.

74. At 852, Lord Brandon said:

> "…I should not myself be prepared to rest my preference for Bromley's case on the two closely linked questions of construction referred to earlier on the use in sections 1 and 5(1) of the words "economic" and "economy" respectively. I think

> that these words are used in order to ensure that both the G.L.C. and the L.T.E. have proper regard, in the performance of their functions, to the principle of cost-effectiveness or value for money, and do not of themselves throw any light on the sources of the moneys in the expenditure of which that principle of cost-effectiveness or value for money is to be applied."

75. In my judgment, similar considerations apply here. The expression "in the interests of economy, efficiency and effectiveness" does require consideration of each of the Es. But it does not demand proof that the proposal will necessarily result in some overall savings to the public purse. "Economy" has a broader meaning than that; in my judgment, it means careful management of available resources or, in other words, keeping expenditure as low as possible consistent with achieving the objective in view.

76. It follows that I agree with the submission of Mr Pievsky that something can properly be regarded as being "in the interests of economy" even though it is not shown that it will lead to spending less money overall. He provides a powerful example: a proposal that would be likely to increase a budget of £100m by £100, in order to achieve substantial efficiencies, could fairly be said to be in the interests of both economy and efficiency. It would constitute careful management of available resources and would mean keeping expenditure as low as possible consistent with achieving the objective in view. As he correctly submits, for something to appear to the Secretary of State to be in the "*interests*" of economy, a value judgment is required, concerning *acceptable* levels of spending against the gain made.

77. Although it is not necessary for the conclusion set out above, I take comfort in the additional point Mr Pievsky makes as to the absurdity of the position that would obtain if the construction of the statutory provision I have reached was incorrect. He postulates a proposal submitted pursuant to s.4A(4), which shows that using the same amount of money, the relevant services will be vastly improved, and will become vastly more efficient (with no adverse implications for public safety). On the Claimants' approach, it would be unlawful for the Secretary of State to facilitate this reform, under s.4A(5)(a), because it brings with it no absolute savings.

78. The difficulty with the conclusion set out above as to the proper construction of s.4A(5) of 2004 Act is that it is consistent with the primary case advanced by neither party. Mr Oldham invited me to conclude that "economy" requires the Secretary of State to show positive savings; Mr Pievsky contended, as his principal case, that the words "economy, efficiency and effectiveness" could be considered "in the round", as a composite test.

79. Mr Pievsky, however, did advance a secondary case, both in his skeleton and his oral submissions, to the effect that it does not follow that a reform which will lead to a more effective and efficient use of public money on a particular public service cannot lawfully be considered to be in the interests of economy, efficiency and effectiveness. As noted above, he argued that, even if the Claimants are right about the meaning of the 3Es, there is "no reason in principle why a reform which will lead to the more effective and efficient use of public money on a particular public service cannot lawfully be considered to be in the interests of "economy, efficiency and

effectiveness" simply because it does not result in an absolute saving in that particular case."

Consequences of that construction

80. It is to be noted, however, that the test adopted by the Secretary of State in reaching the decisions under challenge was the composite test of whether the proposals were in the interests of "economy, efficiency and effectiveness". In the course of his submissions following receipt of the first draft of this judgment, Mr Oldham submitted that it followed that the Secretary of State had applied the wrong test, that her decisions were therefore unlawful and that the Claimants were therefore entitled to appropriate relief, which would consist, at least, of a declaration of illegality.

81. I do not agree.

82. Section 31(2A) of the Senior Courts Act 1981 provides that the High Court must refuse to grant relief on an application for judicial review if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred. In my judgment, that is highly likely here.

83. In *R (Harvey) v Mendip District Council* [2017] EWCA Civ 1784, a planning case, Sales LJ (as he then was) said:

> "…it is … telling that none of the decision-makers in this case have felt able to put before the court any witness statements to support the contention that they would have granted outline planning permission for the development even if they had appreciated that it was in breach of the Local Plan. In the absence of submissions and evidence from the Council, I simply do not know whether the decision-makers on the Planning Board would say there were material considerations which might have caused them to think it right to depart from the Local Plan and if so what those considerations were."

84. By contrast, such is the evidence adduced in this case, that I am in a position to form a very clear judgment of the Secretary of State's likely response to the statutory test as I have interpreted it.

85. The Defendant here did not invite me to apply s31(2A) and advanced no argument in support of it until the resumed hearing, after circulation of the first draft of this judgment. This is, accordingly, not a case (like *R (PCSU v Minister for the Cabinet Office* [2017] EWHC 1787) where the respondent has, ex post facto, produced evidence that the outcome would be the same even if the corrected legal test had been applied. I do not therefore need to treat the available evidence with any particular scepticism.

86. The evidence adduced in this case makes it plain, in my judgment, that whilst the Secretary of State did not, in fact, identify and apply the right test, it is inevitable she would have come to the same conclusion had she done so. That follows in my judgment from the approach she, her departmental advisers and CIPFA adopted to the evidence.

87. As noted above, in both the cases CIPFA provided their views on each of the 3Es separately before considering them collectively. In the Cambridgeshire case, CIPFA noted, at 4.82, that "the LBC sets out no differences between the…options in relation to economy". But the report concluded that on balance "the estimated economic benefits are not an unreasonable estimate of the *reduction in costs that could be achieved*." In the West Mercia case, CIPFA noted that the proposal "does appear to present some opportunities for economy". Whilst it was noted that "there are significant issues regarding the savings identified in the LBC attributable to efficiency, it does appear that the proposals made in the LBC in relation to adoption of the Governance model *would yield some degree of efficiency savings*". No absolute financial savings were identified but CIPFA's approach was wholly consistent with a conclusion that the proposals here kept expenditure as low as possible consistent with achieving the objective in view.

88. The submission to Minister in the Cambridgeshire case included the assessment "Economy – The case is neutral". Nonetheless, as recorded above, officials provided assessments that "*modest but achievable savings* as a direct result of a change of governance" were possible. The submission in the West Mercia case includes a "conclusion on Economy" in Annex H to the effect that "the Governance model does appear to present *some opportunities for economy*". Later when addressing "efficiency" the submission noted that savings would be sufficient to cover the costs of implementation and provide *some additional savings* (emphasis added here and below).

89. The Secretary of State accepted those recommendations. Her letter of 26 March 2018 in the Cambridgeshire case referred to four options, one of which was to make no change. She said that the proposed "governance model option should achieve the *greatest savings* of the four available options", implicitly acknowledging that, compared with the alternatives (including "no change") the proposals would keep expenditure as low as possible. In her letter of the same date in the West Mercia case she said she believed "there are *clear opportunities for savings* to be made", again consistent with the test I have held applies.

90. In those circumstances, a requirement that the proposal being considered kept expenditure as low as possible consistent with achieving the objective in view, or that the proposal amounted to careful management of available resources, would inevitably have been met, on the evidence before the Defendant, with the same answer.

91. Mr Oldham suggested that, even if this were my view, I should hold that the exception in s31(2B) applies. That provision provides that "The court may disregard the requirements in subsection (2A)(a) and (b) if it considers that it is appropriate to do so for reasons of exceptional public interest". I do not so regard this case. There is no evidence of "exceptional public interest" and I can detect none.

92. For all those reasons, the first challenge must fail.

Ground 2 – Public Safety

The Claimants' Arguments on Ground 2

93. Paragraph 4(3) of Schedule A1 requires that where there is opposition from a relevant local authority to a proposal the Secretary of State must obtain and have regard to an independent assessment of the proposal. The independent assessment in this case was that provided by CIPFA.

94. Mr Oldham contends on behalf of the Claimants that the Secretary of State could not rationally decide that CIPFA had sufficient expertise in public safety to provide the required independent assessment.

95. He acknowledges departmental officials acting on behalf of the Secretary of State considered the relevant information on public safety which was before them. But, he says the Act requires an independent assessment, and he says that assessment must be provided by someone with requisite expertise. There is, he says, no evidence that CIPFA have such expertise. He refers to the clarification recorded in the CIPFA report that "in terms of public safety, we are only expected to comment where we identify something on which comment is required." He said the inference to be drawn from that is obvious. Putting it bluntly he said that "There is nothing to show that CIPFA would really know what to look out for". Accordingly, the Claimants argue that the Secretary of State acted irrationally in relying on CIPFA reports as independent assessment of the issue of public safety as required by section 4A(6).

The Defendant's Arguments on Ground 2

96. In response, Mr Pievsky points out that it is not the Claimants' case that the proposals would, in fact, have an adverse effect on public safety. Instead he says, the Claimants are arguing that the wrong process was used, in that no sufficiently expert assessment was conducted. He says that the statutory scheme affords the Secretary of State discretion as to both the nature of the independent assessment and the selection of the assessor. He says that what the 2004 Act requires is an assessment "of the proposal". He says, rationally it can be expected to address in particular those aspects of the proposal which are contested.

97. There is however, he argues, no automatic rule that the assessment should focus on any particular aspect of a proposal. How it is commissioned and what areas it should focus on is something for the Secretary of State to decide. Where, as here, a proposal is advanced on the basis of the 3Es and the objections to, and analysis of, the proposal focused on the business case, the Secretary of State can properly and rationally commission an assessment from a body such as CIPFA. Since neither the proposal nor the responses to the proposal raised substantive issues as to public safety, it was rational for the Secretary of State to invite a body such as CIPFA to concentrate primarily on the business case.

98. In any event, he suggests CIPFA did have expertise in public safety and had the ability and willingness to acquire information about that topic as required.

Discussion and Conclusions on Ground 2

99. As set out above, paragraph 4(1) and 4(3) of Schedule A1 requires the Secretary of State to obtain an independent assessment of the proposal and have regard to it in deciding whether to make an order in response to the proposal. The statute says nothing about the nature of the independent assessment or the choice of assessor. The

Explanatory Notes to the Act indicate, at paragraph 360, that "such an independent assessment may be secured from HMIC, the Chief Fire and Rescue Adviser or any other such independent person as the Secretary of State deems appropriate".

100. It is plain, therefore, that the Secretary of State has a broad discretion in the selection of the assessor and her decision is challengeable only on rationality grounds.

101. The Chartered Institute of Public Finance and Accountancy, CIPFA, were identified as the appropriate body to conduct the independent assessment. CIPFA is a professional accountancy body. There is no challenge to their independence. The complaint is as to their expertise in safety matters. As the Defendant observes, there was and is no evidence that the proposal would in fact have an adverse effect on public safety. But Mr Oldham is entitled to observe that the Secretary of State "doesn't know what he doesn't know" and one of the purposes of the independent assessment might be to detect unrecognised hazards.

102. However, the assessment required is an assessment of *the proposal*. The proposal emerges at the end of a process of consultation with the relevant interested parties, the purpose of which, self-evidently, is to tease out into the open weaknesses and risks associated with the plans. It is entirely sensible, in my judgment, for the Secretary of State to require the assessor to look particularly closely at those aspects of the proposal that were controversial during the consultation or are contested by those with an interest.

103. Here, each proposal was focused on the 3Es and advanced a particular business case. There were objections to those proposals and each business case. As Mr Pievsky points out, the Ministerial submission recommending CIPFA's appointment in the Cambridgeshire case noted that the relevant local authorities did not express a single overarching concern, but were critical of some of the cost savings and implementation costs claimed by the PCC. In relation to West Mercia, the Ministerial submission recommending CIPFA's appointment noted that, "a similar theme runs across all the objections from the local authorities – the lack of financial detail within the initial business case".

104. In my judgment, there is nothing remotely irrational, in those circumstances, in the Secretary of State choosing as an assessor someone, or some body, with the experience and expertise necessary to conduct a proper appraisal of what is proposed and what is contested. What was required as an assessor was a body able to provide expert opinion on that proposal and on the objections to it.

105. There is no evidence to suggest that the selection of the assessor and the fixing of its terms of reference were exercised other than in a careful and conscientious manner; in fact, the evidence of Mr Watts speaks to the contrary.

106. Reflecting section 4A(6), CIPFA was expressly instructed to consider "whether there would be an adverse effect on public safety" if the proposal was implemented. They made it clear in their report that their instructions included the provision of a view on whether there would be any adverse effect on public safety in the event of the proposal being accepted. Whilst their expertise was not primarily in public safety, they had experience of consultancy work with local government and the police. As Mr Pievsky puts it "the CVs of the various CIPFA consultants demonstrate a wide

range of experience across sectors with important public safety dimensions, including in…policing and fire".

107. CIPFA were provided with a list of experts whom they might consider consulting, including those with operational fire expertise. They interviewed, amongst others, the relevant Chief Fire Officers and councillors serving as members of the Claimant FRAs. Accordingly, they put themselves in a good position to receive reports of concerns that might affect public safety. It is evident that, in fact, they were successful in keeping a weather-eye open to the possibility of the proposals affecting public safety; in the West Mercia case they identified three operational issues where there were potential safety concerns; in the Cambridgeshire case they identified no public safety issue on which comment was required.

108. In my judgment, it is impossible in those circumstances, to characterise their selection as irrational. It follows that Ground 2 must also be rejected.

Conclusion

109. For all those reasons, this judicial review must fail.

110.