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Baroness Goldie DL
Minister of State
Ministry of Defence
Main Building
Whitehall
London SW1A 2HB

17th February, 2020

Dear *unsel,*

Thank you for your response to the QSD on 27th January on the Reserve Forces' and Cadets' Associations. In your opening words you kindly paid tribute to the role of the RFCAs in three areas and described us as a key partner. You also recognised that this is 'thanks in no small part to the commitment of their vibrant and active voluntary membership and executive staff, the regional networks, and the links that the RFCAs have within their communities.' I find it a stretch to believe, as the MOD apparently does, that that membership and those links would survive the transformation proposed under the RFCA review.

The RFCA members volunteer and freely give up their time and energy to support and promote the wellbeing of the nation's Armed Services and their people. It is something all take seriously and value. Not least, one of the drivers is that they feel they have a stake in decision making and can elect the people who volunteer to serve on the regional and national boards and sub-committees. They also receive the recognition that comes with belonging to something which has a relationship to the Crown through the Lord Lieutenant, has stood the test of time since 1908 and has been constituted under the law of the land (most recently, Schedule 4, The RFA 96) with Crown status.

It is simply unrealistic to believe that people would be equally willing to serve if downgraded to the status of 'associates', divorced from their committees, which are reduced to an advisory status with the positions of their chairs and members appointed from outside under Cabinet Office rules. Soundings have already made it clear that that would not cut it for the majority of them. There is a clear parallel with what happened to St John Ambulance, which underwent a very similar restructuring a decade ago, converting its volunteer-controlled county hierarchy into advisory bodies and replacing them with a network of regional chief executives reporting directly to the national chief executive, just as the draft review report proposes for the RFCAs.

More widely, several Lord Lieutenants have intimated that they would not wish to be a president of an advisory council to a regional directorate of a centralised NDPB, whose key personnel were selected from outside Under OCPA rules and probably paid — in effect a quango, a different beast indeed to a constituted Association, governed by experienced volunteers, mostly with military service and drawn from across places and communities they represent.

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The Report makes sweeping and unsubstantiated reference to retention of the wider memberships of RFCAs but does not differentiate or address adequately the much smaller element thereof who actually sit in effect as NEDs on boards and committees, usually with highly relevant specialist skills. These are the people who willingly commit a considerable amount of time and effort in preparation and attendance, all on an unpaid pro bono basis in contrast to what they can and do earn 'as NEDs and professionals elsewhere.

These NEDs bring highly relevant civilian skills in finance, law, property and general management et al, with military backgrounds as a bonus. It would fly in the face of all that MOD is trying to achieve with the Military Covenant and send a most unfortunate message if military service were seen to be effectively discriminated against. If OCPA-regulated NEDs were to be recruited in addition, it would create an utterly untenable and invidious position to have well qualified, thoroughly familiar, but unpaid NEDs sitting alongside new NEDs recruited and paid for their lack of familiarity. There is little doubt that we would lose the essential expertise of these volunteer NEDs, and one is left with the disturbing impression that this may actually be the intention in advocating the OCPA model.

The draft Report does not address the inapplicability of the simple binary OCPA board model of exec and non exec to an RFCA board. At RFCA level, it is straightforward enough to define the Execs as the Chief Executive (CE) and his directors of delivery and finance, and some of the majority NEDs as the serving or former officers with relevant civilian careers and qualifications who also chair the finance and property advisory boards - unpaid. However, there are other board Chairs and members, such as several representative unit COs, single Service representatives and the Army's Regional Deputy Commanders, some of whom are paid as regulars or reserves, and some not. They are not execs, so they must be non execs, but hardly amenable to open recruitment, so it looks as though the principle of non OCPA NEDs is already established by default — unless they too are to become casualties, in which case we really shall have lost the plot, and the RFCAs. The position becomes even more complex at Council level, where We have a board on which the majority are unpaid volunteer NEDs. Are they too all to be replaced, thus losing the Council as well?

With respect, the inapplicability of the Simple binary OCPA board model has not been addressed or thought through in the draft Report. The essential point to be stressed here is that the RFCA boards already have a Majority of high-quality independent NEDs with relevant outside experience; they do not need to go looking for more. They already perform the essential NED governance role of holding the execs to account, whilst acting as a unitary board with collective responsibility and chairing board committees.

The majority of the 'Issues' flagged at s2.3 of the draft Report relate to the way in which MOD deals with the RFCAs, citing diversity of funding sources and need for SLA improvement in particular. These issues, like virtually all others in the Report, would be applicable regardless of ALB status, and are indeed recognised by the RFCAs who are keen to assist with what in many cases are primarily internal Departmental matters. We and the MOD are agreed on the same outcome - clarity and a proper legal foundation for the Council, proper controls of public money and an effective Council and Boards. We differ on the means to achieve it.

Legal Status

In your speech you also expressed concern that constituting the Council of RFCAs as a legal entity in its own right would not achieve the level of financial accountability and control which the civil service seeks. Could I ask you to reconsider that? The draft report claims at para

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2.10.2 that "The Cabinet Office outlines four possible circumstances where it may be acceptable for a public body to be unclassified. The RFCAs do not meet any of these".

The Cabinet Office's handbook: Classification of Public Bodies: Guidance for Departments makes clear, however, that exceptions can be made. It says:

"It is possible that for reasons associated with function or services, there may be a small number of ALBs that cannot be classified into one of the main categories without adversely impacting on the body's ability to fulfil those functions / deliver those services".

Crucially, for the reasons just outlined, I believe classification will have an adverse impact on the RFCAs key strength — its localism, networks and links into the regional communities.

The CRFCA has a copy of an email dated 4th October 2007 from the Propriety and Ethics Team at the Cabinet Office (attached for your ease of reference). Then, it was the Cabinet Office's view that: "the CRFCA/RFCAs occupy a unique position within the central government sector and do not fall into any of the existing administrative classifications. In particular, they are not (underlined in the email) NDPBs....some of the NDPB controls such as those on appointments would not be appropriate for the CRFCA/RFCAs".

The draft Report offers no new evidence as to what might have changed or become 'wrong' subsequently with the current construct and why it therefore has to change now. Indeed, there is even confirmation within it of their uniqueness.

With respect, it is not ALB categorisation per se that is the key issue; it is the lack of legal status of the CRFCA and its consequent legal and financial ramifications. Whilst the current financial hierarchy is well established and has not caused any difficulties in practice, we quite understand the concerns in principle of PUS as Departmental Accounting Officer and are agreed of the need to address this. At present, the Council is theoretically the creation of and legally subordinate to the individual RFCAs and we recognise that this must be rectified to align with and reinforce the flow of financial and governance accountability.

With willingness on all sides, it should not be beyond our collective wit to devise a form of words in the RFA 96 and associated Schemes, Frameworks et al to set the CRFCA on a firm legal footing, in similar terms to the RFCAs, who would retain their current essentially discrete identities, whilst thus being clearly defined as financially subordinate to the Council, thus not necessitating any change to ALB status, and simply resolving matters such as 'no geographical area'. This could be by a process somewhat similar to the Defence Reform Act 2014 that established the RFCA External Scrutiny team.

Managing Public Money

We note the MOD's concerns over the need for 'full line of sight' of the management of allocated public money and what appeals to them to be a lack of clarity around CRFCA's ability to hold the budget for the RFCAS.

Nevertheless, the Cabinet Office's handbook also goes on to say: *"such unique and unclassifiable entities will be allowed to remain administratively unclassified, in exceptional circumstances, so long as they have appropriate governance and accountability structures in place".*

To this end, PUS has appointed the Chief Executive (CE) of CRFCA as the Accounting Officer and has written a letter setting out his responsibilities and duties for managing public money. The CE, in turn, issues similar letters to the 13 CEs of the RFCAs.

The tasks and outputs carried out by the RFCAs are specified in a number of documents - Defence Council Policy Guidance through to the CRFCA Corporate Plan and the CRFCA Annual Business Plan. The latter two documents are approved by the MOD's Customer Board. RFCAs then produce Annual Management Plans. In parallel, there are five Service Level Agreements held with the ACDS IRF&C, Royal Navy, Army, Royal Air Force and Defence Infrastructure Organisation (DIO), against which resources are allocated. The RFCAs are held to account at the hi-annual Customer Board for its delivery against these specified outputs.

There is further clarification of the responsibilities of Accounting Officers in Arm's Length Bodies in section 3.8 of Managing Public Money, particularly around the sensitivities and role of the Accounting Officer in an ALB governed by an independent board, as is each RFCA. The circumstances are exactly as defined and acceptable in s3.8.5, with the enforcement measures of s3.8.6 already firmly reflected in the hierarchy of delegations from PUS to CE CRFCA and onwards to CEs of RFCAs. Chairs, CEs and Board members alike are all well aware of their clearly defined obligations, and their conformity with s3.8 which defines and endorses the regularity and propriety of exactly this structure. Given all this, I have to say, it is hard to see what further 'line of sight' is required.

In summary, the RFCAs accept the need for legal changes to formalise and strengthen the role of the Council and the role of the national and regional chief executives as accounting officers and would be delighted to work with you on that. Moreover, we are ready and willing to implement the many detailed and constructive recommendations in the draft Report. However, we believe that these improvements can best be achieved without the adverse consequences of a change in ALB status.

The proposals in the RFCA review to convert the RFCAs to NDPB status, and make appointments by OCPA rules, replacing elected volunteers with paid quango members, are unnecessary and would destroy the volunteer ethos which brings so much to Britain's reserves, cadets, and wider Defence. We must not let the procedural quest for administrative tidiness put at risk the bigger strategic outcomes that our customers all recognise as being delivered so effectively and efficiently through the current highly motivated volunteer structure. As their Lordships were unanimous in stressing, "it ain't broke... "

Pat Wilson,

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Rupert

/Enclosure

Classification

Director-CEDEP Council Of RFCAs

From:

Sent: 09 December 2008 19:37

To:

Cc:

Subject: Release-Authorised: Classification of CRFCA/RFCAs

Importance: High

Dear , as requested please find set out below the Cabinet Office full explanation on my submission on RFCA classification in 2007. I hope that this will inform you on the decision to move our GiA out of budget in the MOD Winter Supplementary. This ruling informed the MS&FM, the FF and RFCA Regs 2008.
Warm regards

From:

Sent: 04 October 2007 13:26

To:

Cc:

Subject: Release-Authorised: Classification of CRFCA/RFCAs

Thanks . This is very helpful and is in line with my understanding of the outcome of this morning's meeting.

I will keep you informed of any developments with regards the Council of the RFCAs.

From:

Sent: 04 October 2007 13:22

To:

Cc:

Subject: Classification of CRFCA/RFCAs

I am writing to confirm our position on the classification of the CRFCA/RFCAs. This is based on our discussions this morning and on the submission provided by .

The legal position of the CRFCA/RFCAs seems quite clear - they are established under the Reserve Forces Act 1996 and have Crown status. For national accounting purposes, I understand that HMT/ONS have classified the CRFCA/RFCAs to the central Government sector. This seems appropriate. The issue we have been considering is how we should classify CRFCA/RFCAs for administrative purposes. The Cabinet Office view is that CRFCA/RFCAs occupy a unique position and do not fall into any of the existing administrative classifications. In particular, they are not NDPBs. Crown status

10/12/2008

includes a closer relationship with central Government than is typical for NDPBs. Although based on our discussion, some of the NDPB controls - such as those on appointments - would not be appropriate for the CRFCA/RFCAs. We did agree, however, that the executive NDPB governance framework might be a useful model for the CRFCA/RFCAs to consider when examining their own governance arrangements (and I note in the draft MS/FM that some PB controls have already been highlighted as good practice and incorporated in the MS/FM). As regards how we would refer to the CRFCA/RFCAs, I think we would simply refer to them as central government bodies, set up under the Reserve Forces Act 1996, with Crown status.

We did, however, speak about plans to establish the CRFCA as a company limited as guarantee. As discussed, this could have an impact on the classification of the CRFCA and bring it closer to the ND model. If these plans are progressed, we would want to re-consider the classification of the CRFCA (but not the RFCAs).

Hope this is helpful. Happy to discuss.

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