

## **WEST MIDLANDS FIRE AND RESCUE AUTHORITY**

**12 DECEMBER 2022**

### **1. BUSINESS CONTINUITY ARRANGEMENTS – SCRUTINY REVIEW**

Report of the Chair of the Scrutiny Committee

#### **RECOMMENDED**

- 1.1 THAT Authority reject Officers' recommendations, made on 10 October 2022, to employ either an External Contractor or Contingency Workers (either internal or external) in the event of Industrial Action.
- 1.2 THAT Officers make further efforts to understand the number of operational staff likely to strike – recognising that staff have no requirement to provide this information.
- 1.3 THAT Officers provide further detail on the training requirements and competencies of external resilience contractors.

### **2. PURPOSE OF REPORT**

- 2.1 To report back the outcome of the Scrutiny Review of Business Continuity Arrangements to Authority, requested on 10 October 2022 and undertaken on 7 November 2022.

### **3. BACKGROUND**

- 3.1 Corporate Risk 6.1, regarding Business Continuity, was first elevated by Officers to 16 (Red) its highest level, in June 2022. A verbal update on this was provided to the Audit and Risk Committee (A&R) on 18 July 2022, and a written report requested by A&R was taken on 26 September 2022. This report "Update on Corporate Risk 6.1 – Business Continuity Arrangements" outlined the reasons why CR6.1 had been elevated, and proposed steps to mitigate this risk were shared with the Committee.
- 3.2 The matter was referred to the full Authority Meeting on 10 October 2022. That report "Business Continuity Arrangements" similarly set out

the reasons for the escalation of CR6.1 and proposals to mitigate the risk by either employing Contingency Contracts or an External Contractor. The employment of an External Contractor, while an operational matter covered by Officer delegations, could incur costs in excess of £250,000 limit requiring authority approval. The report also highlighted the input from the Home Office/National Resilience Assurance Team (NRAT), which had also “Red” rated WMFS’s business continuity arrangements.

- 3.3 Authority referred the matter to the Scrutiny Committee for a review. This mirrored a similar review of similar proposals undertaken in November 2019.
- 3.4 Scrutiny Review invited oral and written evidence from a range of relevant stakeholders including WMFS Officers, Representative Bodies, external contractors, other FRS and the Home Office. The Committee met on 7 November 2022 to consider the written evidence and hear from witnesses. The full minutes of that session can be found in **Appendix 1**. The full terms of reference for the review can be found in **Appendix 2**.

#### 4. **SCRUTINY REVIEW FINDINGS**

- 4.1 Scrutiny Committee questions Wayne Brown, Deputy Chief Fire Officer, on behalf of the service’s Strategic Enabling Team, Steven Price-Hunt, Brigade Secretary, on behalf of the Fire Brigades Union and Paul Hitchen on behalf of the National Resilience Assurance Team (NRAT).
- 4.2 Scrutiny Committee also considered written evidence ([available from CMIS here](#)) from all three parties named above, as well as evidence from other Fire and Rescue Services (FRS) who operate various contingency arrangements either through contingency contracts or external resilience providers.
- 4.3 Following consideration of the evidence, the Scrutiny Committee voted to reject each of the options put forward by officers. It was the view of members that the current approach, relying on volunteers and non-striking staff, is preferable to the options outlined.
- 4.4 Although the options were rejected, Members have requested that officers make further efforts to determine how many staff are likely to take industrial action in the event of a successful ballot, as this is key intelligence in judging the suitability of current requirements. It was

recognised by members, following feedback from both Officers and Representative Bodies, that employees have no requirement to provide such information and that officers must ensure such requests are not regarded as harassing staff.

- 4.5 Members also requested further information be provided to the authority on the training requirements for contingency staff, be their internally employed or provided by an external provider, as this was not provided in evidence.

## 5. **EQUALITY IMPACT ASSESSMENT**

- 5.1 In preparing this report an initial Equality Impact Assessment is not required and has not been carried out.

## 6. **LEGAL IMPLICATIONS**

- 6.1 The West Midlands Fire and Rescue Authority (WMFRA) have a legal duty as detailed in Part 2, section 7-9 of the Fire and Rescue Services Act, 2004, the FRA must make provision for responding to fires, road traffic accidents and emergencies.
- 6.2 The Civil Contingencies Act (CCA), 2004 also requires Category 1 responders to maintain business continuity plans to ensure that they can continue to deliver key services in the event of an emergency.
- 6.3 Under the CCA, CFOs have target duties to mitigate community risk and if, having taken all available steps, the arrangements are not satisfactory then CFOs have a legal duty to declare this position via the Local Resilience Forum.

## 7. **FINANCIAL IMPLICATIONS**

- 7.1 The Options considered by Scrutiny Committee would require additional expenditure if enacted. In the case of the employment of external contractors this would constitute spending above the current £250,000 limit identified under the scheme of delegations as requiring Authority approval.
- 7.2 Any additional costs of implementing potential mitigation measures considered by Scrutiny Committee are not currently included within the agreed service budget for 2022/23, so these costs would be in addition

to existing expenditure plans. As it stands no additional funding is available from central government in the event of strike action.

## 8. **ENVIRONMENTAL IMPLICATIONS**

- 8.1 In preparing this report an Environmental Impact Assessment is not required and has not been carried out.

## **BACKGROUND PAPERS**

- [Minutes of the Audit and Risk Committee - 18 July 2022](#)
- [A&R Report, Update on Corporate Risk 6.1 - Business Continuity Arrangements, Monday 26 September 2022](#)
- [Fire Authority Report, Business Continuity Arrangements, 10 October 2022](#)

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Cllr Sybil Spence  
Chair of WMFRA Scrutiny Committee

## **Appendix 1 – Minutes of Business Continuity Scrutiny Review Session, 7 November 2022**

### **Scrutiny Committee Working Group – Business Continuity Arrangements**

Tom Embury, Deputy Clerk, provided an overview of the Scrutiny Committee Working Group – Business Continuity Arrangements report. He advised that the matter had been referred to the Committee by Fire Authority on Monday 10 October 2022. Appendix 1 of the report outlined the proposed options taken to Fire Authority. Appendix 2 of the report outlined the Terms of Reference (TOR) for the Review. The Committee were advised that all those listed within the TOR had been invited to provide both written and verbal attendance to the Committee.

### **WMFS Service Evidence**

Wayne Brown, Deputy Chief Fire Officer (DCFO), was invited to present the evidence on behalf of the Service. He advised the Committee that the West Midlands Fire and Rescue Authority (WMFRA) had key responsibilities under the following principles and legal obligations:

- Local Authority Nolan Principles that stated the Community must be at the heart of decision making.
- Fire and Rescue Service Act 2004 and National Framework Document 2019 required Fire and Rescue Authorities to assess any risk of emergencies occurring and ensure business continuity.
- Section 2 of the Civil Contingencies Act 2004 required contingency/business continuity plans that the Authority had a statutory duty to assess, plan and advise upon.
- The Health and Safety at Work Act 1974

The current business continuity arrangements in place were the use of volunteers from non-striking employees, risk management via dynamic cover tool and provision of national resilience capabilities. Corporate Risk 6.1, that was related to Business Continuity and preparedness, had been raised to 16 (RED), as the service did not have confidence in the current arrangements.

Under the current arrangements, the service believed that core functions would not be provided as a result of extensive disruption and the above obligations would not be adhered to unless change was agreed. Failure to comply with the above legislation could result in intervention from the Secretary of State, increased likelihood of harm to the community due to

reduction in services and impact employees due to insufficient resources being available to apply safe systems of work.

As the current arrangements relied upon good will, a letter was circulated by the Chief Fire Officer (CFO) to all 1854 employees that requested a non-obligatory response on their intentions to strike or not. The intention had been to access the number of employees the service may have should a strike take place. 93 responses were received. Of the 93, 65 responded 'yes', they would be willing to work during strike action which totalled 3.5% of the total workforce, 16 responded 'no' and 12 responded 'prefer not to say'.

In July 2022, the National Resilience Assurance Team conducted a survey with Fire and Rescue Services on Business Continuity Arrangements for Industrial Action. As a result of this survey, the West Midlands Fire Services (WMFS) had been rated high risk (RED) due to the lack of re-assurance that 30% of services could be provided under strike action. A meeting with the Chief Fire Officer and Chair of the Authority would take place with the Home Office whereby an explanation would be required as to why WMFS had been rated RED.

A SWOT analysis had been conducted for all options presented and were as follows:

- Current arrangements – low confidence. Due to insufficient staffing levels to provide an emergency response to all incident types.
- Internal Resilience Contracts – medium confidence. Aimed to ensure current employees provided additional emergency cover but the level of staff that would sign up is unknown.
- External Resilience Contracts – medium confidence. WMFS could ensure standards of training be provided but the level of applicants would be unknown and the time to take to introduce would be significant.
- External provider – high confidence. Guaranteed a minimum level of resources would be provided during potential industrial action.

The estimated financial considerations to incorporate the above options was highlighted to members. These included the following:

- Internal resilience contracts: average retainer fee in other Fire Services had been £1000-£2000 per contract, annually.
- External resilience contracts: average annual cost of £140k (without Industrial Action (IA), mobilisation costs based upon 8 days continuous IA average cost was £80k (25 staff).

- External provider: average cost without IA of £164k, mobilisation costs based upon 8 days continuous IA average cost was £464k.

The DCFO advised the Committee that the proposed changes to the current business continuity arrangements made no judgement on those wishing to strike and officers knew the impact this would be having on staff; however, the service did have a legal duty to ensure that services could still be provided in the event of strike action.

Following queries around the methods used to engage with employees and on what had changed to cause 6.1 to be raised, DCFO advised the Committee that the views of the service had not changed since 2019, whereby a report was rejected by Scrutiny Committee to change the business continuity arrangements. It was felt that multiple factors including the cost-of-living crisis impacting upon all employees only emphasised the need to change the current arrangements further. The service did not wish to pressure employees to respond to the CFOs question on their intention to strike as this was deemed inappropriate and may constitute harassment. It was emphasised that employees had a legal right to strike and had no requirement to inform the service of their intention to do so.

Following queries around funding, the DCFO advised the Committee that any funding would need to be incorporated into the current budget and no additional funding would be provided by the Home Office. Following queries by the Chair of the Committee, the DCFO advised the Committee that as current industrial action would likely be a national strike, no additional staff from other areas could be called upon. All areas are responsible for their own business continuity. External provider employees would be trained adequately from a health and safety perspective. It was emphasised that it did not need to be one option and a blended approach could be utilised.

### **Fire Brigades' Union Evidence**

Steven Price-Hunt, West Midlands Brigade Secretary, was invited to present the evidence on behalf of the Fire Brigades Union (FBU). He advised the Committee that the FBU had serious concerns around any potential changes to contingency arrangements as outlined within the report and the damage this would cause to industrial relationships. The rationale behind the changes referenced a requirement under The Fire Services Act 2004 and Civil Contingencies Act 2004. The Fire Services Act sections 7,8 and 9 explained the role of responding to fires and road traffic collisions, and that services needed to make provisions to provide coverage. The Civil Contingencies Act

Section 2 (1) (C) explained 'maintain plans for the purpose of ensuring, so far as is reasonably practicable, that if an emergency occurs that person or body is able to perform his or its functions.' Steven emphasised the wording to be 'so far as is reasonably practicable,'.

There were concerns by the FBU with the costs associated to any changes implemented and expressed the view that these costs would exceed the predicted quarter of a million pounds. The external providers had been advertising for these roles with huge salaries to try and entice people to apply. It was felt this was unfair to employees, given the campaign for better pay as a result of the cost of living, that external companies could pay up to 50% more than that of firefighters.

The FBU did not believe that the external companies would have the capacity to deliver as those contracted would require breaks and annual leave. This would result in an estimated two vehicles being available although, contracted/paid for five vehicles. It was felt that the companies were approaching all services without having the resources ready as they had been in the process of job advertising. The FBU raised concerns around the advertisements from external companies that declared 12 days of training would be provided. They did not feel this was adequate and sufficient enough. Alongside this, the lack of local knowledge and use of safety critical equipment would put employees at risk under the Health and Safety at Work Act. Steven advised the Committee, that should this option be implement and employees felt unsafe working alongside externally contracted, advice would be given to withdraw their services.

The Committee were advised that a recall system had already been in place, should a strike take place. If a reasonable recall to duty process for Fire fighters could be presented, the FBU would sign to provide that a level of assurance if industrial action took place. The FBU had consulted with its members, and they opposed the proposal to change business continuity arrangements. The FBU felt if changes were implemented it would antagonise the workforce and would result in more Firefighters taking industrial action if it took place.

Following questions by the Chair of the Committee, Steven advised the Committee that Unions would not be able to guarantee that 30% of the workforce would be available should there be industrial action. To ensure that, fairer pay would need to be provided to employees. Members expressed the need for the Home Office to be convinced that the required level of resources needed would be provided. Steven advised the Committee that historical



events had shown that firefighters would respond should a major incident be declared. Following queries around FBU members being asked to provide the required 30%, Steven advised the Committee that the 30% of resources had been a request by the Home Office.

### **National Resilience Assurance Team Evidence**

Paul Hitchen was invited to present the evidence on behalf of the Home Office/National Fire Chief Council. He advised the Committee that the business continuity survey was conducted annually with a range of questions. As a result of information not being readily available around the level of cover that could be provided during industrial action, WMFS had been rated high risk (RED). The Chair of the Committee asked that the result be reviewed to take into consideration the good will of firefighters as it was felt employees did not intend to strike.

Following questions around the approach taken to receive responses, Paul Hitchen advised the Committee that all questions were submitted to WMFS for response. All questions had been answered but as the service could not provide a definite number of resources that would be available during industrial action, they were deemed high risk. He highlighted that all services nationally take part in the survey and WMFS had been the only service that could not provide this re-assurance.

The DCFO advised the Committee that the letter from the CFO to employees on their intention to strike had been a result of the survey questions by the National Resilience team. Following questions around legal restrictions and contacting employees on their intentions, the DCFO emphasised that it would not be morally right to push employees for a response as it could be received as harassment/manipulation. The FBU agreed with the DCFO that further correspondence with employees/additional pressure to provide their intentions to strike or not would be inappropriate.

Resolved:

1. That it be agreed that all evidence presented be noted.

### **23/22 Exclusion of the public and press**

Resolved:

1. That the public and press be excluded from the rest of the meeting to avoid the possible disclosure of exempt information under Schedule 12A to the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) Order 2006."

*The Committee agreed a 15-minute adjournment at 14:06.*

*The Committee re-convened at 14:21.*

## **24/22 Private Workshop for Members**

Discussion was opened up to Members to deliberate on all evidence presented during item 8 of the agenda, including written evidence. Members expressed concerns that External Providers had not had the chance to respond to comments made by the FBU around the level of training provided to its employees. Tom Embury assured Members that external companies had been invited to provide evidence but had declined to attend due to capacity. It was agreed that more information be provided on the training provided by external companies. Members desired a different approach to be taken on engagement with staff around their decision to strike or not. Members wished to be provided with data from 2019.

It was agreed that a named vote be conducted on the options outlined as per the report. Members voted as follows:

<b>Option 1a/1b – Internal/External Resilience Contracts/workforce:</b>
Councillor Barrie – For
Councillor Dehar – Against
Councillor Hussain – Against
Councillor Spence – Against
Councillor Waters – Abstain
Councillor Young – Against

<b>Option 2 – External Provider:</b>
Councillor Barrie – For
Councillor Dehar – Against
Councillor Hussain – Against
Councillor Spence – Against
Councillor Waters – Abstain
Councillor Young – Against

It was agreed that a recommendation be presented to Fire Authority to continue with current practice. It was agreed that Tom Embury would draft the report on behalf of Scrutiny Committee and circulate to members for comments/amendments/approval prior to Fire Authority publication.

Resolved:

1. That it be agreed that options 1a, 1b and 2 be rejected following a named vote.
2. That it be agreed that a recommendation be presented to Fire Authority to continue with current practice. That it be agreed that Tom Embury, would draft the report on behalf of Scrutiny Committee and circulate to members for comments/amendments/approval prior to Fire Authority publication.
3. That it be agreed that more information be provided on the training provided by external companies, further consideration made of how the staff could provide information on their intention to strike, and data be provided from 2019.

The meeting finished at 14:59 hours.

## **Appendix 2 – Terms of Reference of the Business Continuity Scrutiny Review**

### **1. Purpose of the review**

To review proposals designed to mitigate Corporate Risk 6.1 by considering appropriate Business Continuity arrangements for West Midlands Fire Service.

### **2. Background**

A similar set of proposals were considered by the Scrutiny Committee in October and November 2019, and ultimately neither option presented at that time was recommended to the authority by the committee. These options have been brought back to the authority as a result of the increased assessed likelihood and impact of industrial action in the short to medium term.

In June 2022, the Strategic Enabling Team increased Corporate Risk 6.1 to 16 from a rating of 12 **(4 likelihood & 4 impact)**, its highest level, as a result of the changing national Industrial Relations environment and ongoing cost-of-living pressures. This indicated a significant risk to the authority being able to fulfil its statutory duties in the event of industrial action.

As a result, a report was presented to the Authority's Audit and Risk Committee on 26 September 2022 outlining the rationale for the increase in CR 6.1, and its potential impacts. It was agreed a report would also be presented to the Fire Authority on 10 October 2022 with proposals to mitigate CR 6.1 and alter the service's Business Continuity arrangements. To support the Fire Authority's consideration of these recommendations it was agreed at the Fire Authority meeting on 10 October that these proposals would be considered by the Authority's Scrutiny Committee, through a 'pre scrutiny' review. This will enable a decision of the recommendations made of the 10 October to be made at the next Fire Authority meeting.

### **3. Terms of Reference**

The Scrutiny Committee are to review two options to provide appropriate business continuity arrangements for the Service, designed to mitigate Corporate Risk 6.1:

- a) Contingency contracts for existing firefighting staff
- b) An external provider

It should be noted that option b) is that recommended by the Chief Fire Officer, as outlined in the report to Fire Authority on 10 October 2022.

Scrutiny Committee are to consider the financial, governance, legal and operational impacts of each option, and produce a report, including recommendations, for decision by the Fire Authority.

#### **4. Scrutiny Process**

The Review will be undertaken by the members of the Scrutiny Committee in a public session on 7 November 2022, following the completion of the other business of the Committee.

The Assistant Chief Fire Officer (People) as lead officer for the Committee, the Deputy Clerk and Democratic Services Officer will support the Committee. Only elected Scrutiny Committee members will be entitled to ask questions as part of the review.

All participating stakeholders will be invited to submit written evidence to the committee ahead of their oral evidence session. This will be shared with Scrutiny Committee members ahead of the meeting, although Scrutiny Committee members may choose to ask questions outside of the scope of the submitted written evidence.

Stakeholders providing oral evidence will do so separately, starting with a brief presentation of key points from their written evidence followed by questions from committee members. As the session will be held in public meeting, stakeholders will be entitled to observe the rest of the session but will not be able to raise questions.

If stakeholders wish to provide evidence that is commercially sensitive or should otherwise not be in the public domain, then the Committee will meet in closed session at the end of the oral evidence session to hear such evidence and question stakeholders on those matters.

Upon completion of the oral evidence sessions, Scrutiny Committee will meet privately to consider the evidence presented and formulate recommendations to the Fire Authority.

Following this session, members will be supported to develop a scrutiny report to be presented to the Fire Authority. This will be shared virtually with authority members and formally presented to the December Authority meeting. Any urgent actions that are necessary as a result of the Scrutiny Review report may be addressed under the Arrangement to

Act in Matters of Urgency through the process outlined within the Authority Constitution.

## **5. Invited Stakeholders**

The following stakeholders will be invited to provide both written and verbal evidence to the committee:

- WMFS Officers
- Internal Auditors
- Representative Bodies
- The Home Office – regarding their assessment of WMFS BCP
- Potential External Resilience Providers
- Other fire and rescue services with experience of implementing identified options.