

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

**13 FEBRUARY 2023**

### **1. REVIEW OF THE CONSTITUTION**

Report of the Clerk to the Authority

RECOMMENDED:

- 1.1. THAT Members approve the amendments to the Constitution as set out in this report and in particular Appendix 1.
- 1.2. THAT the Clerk and Monitoring Officer be authorised to make and publish any necessary consequential amendments to constitutional documents to achieve the desired changes, in consultation with Chair, Vice-Chair and CFO.

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

- 2.1. This report is submitted to make several changes to the WMFRA Constitution following a period of review.

### **3. BACKGROUND**

- 3.1. In accordance with good governance principles, WMFRA should review its Constitution on at least an annual basis. As a result, the Chair, Vice-Chair, CFO and Statutory Officers have undertaken a review of a number of areas and made recommendations for change. The changes proposed concern three main areas:
  - 3.1.1. CFO, DCFO and ACFO appointments – clarifying the appointments process including the role of the Appointments, Standards and Appeals Committee.
  - 3.1.2. Decision making – clarifying the basis on which members make decisions and adding additional clarity regarding what constitutes a strategic decision which only the Authority can

make.

- 3.1.3. Named substitutes – allowing any appropriately trained authority member to substitute in the event of absence if required.
- 3.2. Members should note that further changes will be proposed to the Constitution to reduce its overall length, remove duplication, improve readability and formatting and ease navigation. Such changes will be brought to the Authority for approval as required at the June 2023 AGM meeting.

#### 4. **EQUALITY IMPACT ASSESSMENT**

- 4.1. No initial equality impact assessment has been undertaken as these changes will have no impact on protected characteristics.

#### 5. **LEGAL IMPLICATIONS**

- 5.1. The Monitoring Officer has reviewed all proposed changes and does not believe there to be any additional legal implications for members.

#### 6. **FINANCIAL IMPLICATIONS**

- 6.1. There are no anticipated financial implications from these changes.

#### 7. **ENVIRONMENTAL IMPLICATIONS**

- 7.1. An Environmental Impact Assessment has not been undertaken as there are not believed to be any environmental implications from these changes.

### **BACKGROUND PAPERS**

- [West Midlands Fire and Rescue Authority Constitution – June 2021](#)

The contact for this report is Tom Embury, Deputy Clerk to the Authority

Wayne Brown  
CHIEF FIRE OFFICER

## Appendix 1 – Proposed Constitutional Changes

*Please note, only the relevant pages of the Constitution – where changes have been made – have been included.*

### Page 11 – Summary and Explanation

#### How Decisions are Made

The Authority has ultimate responsibility for decision making but has delegated many decisions to committees and officers as described in Article 4 and Part 3 of this Constitution.

The Authority aims to ensure decision making is efficient, transparent and accountable and in accordance with the following principles:-

- the action taken is proportionate to the desired outcome;
- decisions are taken on the basis of due with consultation and professional advice from officers;
- ~~decisions taken by elected members will receive~~ decisions taken by elected members will receive ~~information provided in a written report prepared by the responsible officer(s) to support decision making;~~ information provided in a written report prepared by the responsible officer(s) to support decision making;
- —
- respect for human rights;
- a presumption in favour of openness;

Reports will only be considered in private where they contain confidential or exempt information as defined under specific legislative provisions (see Part 4 Access to Information Rules – Rules 10 and 11)

### Page 13 – Summary and Explanation

#### 1.3 Monitoring

The Authority will monitor and review the operation and content of this Constitution, in consultation with officers and the Clerk and Monitoring Officer at least once per annum and, consequential upon any review, will make any changes deemed appropriate. However, the Monitoring Officer or Clerk may make such purely administrative changes (e.g., formatting, spelling or updating of references) as required in consultation with the Chair and CFO without formal review by the Authority.

## Page 14 – Article 4 Decision Making

### 2.1 Composition and Eligibility

- (i) Composition – 2.1 (i) The Authority comprises of 18 members, 15 of whom are elected councillors, two co-opted members and a further membership to be held by the West Midlands Police and Crime Commissioner. **Four representatives of recognised trade unions hold special observer status.** The 15 members will be elected from the seven constituent district councils comprising the West Midlands.

## Page 15 – Article 4 Decision Making

### 2.2 Roles and Functions of Members

It is the role of the Fire Authority to make and scrutinise decisions on the basis of 'public safety, efficiency and effectiveness' in keeping the community safer, stronger and healthier. A full description of the role of the Authority is set out in Article 6.

All members are expected to:-

- (i) act corporately for the good governance of the Authority, balancing the needs of the whole community of West Midlands with their role of local representative;
- (ii) to actively represent, promote and support the work of the Authority in the provision of Fire and Rescue Services within the whole area and community of West Midlands;
- (iii) **exercise good judgement when making decisions, with full consideration of relevant information, guidance and external factors.**

## Page 19– Article 4 Decision Making

### 2.4.7 Special Observers

**In accordance with the agreed Memorandum of Understanding, three representatives from trade unions (one FBU, one FOA and one Unison) will hold special Observer status that entitles them to attend and participate in the main Authority meetings and Policy Planning Forum. This arrangement doesn't impact upon the existing rights of all members of the public to attend public meetings of the Authority. This arrangement also does not negate the effect and the processes within the organisation's Employee Relations Framework.** |

**The Chair of any meeting of the Authority may require a special Observer or named substitute to absent themselves from any meeting of the Authority at the Chair's discretion.**

## Article 4 – Decision Making

### 4.1 Responsibility for Decision Making

Responsibility for decision making by the Authority, its committees, and officers is in accordance with Articles 4 to 12 of this constitution and the Officers' Scheme of Delegations set out in Part 3 of this constitution which together comprise the record of responsibility for decision making.

The Authority and officers have agreed the following responsibilities for decision making:

**Governance** decisions are those which the Authority will be asked to ~~approve~~ approve in consultation and with professional advice from Officers via Officers. These decisions will align to the role of the Authority in setting the Strategic agenda and budget for the Service.

**Operational** decisions are those taken by the CFO and Officers in delivering against the strategic agenda set by the Authority. These decisions are taken independently and in line with the Scheme of Accountability Delegations.

### 4.2 Principles of Decision Making

All decisions of the Authority will be made in accordance with the following principles:

- be within the lawful powers of the Authority;
- proportionality (i.e. the action taken is proportionate to the desired outcome);
- be aligned to the decision-making definitions set out in this article.
- ~~Decisions are taken on the basis of~~ with due consultation and professional advice from officers and statutory officers (Decision ~~makings taken~~ by members of the Authority ~~will be based~~ will be supported on by information provided in a written report prepared by the responsible officer/s) ~~Refer to section 4.4;~~
- respect for human rights;
- a presumption in favour of openness (Reports will only be considered in private where they contain exempt information as defined in Schedule 12A to the Local Government Act 1972 (as amended)(see Part 4 Access to Information Rules – Rule 11);
- clarity of aims and desired outcomes (The written reports submitted to elected members will contain a clear recommendation of the professional officer for every decision they are asked to take).

## Page 24 – Article 4 Decision Making

**Operational Decisions** are those which:

- operate within the strategic and governance framework provided by the Authority (see explanatory note)
- direct and detail 'how' the strategic priorities and outcomes are achieved to meet the priorities of the Community Risk Management plan (CRMP)
- manage resources (people, finance, fleet, assets) in the most appropriate way to achieve the priorities of the CRMP and strategic priorities, **but do not represent a significant change to the CRMP or strategic priorities such as the closure of fire stations or the permanent removal of fire appliances.**
- are aligned to the role of the Head of Paid Service and the CFO as set out in the constitution and appropriate legislation

Decisions relating to the functions listed in Article 4 will be made by the Authority and not delegated.

## Page 25 – Article 4 Decision Making

### 4.5 Decision Making by Officers

The CFO and officers have full accountability to make decisions on all matters relating to the administration of the Authority's functions under the Fire and Rescue Services Act 2004 and any other enabling legislation. This shall include taking and implementing decisions that are:

- Defined as the role of the CFO as set out in section Article 5, section 5.2,
- Defined as 'operational decisions as set out in Article 4, **section 4.3.3** (and explanatory guide) and
- aligned to the Scheme of Delegations set out in this constitution.

~~Explanatory note on the business planning process and feedback to members of the Authority:~~

~~Operational decisions may involve the allocation of people, finance, resources to delivery the agreed Authority Strategy and Plan. These are aligned to the CFO delegations set out in Part 3, Scheme of Delegations and may determine approaches to staffing structure, recruitment, workforce planning, etc.~~

~~Article 6 of this Constitution indicates that the Authority is responsible for the approval of the 3 year rolling Strategy and Annual Plan, and the Community Risk Management Plan as provided by the CFO. The Authority will approve the key priorities set out in The Plan and where appropriate significant changes to these, which will impact on the direction of the Authority's Strategy. Any changes will always seek to support the delivery of outcomes for the community and the achievement of the vision of, 'Making the West Midlands Safer, Stronger and Healthier'. A 'rolling' 3 year strategy, enables local service delivery plans to focus on current business, through the Annual Plan whilst indicating the Authority's intentions for subsequent years. The Community Safety Strategy (Community Risk Management Plan) sets out how the Service will address risk in the community to achieve the outcomes agreed in The Plan.~~



## Page 26 – Article 4 Decision Making

~~The Authority will approve the rolling 3 Year Strategy, objective and Annual Plan priorities for the following financial year at the February meeting of the Authority. Following Authority approval, the Chief Fire Officer will, via his/her Scheme of Delegations, ensure the appropriate and flexible allocation of resources to meet the needs of local communities and enable the delivery of The Plan, based on analysis of risk and best fit with the resources available to him/her.~~

~~In order to ensure Authority members are kept informed of the progress in delivering the strategic objectives and outcomes set out in The Plan, progress briefings will be sent to all Authority members. This briefing will be sent out in a timely manner that allows members, who require further information or clarification on matters contained within the briefing, to request that an item be placed on the agenda for the Policy Planning Forum, which provides a forum for the discussion of issues affecting the Service.~~

## Page 34 – Article 6 The Authority

### **Explanatory notes:**

*\*\*Significant could be in this context would be described as: 'matters which may exceed officer financial approvals or may have the potential to change the approved strategic direction and/or policy of the Authority: such as the closure of fire stations or the permanent removal of fire appliances.*

Strategic Planning: As set out in this section the Authority's strategic planning process enables a multi-year approach to the delivery of the 3 year Strategy.

## Page 35 - Article 6 The Authority

### 6.2.4 Human Resources

- i. Approval of the staffing structure and pay and conditions of service for principal and statutory officers.
- ii. Appointment of Chief Fire Officer, Deputy Chief Fire Officer and Assistant Chief Fire Officers [delegated to Appointment, Standards and Appeals Committee] in line with the processes set out within Part 6 of the Standing Orders.
- iii. The appointment of the Deputy and Assistant Chief Fire Officers on the recommendation of the CFO [delegated to Appointments, Standards and Appeals Committee];
- iv-iii. The appointment of the Clerk, Monitoring Officer and Treasurer in

## Page 36 - Article 6 The Authority

*West Midlands Fire and Rescue Authority – Constitution*

**line with the processes set out within Part 6 of the Standing Orders.**

**v-iv.** Discipline and dismissal of the Chief Fire Officer, Clerk, Monitoring Officer and Treasurer **in line with the processes set out within Part 6 of the Standing Orders.**

**vi-v.** to hear and decide upon appeals by the Deputy Chief Fire Officer, and Assistant Chief Fire Officer against dismissal or other disciplinary action. [Appointments, Standards and Appeals Committee] **in line with the processes set out within Part 6 of the Standing Orders.**

**vii-vi.** Deciding appeals under the firefighter pension schemes and the local government superannuation regulations [Appointments, Standards and Appeals Committee].

### **Explanatory notes:**

**The recruitment process (as set out in diagram 1 below) for the roles of DCFO and ACFO's will be led by the CFO, up to the recommendation of candidates to the Appointments, Standards and Appointments Committee and appointment. This will enable a suitable appointment to be made by the Committee based on the professional and technical competence and behavioural attributes of any candidate.**

**The appropriateness of any candidate recommended to the Appointments, Standards and Appointments Committee by the CFO will also be considered against the behavioural framework identifying best 'team fit' as an important aspect of the selection and appointment processes.**

**The Appointments, Standards and Appointments Committee will lead the final stages of the recruitment process to ensure the most appropriate candidate is appointed into role. This will be undertaken in two stages: an informal meeting with candidates to allow Members to get to know the candidate and then the formal interview process of the Appointments, Standards and Appointments Committee. This will be supported by the CFO and the HR Manager.**

**Where only one candidate can be recommended by the CFO to the Appointments, Standards and Appointments Committee, a decision will be taken in consultation with the CFO and the Authority's HR Manager, as to whether the recruitment process can continue or should be run again.**

**The CFO will lead the presentation of appointable candidate(s) who meet the professional and technical competencies as well as team fit for the role to the Appointments, Standards and Appointments Committee. The Appointments, Standards and Appointments Committee will make the decision of final appointment with due regard to the CFO recommendation.**



## Page 39 – Collaboration and Transformation Committee Terms of Reference

8.1 The Authority has established and Collaboration and Transformation Committee of 7 members.

8.2 Role and Functions:-

To support the Fire Authority's role and responsibility with regards to: The strategic development and assurance of transformational collaborative working agreements (up to implementation) aligned to the 'Duty to Collaborate' (Policing and Crime Act 2017) and/or the delivery of the Authority' Strategy, The Plan.

8.3 To review the strengths, weaknesses and opportunities of strategic collaboration work between the service and regional partners.

8.4 To receive updates on digital innovations and strategic collaborations with other organisations.

8.5 Findings and recommendations of the Collaboration and Transformation Committee are to be submitted to the Authority by the Chair of the Governance Collaboration and Transformation Committee.

8.6 To submit its minutes to the Authority.

## Page 40 – Scrutiny Committee Terms of Reference

9.2 Role and Functions:-

To carry out a maximum of two scrutiny reviews selected by the Committee, with appropriate consideration of committee and officer capacity and cost per annum. Such reviews will be member-led and evidence based, and will produce SMART (specific, measurable, attainable, realistic and timely) recommendations to the Authority.

## Page 49 – JCP Terms of Reference

The quorum of the Panel shall be one third of the total number of representatives appointed by each side subject to each Trade Union/ Representative Body being represented, however, where the Panel is considering business relating specifically to one Trade Union/ Representative Body that has locally appointed representatives, being represented, however, where the Panel is considering business relating to one Trade Union/Representative Body the quorum of the employees' side shall be one third of the total number of representatives appointed by each side, with no requirement for each Trade Union/ Representative Body to be represented, provided that the relevant Trade Union/ Representative Body must be represented.

Page 57 – Article 15

**15.2 Changes to the Constitution**

Changes to the constitution will only be approved by the Authority after consideration of proposals submitted by the Clerk and Monitoring Officer and following consultation with Fire Service Officers. However, the Monitoring Officer or Clerk may make such purely administrative changes (e.g., formatting, spelling or updating of references) as required in consultation with the Chair and CFO without formal review by the Authority

Page 85 – Standing Orders Part 3 Committees

- (4) (5) Should the named substitute be unable to attend, a member of the same political party can be appointed by the Chairleader of the relevant party, subject to that member having had relevant training for the Committee/Panel in question.

Page 99 – Standing Orders Part 4 Conduct of Meetings

- (4) Special Observers are entitled to contribute to Authority and PPF meetings only in line with the agreed Memorandum of Understanding.

**27. Appointment, Dismissal and Disciplinary Action**

- (1) The appointment of the Chief Fire Officer, the Deputy Chief Fire Officer and the Assistant Chief Fire Officer shall be made by the Appointments function of the Appointments, Standards and Appeals Committee of the Authority. These posts shall be subject to the National Joint Council's scheme of conditions of service for Brigade Managers of Local Authorities Fire and Rescue Services as amended from time to time and be subject to the relevant disciplinary regulations which apply to the employee(s) concerned.
- (2) Where the Authority proposes to appoint a **Chief Fire Officer, as described in (1) above**, the Authority :-
  - (a) will draw up a statement specifying:
    - (i) the duties of the **officer concerned** **Chief Fire Officer**; and
    - (ii) any qualifications or qualities to be sought in the person to be appointed;
  - (b) will make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it;
  - (c) will make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to all applicants for any particular post and to any other person on request.

**Once applications have been received, the Chief Fire Officer (or appropriately qualified external advisor in the absence of a CFO) will undertake a process of evaluation to determine technical, behavioural and operational competency and qualification for the role. This will include relevant behavioural and psychometric assessments and professional conversations. The CFO (or external advisor) will provide updates on this process to the Authority as required.**

**Following this process, the Authority, with the support of the Chief Fire Officer (or appropriate external advisor) and a People Support Services representative, will either interview all qualified applicants for the post or select a short list of qualified applicants and interview those on the short list. This interview process will take place in accordance with all applicable service recruitment policies.** If no qualified person applies, the Authority shall make arrangements for further advertisement in accordance with (b)

Page 102 – Standing Orders Part 6 Cont.

(3) Where the Authority proposes to appoint a Deputy or Assistant Chief Fire Officer, the Chief Fire Officer:

(a) will draw up a statement specifying:

(i) the duties of the officer concerned; and

(ii) any qualifications or qualities to be sought in the person to be appointed;

(b) will make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it;

(c) will make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to all applicants for any particular post and to any other person on request.

Once applications have been received, the Chief Fire Officer will undertake a process of evaluation to determine technical, behavioural and operational competency and qualification for the role. This will include relevant behavioural and psychometric assessments and professional conversations. The CFO will provide updates on this process to the Authority as required. The CFO will then select a shortlist of the suitably qualified candidates for interview by the Appointments Committee.

Following this process, the Authority, with the support of the Chief Fire Officer and a People Support Services representative, will interview all shortlisted applicants. This interview process will take place in accordance with all applicable service recruitment policies. If no qualified person applies, or the Authority does not believe there to be sufficient qualified candidates for interview, the Chief Fire Officer shall make arrangements for further advertisement in accordance with (b) above.