

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

AUDIT AND RISK COMMITTEE

27 NOVEMBER 2023

1. BUSINESS CONTINUITY – RESILIENCE CONTRACTS

Report of the Chief Fire Officer

RECOMMENDED

- 1.1. THAT Members note that Corporate Risk 6.1 relating to Business Continuity remains amber rated, as reported previously to both Audit and Risk Committee and Fire Authority.
- 1.2. THAT Members note the legal and statutory duties of the Authority to respond to emergencies, and to maintain robust business continuity arrangements.
- 1.3. THAT Members review previously considered options for mitigation and Scrutiny Committee's previous recommendations.
- 1.4. THAT Members recommend that Fire Authority consider a proposal to implement Internal Resilience Contracts as a means of mitigating this risk.

2. PURPOSE OF REPORT

- 2.1. To outline previous Authority considerations and decisions relating to Corporate Risk 6.1 Business Continuity, in particular in relation to industrial action.
- 2.2. To provide the Committee with detail on the option of Internal Resilience Contracts, which they can recommend to Fire Authority for consideration and approval.

3. BACKGROUND – STATUTORY DUTIES

- 3.1. The Fire and Rescue Service National Framework (The Framework) outlines that Fire and Rescue Authorities (FRA) are required to assess the risk of emergencies occurring and use this

to inform contingency planning.

- 3.2. The Fire and Rescue Services Act 2004 and the Civil Contingencies Act 2004 outline the legal and statutory duties of an FRA in relation to provision for responding to incidents and the maintenance and management of the provision of business continuity plans to ensure that an FRA can deliver key services in the event of an emergency. Such emergencies include periods of Industrial Action.
- 3.3. In line with the Framework every FRA must assess foreseeable risks that could affect their communities and states that regard must be had to Community Risk Registers (CRR) produced by Local Resilience Forums (LRF).
- 3.4. The Community Risk Management Planning (CRMP) process continually identifies risk locally, regionally, and nationally, and this includes the scenarios identified in the National Security Risk Assessment. These identified risks are delivered through the FRA Strategy. The Chief Fire Officer (CFO) is accountable to the FRA and community for ensuring the Service delivers against the requirements of the Fire and Rescue Act, Regulatory Reform (Fire Safety) Order, Civil Contingencies Act and the National Framework in an assertive, effective, and safe way.

4. **BACKGROUND - CORPORATE RISK 6.1**

- 4.1. All Corporate level risks are recognised and managed through the WMFS Corporate Risk Register which is kept on constant review and reported quarterly to the Strategic Enabling Team (SET) via Strategic Performance Review Board (SPRB). There is also a six-month review to the Fire Authority via the Audit and Risk Committee.
- 4.2. Corporate Risk (CR) 6 relates to Business Continuity and Preparedness. CR 6.1 concerns a situation where *“The Fire Authority is unable to provide business continuity arrangements, to maintain delivery of core functions, as a result of extensive disruption to normal working arrangements, including national and international deployments, significant and major events, resulting in increased community risk; reduced confidence; increased reputational damage; and external scrutiny.”*

- 4.3. In November 2019, the CFO presented to the Fire Authority a recommendation to engage an external provider to enhance business continuity and resilience arrangements, to enable the Fire Authority to meet expected resilience level. It was also recommended that the Fire Authority approve the funding to implement the required business continuity option. The recommendations were not approved by the Fire Authority based on the resolution of the Scrutiny Committee, which recommended that the Fire Authority continues to use existing arrangements for business continuity using volunteers from existing staff.
- 4.4. As a consequence of this decision, Corporate Risk 6.1 was raised to 12 (Impact 4, Likelihood 3) in December 2019. This was as a result of the impact rising from 3 to 4 due to the limited capability offered by the agreed business continuity approach.
- 4.5. In June 2022 the CR 6.1 was raised to 16 (Impact 4, Likelihood 4) as a result of growing likelihood of industrial action relating to the firefighter pay claim. As a result of this, in October 2022, the CFO presented a further paper to Fire Authority to recommend options to mitigate CR 6.1 either through the employment of external providers or implementation of internal resilience contracts. The matter was referred to the Scrutiny Committee in November 2022.
- 4.6. The Scrutiny Committee on 7 November 2022 considered both proposals, hearing evidence from the Deputy Chief Fire Officer, FBU and National Resilience Assurance Team. The Scrutiny Committee again recommended that the Fire Authority continues to use existing arrangements.
- 4.7. Corporate Risk 6.1 is currently at 12 (Impact 4, Likelihood 3), an AMBER rating under the new 5x5 risk matrix adopted for corporate risk. This is because there is no immediate threat of strike action, but forthcoming pay negotiations and other matters mean industrial action remains likely in the medium term.

5. **BACKGROUND - NATIONAL RESILIENCE ASSURANCE TEAM SURVEY**

- 5.1. Further to CR 6.1, In August 2022 a survey was commissioned by the Home Office and undertaken by the NRAT on preparedness for Industrial Action, which will be used to RAG rate (Red, Amber, Green) Fire and Rescue Services according to the resilience of

their Business Continuity Arrangements in the event of industrial action. WMFS responded to the Survey in August 2022, making clear that officers had limited confidence or understanding of the predicted cover that might be achieved during future periods of industrial action.

- 5.2. The Home Office provided their outcome to the survey in September 2022. They acknowledged that WMFS are unable to provide information about the number of staff that would be available during a period of firefighter industrial action and consequently no information about the number of fire and rescue response assets we expect to maintain available to respond to incidents during industrial action. Without clarity and detail in respect of these areas the Home Office were unable to conclude that WMFS arrangements to maintain an effective emergency response in the event of firefighter industrial action are suitable and sufficient and therefore concluded that WMFS arrangements would be considered **red, high risk**. We remain at that level.

6. **CURRENT POSITION**

- 6.1. Current business continuity arrangements for loss of staff due to industrial action involve the use of non-striking operational and support staff (including Fire Control). Appliances are then strategically placed across the West Midlands, using tools such as the Dynamic Cover Tool (DCT). Some appliances are 'dual staffed' to ensure National Resilience capabilities are maintained during industrial action i.e. DIM capability, USAR.
- 6.2. Analysis has previously been completed of business continuity arrangements based on two previous periods of industrial action as a result of the West Midlands trade dispute that was registered on 11th April 2018. Pre-planned coverage for a scheduled period of industrial action (30th July 2018) demonstrated WMFS were not able to meet the Home Office target of 30% appliance availability.
- 6.3. It remains the view of the Chief Fire Officer and Strategic Enabling Team that the current business continuity approach in the event of industrial action does not provide sufficient assurance that the Authority can meet its statutory obligations under the Fire and Rescue Services Act 2004 and the Civil Contingencies Act 2004.

7. RESILIENCE CONTRACTS – CONTEXT AND EXAMPLES

- 7.1. Resilience Contracts are used in other fire and rescue services in the UK as a means of providing additional assurance around minimum service levels in the event of industrial action and have been used successfully during strikes.
- 7.2. Merseyside FRS have had resilience contracts for over a decade, having successfully used them during periods of industrial action in 2006 and 2013/14. They have a three-month notice period, and pay a flat rate of £1,100, which will increase by 5% in April 2024 in line with agreed grey book pay rises. Staff are expected to work flexibly outside their usual shift pattern during industrial action to cover whatever period of strikes may occur.

8. RESILIENCE CONTRACTS – PROPOSAL

- 8.1. It is proposed that WMFRA consider a proposal for the use of an internal resilience contract scheme. The Committee are advised to recommend a proposal is taken to Fire Authority for consideration and decision on this matter.
- 8.2. Such contracts could provide the Service and Home Office with assurance as to minimum staffing levels during periods of industrial action. They would allow us to plan for a specific number of staff to be available and make appropriate arrangements for resources and staffing ahead of time.
- 8.3. Resilience contracts, appropriately written, could also be used to address issues with understaffing during key periods (such as the summer holidays and Christmas) with those taking resilience contracts agreeing not to take annual leave during these peak periods.
- 8.4. However, there are limitations to an internal resilience contract approach. While the contracts are themselves binding, staff are free to exit the contract at any time by giving appropriate notice. Given the usually significant lead-in time to industrial action, this means staff could agree to the contracts when industrial action is not imminent but then leave the contracts if industrial action appears likely. Staff could also simply exit the contracts at short notice and accept a financial penalty.

- 8.5. There is also a risk that resilience contracts will reduce the number of staff who would otherwise have volunteered to work during industrial action without the need for the additional contract. Not only does this mean the Service is incurring additional cost, but if those on the resilience contracts were to leave the contract those that might otherwise have volunteered may not do so.
- 8.6. Any resilience arrangement, including resilience contracts, would also be tested by prolonged industrial action, especially where it includes sustained periods of strike (i.e. four consecutive days or more). While those on resilience contracts could work a number of consecutive shifts if split into two groups, there would be limitations to this approach.

9. **EQUALITY IMPACT ASSESSMENT**

A full Equality Impact Assessment would be undertaken as part of the development of a full proposal for decision by the Fire Authority.

10. **LEGAL IMPLICATIONS**

- 10.1. As highlighted within section 3, the Fire Authority has a legal duty to provide a response to emergencies and to ensure robust business continuity arrangements are in place.
- 10.2. Resilience Contracts are in place in other parts of the UK FRS and have not been found to be unlawful. However, they do not remove the right of an individual to withdraw their labour, which could only be removed by legislation (see 10.3 below).
- 10.3. The Strikes (Minimum Service Levels) Act 2023 was passed into law in July 2023, and may render resilience contracts unnecessary. Government has recently finished consulting on a statutory code of practice and regulations which will dictate how the law would work. There may be some delay before these regulations are brought into force, and it is likely that unions will challenge the law in the courts, which may further delay implementation. The Labour Party, currently on course to win the next General Election due by January 2025, has also promised to repeal the Act. Therefore, it is not clear for how long (if at all) the law will be in effect.

11. **FINANCIAL IMPLICATIONS**

- 11.1. The potential cost of Resilience Contracts, if agreed, will vary depending upon the payment approach and level of staffing that is required to provide resilience. Figures given in table 1 below are illustrative of potential costs depending on the model developed for approval by the Fire Authority. The annual cost could exceed the CFO's delegated authority and therefore require specific Authority approval.

Table 1 - Indicative Annual Resilience Contract Costs

No. of Contracts	Resilience Contract Value p/a	Assumed Grey Book award p/a	Cost 2024/25 (£ ,000s)	Cost 2025/26 (£ ,000s)	Cost 2026/27 (£ ,000s)
350	£1,100	3%	385	396	408
300	£1,100	3%	330	340	350
250	£1,100	3%	275	283	292

- 11.2. It should be noted that these would be the Business as Usual (BAU) costs without any period of industrial action. Were industrial action to take place there would be additional costs associated with paying staff on resilience contracts for their hours worked, which will be offset by reductions in salary costs from those staff that to undertake industrial action.

12. **ENVIRONMENTAL IMPLICATIONS**

There are no specific environmental implications of this report, as internal resilience contracts will make use of existing staff and resources.

BACKGROUND PAPERS

- [10 October 2022 – Fire Authority – Business Continuity Arrangements.](#)
- [7 November 2022 - Scrutiny Committee Working Group – Business Continuity Arrangements.](#)
- Example Contract – Merseyside FRS.
- [Strikes \(Minimum Service Levels\) Act 2023.](#)

OFFICIAL

The contact for this report is Area Manager Alex Shapland,
alex.shapland@wmfs.net

WAYNE BROWN
CHIEF FIRE OFFICER