

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

18 FEBRUARY 2019

1. ROUTE TO MAYORAL GOVERNANCE UPDATE

Report of the Clerk

RECOMMENDED

THAT Members note the progress of discussions with the Chair, Mayor, Chief Fire Officer (CFO) and West Midlands Combined Authority (WMCA) regarding the route to Mayoral Governance.

2. PURPOSE OF REPORT

- 2.1 This report provides Members with an update on the governance transfer of West Midlands Fire Service, from the Fire Authority to the Mayoral WMCA.
- 2.2 A separate report 'Arrangements to Act in Matters of Emergency' outlines the background and current position in relation to the submission of the draft Order, following local agreement and its receipt following review by the Joint Committee for Statutory Instruments (JCSI).
- 2.3 This report sets out the steps that are now being taken to resolve this issue and move towards a transfer in governance during 2019.

3. BACKGROUND

- 3.1 The pause created in the governance process was a result of amendments made to the draft Order at the JCSI stage. These focused on the delegation of the accountabilities of the CFO and removed the absolute assurance that these would be delegated by the Mayor. This resulted in concern that the operational and organisational independence of the CFO role could be compromised. The CFO issued an assessment to all seven constituent authority Chief Executives to this affect, with the result that constituent authorities did not provide the required consent to the Home Office for the Order to be laid before Parliament on the 14 January 2019.

- 3.2 This has led to the consideration of additional local safeguards, which could replace the specific provisions that were removed from the draft Order and thereby secure the key asks of constituent authorities with regards to the CFO role. Notably these provisions will need to ensure that the accountabilities of the CFO, as defined in the draft Order, 'must' be delegated by the Mayor to the CFO. This approach will ensure the CFO is able to utilise professional judgement, skills and experience underpinned by operational independence and organisational leadership, to actively manage assessed risk on a dynamic basis.
- 3.3 The local safeguards will form clauses contained in the WMCA Constitution, which will put in place clear and robust processes, will provide wide consultation, appropriate scrutiny and voting of any decision to change or amend the CFO accountabilities.
- 3.4 Following recent meetings between the Fire Authority Chair, the Mayor and CFO, each party has re-affirmed their commitment to the governance transfer to the WMCA. This has been underpinned by the need for sufficient assurance around the role of the CFO in any new arrangements, aligned to that intended in the locally agreed draft Order submitted to the Home Office in September 2018.
- 3.5 WMCA Officers have proposed five distinct areas to the CFO, which are intended to provide assurance around the independence of the CFO role and key accountabilities. These are set out in paragraph 3.7 below. Both WMCA and WMFS officers are considering these proposals and developing the detail that will be proposed for inclusion in the WMCA constitution.
- 3.6 It is intended that, following the development of these assurances, the constitutional detail and the assessment of the CFO, the proposed constitutional clauses as developed will be submitted to the WMCA board for approval on 22 March 2019.
- 3.7 The five proposed areas are out below.
- a) A clause within the WMCA constitution which provides security around authorisation by a WMCA Mayor of delegations to the CFO. This removes any doubt about the explicit delegation of accountabilities and decision making authority to the CFO only.

This clause aims to directly address the underlying concern with the JCSI amended Order (which currently makes such delegation optional).

- b) A specific decision making route should any Mayor/WMCA member seek to change the constitutional position in point 1. This would incorporate usual and explicit stakeholder consultation. For example, including the CFO, Mayoral Fire Committee, Overview and Scrutiny Committee within the process to change point 1 (above).
- c) In parallel, a specific clause as a 'reverse lock' – which would offer a second point of assurance such as specifying that other officers of the WMCA 'must not' take on what are currently CFO accountabilities.
- d) A period within which any proposed constitutional change in relation to CFO functions shall not be considered/implemented. For example, until the next Integrated Risk Management Plan (IRMP) is completed. This will enable the consideration of the validity any decisions to change the constitution in relation to CFO functions, to be implemented aligned to the WMFS planning period and will enable the CFO to assess the impact of these decisions on risk.

In order to develop and implement the IRMP as defined by the National Fire and Rescue Framework, the CFO must be the Officer who has the necessary competencies to do so.

The competences of this role will be defined by the National Framework and guidance produced by the fire sector through the National Fire Chiefs Council.

- e) A commitment to further reviewing governance arrangements within the next Mayoral term (or similar), specifically, to explore whether there are any other mechanisms, legal or legislative, which could provide further assurance surrounding CFO accountabilities in the future.
- 3.8 Each of the above points aim to provide assurance within the spirit of local policy intent, which has been underpinned by a robust evidence base on which the Governance Review and Scheme was developed.

- 3.9 Where constitutional changes around the CFO are proposed, points 2 and 4 in particular should provide sufficient time to consider any proposed amendments to the constitutional arrangements around the role of the CFO, along with additional scrutiny on these proposals.
- 3.10 The above draft proposals were received positively by all parties and demonstrated an intent to reach a robust model.
- 3.11 Progression of these proposals will be subject to more formal and detailed drafting for review prior to the 22 March 2019 and an understanding that the CFO would need to be assured around the detail.
- 3.12 The following timeline assumes that constitutional proposals can be developed and agreed with the CFO, prior to engagement and recommendation at WMCA Board.
- WMFRA PPF 4th February
 - WMCA Board update 8th February 2019 – urgent business item
 - WMFRA meeting update 18th February 2019
 - WMCA Board agree constitutional changes 22nd March 2019
- 3.13 It should be noted that at this stage the constituent authority Leaders will need to consider whether the changes to the Order and the developed proposals would require further consideration by their Authority decision-making process; or whether existing delegations would be sufficient to provide consent to the Order (given the development of robust local assurance within the WMCA Constitution).

4. **EQUALITY IMPACT ASSESSMENT**

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

5. **LEGAL IMPLICATIONS**

- 5.1 This report does not present any immediate or direct legal implications. However, progression of the constitutional changes will lead to legal implications in respect of WMCA Board approval on 22 March 2019 and subsequent laying of an Order before Parliament once the constitutional changes have been approved locally.

6. **FINANCIAL IMPLICATIONS**

There are no direct financial implications to this report.

7. **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications to this report

BACKGROUND PAPERS

WMFRA 18 February 2019 Arrangements to Act in Matters of Emergency

[WMFRA 20 FEBRUARY 2017 ROUTE MAP TO A WEST MIDLANDS COMBINED AUTHORITY MAYORAL WMCA GOVERNANCE REPORT](#)

[WMFRA 20 FEBRUARY 2017 OUTCOMES OF THE FUTURE GOVERNANCE WORKING GROUP](#)

[WMCA 3 MARCH 2017 ROUTE MAP TO MAYORAL WMCA GOVERNANCE](#)

[AGM June 2017](#)

[WMCA 8 SEPTEMBER 2017](#)

[Governance Review and WMCA Scheme Report to Local Authorities](#) (17 October 2017 Sandwell Metropolitan Borough Council example) [Scheme](#)

[Governance Review](#)

[WMFRA 20 NOVEMBER 2017](#)

WMCA Board 8 December 2017 [Mayoral WMCA Governance of West Midlands Fire Service - Governance Review and Scheme](#)

[CONSULTATION OUTCOMES REPORT TO LOCAL AUTHORITIES](#) (21 March 2018 Sandwell Metropolitan Borough Council example)

[WIDENING CFO Accountabilities 16 April 2018](#)

[ROUTE MAP TO MAYORAL COMBINED AUTHORITY GOVERNANCE:
CONSULTATION OUTCOMES AND SCHEME SUBMISSION TO
SECRETARY OF STATE 16 APRIL 2018](#)
[WMCA 14 SEPTEMBER 2018 GOVERNANCE OF WEST MIDLANDS
FIRE SERVICE APPROVAL OF STATUTORY ORDER](#)
[WMFRA 17 SEPTEMBER 2018 ROUTE MAP TO MAYORAL
COMBINED AUTHORITY GOVERNANCE](#)
[WMFRA GOVERNANCE AND TRANSFORMATION COMMITTEE 8
October 2018](#)
[WMFRA GOVERNANCE AND TRANSFORMATION COMMITTEE 12
NOVEMBER 2018](#)
[WMCA AUDIT AND RISK ASSURANCE COMMITTEE 12 NOVEMBER
2018](#)
[WMFRA GOVERNANCE AND TRANSFORMATION COMMITTEE 10
DECEMBER 2018](#)
WMFRA GOVERNANCE AND TRANSFORMATION COMMITTEE 28
JANUARY 2019

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