

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

18 FEBRUARY 2019

1. **ARRANGEMENTS TO ACT IN MATTERS OF EMERGENCY
- LAYING OF THE STATUTORY ORDER FOR TRANSFER
OF GOVERNANCE**

Report of the Clerk.

RECOMMENDED

THAT members note the decision made under the above provisions set out within the Authority's constitution, to advise local authorities not to proceed with the laying of the statutory Order for transfer of governance.

2. **PURPOSE OF REPORT**

This report is submitted to notify members of the decision taken between the Chair to the Fire Authority and the Chief Fire Officer (CFO), following amendments made to the draft statutory Order by the Joint Committee for Statutory Instruments (JCSI). Advice was provided by the CFO to local authority Chief Executives on the 10 January 2019, not to proceed with the laying of the statutory Order to transfer governance of West Midlands Fire Service (WMFS) to the West Midlands Combined Authority (WMCA).

3. **BACKGROUND**

- 3.1 During 2017 - 2018 the WMCA and WMFS undertook extensive engagement with each of the 7 local authorities, the Fire Authority and the Home Office regarding the proposed change in governance arrangements. This process followed the requirements of the Local Democracy, Economic Development and Construction Act 2009 and included a public consultation focusing on proposals as set out in the approved governance review and scheme.

During this engagement there were clear areas, 'key asks', which each local authority determined would need to be maintained in the Order to ensure the principles of the governance change were met. These areas covered:

- Constitution and composition of the Mayoral Fire Committee
- Ring fencing of fire budget and reserves
- CFO accountability as Head of Paid Service for WMFS

On advice of the Home Office it became clear that both the ring fencing of reserves and the CFO accountability as Head of Paid Service, could not be provided for in the draft statutory Order as these would require a change in primary legislation, and this was not achievable within the required timeline. Compromises were met to achieve the principles of these key asks. The ring fencing of the fire budget and reserves was agreed to be provided for through the WMCA constitution. The accountabilities required for the CFO would be set out in the Order as clear functions to be exercised by the CFO only.

On the 14th September 2018 the WMCA approved the submission of the developed draft statutory Order to the Home Office to be progressed for laying in Parliament. This decision was substantiated by Sandwell Council on the 19 September 2018.

During September 2018 to December 2018, both WMFS and WMCA officers engaged with the Home Office to keep apprised of progress of the Order into the JCSI prior to it being laid in Parliament.

The Order was due to be laid in Parliament on the 14 January 2019. On the afternoon of the 9 January 2019 following JCSI review and amendments, the Order was submitted to all seven local authorities and the WMCA Chief Executive's seeking consent to lay the Order in Parliament. Consent was required by 10 January 2018, 1430hrs.

On review of the JCSI amended Order, it was apparent that changes had been made to section 1 and section 7 of the Order, Chief Fire Officer Functions.

1. Section 7(1) now says “the only arrangements the Mayor may make under section 107D(3)(b) of the LDEDC Act 2009 in relation to fire and rescue functions are to authorise the exercise of the following functions by the CFO (the accountabilities are then listed).... - however;

2. Section 7(2) goes on to say “If the Mayor makes arrangements described in paragraph (1).... - the inclusion of the word "If" means a Mayor has the option not to make the arrangements of authorising a CFO to carry out the delegated accountabilities listed at 7(1) (a) to (j) of the Order.

These amendments changed the ‘CFO functions’ to ‘delegated functions’ on the choice of the Mayor. Therefore, further compromising this locally agreed key ask and removing clarity in the independence of the CFO role.

On the basis of these changes and the further compromise this placed on the locally agreed key asks, the CFO took a decision to advise local authority Chief Executives not to consent to the laying of the Order. The Chair endorsed the assessment of the CFO on behalf of the Fire Authority. Given the timeline for consent this decision was taken aligned to the Authority's Standing Orders, part 3, item 17, Arrangements to Act in Matters of Emergency, section 2.

Each of the local authority and WMCA Chief Executives verbally agreed to this course of action and the Clerk confirmed this decision to the Home Office on the 10 January 2019.

At the time of writing this report six of the seven local authority Chief Executives have provided written confirmation of this decision to the Home Office.

4. **EQUALITY IMPACT ASSESSMENT**

In preparing this report an initial Equality Impact Assessment /is not required.

5. **LEGAL IMPLICATIONS**

The current non-provision of consent by the constituent local authorities to the laying of the draft Order means that the Order (in its current form) will not proceed via the Parliamentary process to become secondary legislation.

6. **FINANCIAL IMPLICATIONS**

There are no direct financial implications arising from this report.

7. **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications

BACKGROUND PAPERS

The contact name for this report is Karen Gowreesunker, Clerk to the Authority (0121 380 6688)

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CLERK TO AUTHORITY