

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

10 October 2022

1. BUSINESS CONTINUITY ARRANGEMENTS

Report of the Chief Fire Officer

RECOMMENDED

1.1 THAT Authority note the increase in Corporate Risk 6.1 relating to Business Continuity, as reported verbally to Audit and Risk Committee on 18 July 2022 and further discussed at Audit and Risk Committee on 26 September 2022.

1.1.1 Corporate Risk 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.”

1.2 THAT Authority considers the potential impact of Industrial Action on business continuity given the increase in Corporate Risk 6.1.

1.3 THAT Authority consider options to mitigate Corporate Risk 6.1 outlined in section 7 in order to decide on next steps.

2. PURPOSE OF REPORT

2.1 To provide Fire Authority with further information regarding the increase in Corporate Risk 6.1 to 16 (Red) based on an increased likelihood of Industrial Action, as detailed in section 3 of the report.

2.2 To bring to the attention of Fire Authority the significant risk for the Fire Authority being unable to meet its statutory duties to provide provision for responding to incidents, as outlined in the Fire and

Rescue Service Act 2004 and the Civil Contingences Act 2004, during a period of Industrial Action based on current business continuity arrangements, which are reliant exclusively on volunteers.

3. **BACKGROUND**

- 3.1 The National 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 Contingences 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 National 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 Contingences Act and the National Framework in an assertive, effective, and safe way.
- 3.5 All risks are recognised and managed through the WMFS Corporate Risk Register and reported monthly to the CFO, and a quarterly and six-month review to the Fire Authority via the Audit and Risk Committee.
- 3.6 Both the Fire Authority and Officers provided a response to 'Reforming Our Fire and Rescue Service' White Paper published by the Home Office earlier this year. The response provided by the Fire Authority indicated that it had confidence that business continuity arrangements were satisfactory, which is in direct

contrast with the officer-led service response which indicated a lack of confidence in these arrangements.

4. **CORPORATE RISK 6.1**

- 4.1 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.”
- 4.2 In September 2019, the Strategic Enabling Team as part of the review of Corporate Risk and to enhance business continuity resilience arrangements, engaged with third party providers. The recommendations were presented to the Fire Authority through a scrutiny process, by the CFO.
- 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 arrangements 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, Corporate Risk 6.1 was reviewed again, and the likelihood of industrial action increased from 3 to 4. This resulted in the overall risk rating of Corporate Risk 6.1 increasing from 12 to 16 (the highest possible rating). Corporate Risk 6.1 currently remains at 16. This was verbally reported to Audit and Risk Committee in July 2022 and again in the form of a formal report in September 2022.

- 4.6 The likelihood rating was increased in June 2022 from 3 to 4 due to the increased likelihood of limited capability of business continuity arrangements.
- 4.7 There is growing discontent regarding fire service staff pay given high level of inflation and its subsequent impacts on cost of living. Wage growth within the fire and rescue service has been below inflation for several years, but the recent high level of inflation has increased the gap significantly.
- 4.8 The above is coupled with concerns about the overall industrial relations environment in the public sector, where several unions have balloted for or begun strike action over pay.
- 4.9 The “Reforming our Fire Service” - White Paper presented in May 2022 outline the desire of Government to have greater assurance around business continuity arrangements and for them to be independently assured.
- 4.10 In July and August 2022, National Employers and Representative Bodies failed to reach agreement on the 2022/23 pay offer, and the Fire Brigades Union (FBU) rejected a 2% pay offer. In early September 2022 the FBU announced their intention to ballot their members for Industrial Action in October 2022 on the issue of pay.

5. NATIONAL RESILIENCE ASSURANCE TEAM SURVEY

- 5.1 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.
- 5.2 WMFS responded to the survey in August 2022 and have subsequently shared this survey response with the Audit and Risk Committee. The survey collected detail of current Business Continuity plans, planning assumptions, expected appliance availability and crewing numbers.
- 5.3 Within the response, it is made clear that **“Resilience arrangements for industrial action rely on non-striking operational staff [and] there is currently limited confidence or understanding of the predicted cover that might be achieved for future periods of Industrial Action.”**

- 5.4 The Home Office provided their outcome to the survey in September 2022. They acknowledge 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 & 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 is unable to conclude at this time that WMFS arrangements to maintain an effective emergency response in the event of firefighter industrial action are suitable and sufficient and therefore must conclude that WMFS arrangements would be considered **red, high risk**.
- 5.5 The Home Office have also confirmed the next steps will be outlined in due course in correspondence to the Chair of the Fire Authority and the Chief Fire Officer.

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 and MTA (light).
- 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 Through implementing business continuity arrangements, a request for volunteers was made to WMFS non-striking operational staff. Whilst not eventually needed, a minimum of 12 PRLs and 1 BRV was achieved (representing 26% of total staff availability and 22% total appliance availability). It is unknown what additional staff and resources may have been made available during the industrial action period.

- 6.4 This analysis was based on actual volunteer numbers from 2018, however, several factors have changed since then. The profile of the workforce has changed considerably since 2018, the current level of communications and feedback from staff is one of growing dissatisfaction regarding national pay, therefore, we can reasonably assume these figures will reduce for future periods of industrial action.
- 6.5 It is 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. **POSSIBLE MITIGATION ACTION**

- 7.1 Below are two actions the authority could take to mitigate CR6.1. Further commercially sensitive information regarding these options will be provided in a separate paper to be discussed in closed session.

7.2 **Retention of external resilience provider**

7.2.1 On 30 August 2022, the Strategic Enabling Team recommended, given the status of CR 6.1, that the Chief Fire Officer seek to engage the services of an external provider to provide 25 resilience staff (able to crew five PRLs) to provide support in addition to whatever capability is provided by non-striking volunteers.

7.2.2 This option could be implemented relatively quickly, with external providers maintaining the competency of contingency workers on an ongoing basis and therefore requiring only seven days' notice to provide the resources. Contingency workers would utilise WMFS equipment and appliances.

7.2.3 This approach would provide high levels of assurance for WMFRA to meet the statutory requirements through business continuity arrangements with less ongoing management. External contractors have been used during previous periods of industrial action by other FRS.

7.3 **Contingency or resilience contracts**

7.3.1 Existing staff operating on “resilience” contracts or contingency staff trained by the service and employed on a retainer are already used by a number of other fire and rescue services to provide business continuity.

7.3.2 This would enable WMFS to ensure standards of training and competence directly but would take longer to implement than using an external provider and staff would need to be recruited and trained from scratch.

7.3.3 If implementing resilience contracts for existing staff, training and skills would not be an issue but there is no guarantee as to how many would agree to sign such contracts and they could choose to withdraw from them.

8. **EQUALITY IMPACT ASSESSMENT**

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

9. **LEGAL IMPLICATIONS**

9.1 The 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.

9.2 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.

9.3 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.

10. **FINANCIAL IMPLICATIONS**

10.1 Both options 7.1 and 7.2 outlined above would require additional expenditure. In the case of option 7.1 this would constitute

spending above the current £250,000 limit identified under the scheme of delegations as requiring Authority approval.

- 10.2 Any additional costs of implementing potential mitigation measures outlined in section 7 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.
- 10.3 A separate report will be considered in closed session that contains commercially sensitive details of the potential costs associated with measures outlined within section 7.

11. **ENVIRONMENTAL IMPLICATIONS**

- 11.1 Environmental implications would be considered as part of the tendering process for the measures outlined in section 7.

BACKGROUND PAPERS

None.

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