

Minutes of the Scrutiny Committee

21 October 2019 at 10:30 a.m.
at Fire Service Headquarters, Vauxhall Road, Birmingham
B7 4HW

Present: Councillor Spence (Chair)
Councillors Barrie, Edwards (substitute for Cllr Gill),
Hogarth (substitute for Cllr Barlow), Jenkins and
Young

Apologies: Councillors Barlow, Dehar and Gill
S Middleton

Observer: Nil

39/19 Declarations of Interest in contracts or other matters

There were no declarations of interest.

40/19 Minutes of the Scrutiny Committee held on 26
September 2019

Resolved that the minutes of the meeting held on 26
September 2019 be approved as a correct record.

41/19 Scrutiny Committee Working Group – Business
Continuity Arrangements

Karen Gowreesunker, Clerk to the Authority, provided an
overview of the report.

The report had been submitted to frame the meeting. The
scope of the review was to consider the two options

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proposed to provide additional business continuity arrangements for the Service.

Following the meeting of the Scrutiny Committee on 26 September 2019, the report 'Business Continuity Arrangements' was subsequently deferred at the Fire Authority meeting on 30 September 2019, upon the request of Scrutiny Committee to allow the review to be conducted.

Upon the request of the Committee, independent witnesses had been called to provide information (via the Scrutiny Committee Working Group Session – item 5 of the agenda).

Members were asked to note the Committee's terms of reference including how the Constitution set out the separation of the scrutiny and decision-making processes. In answer to a Members' question, it was confirmed that Members were not able to vote at Fire Authority if they were involved in the scrutiny review.

A Member noted that Members had previously asked if the Fire Authority report 'Business Continuity Arrangements' could be moved into the public domain and issued to witnesses, and asked if this had been done.

It was confirmed that the contents of the Fire Authority report had not been made publicly available due to the confidential information that it contained.

The Member noted that it was difficult to ask witnesses to provide an opinion on a subject of which they did not have the full details of.

Members were informed that ACFO Sarah Warnes was in attendance and could provide an overview of the contents of the report to the Working Group as part of the Scrutiny Committee Working Group Session.

A Member noted that such an overview would only be useful for those witnesses that were present.

The Chair acknowledged that the confidential nature of the details contained within the report made it difficult to share such information.

42/19 **Scrutiny Committee Working Group Session**

Upon the request of the Committee, independent witnesses had been invited to provide evidence to inform the review process. The Committee had circulated questions to the independent witnesses in preparation for the meeting. The Scrutiny Committee Working Group session allowed Members to consider the information that had been provided by the witnesses in answer to the Committee's questions and to examine the evidence in more detail.

ACFO Sarah Warnes provided an overview of the two options being considered:

- Option 1 – additional business continuity arrangements to be provided via a contingent workforce
- Option 2 - additional business continuity arrangements to be provided via an external provider

A Member noted that it was for the Service's management team to work with these options and that they should be able to undertake what they see as the best action to take. The Member believed that the business continuity arrangements were mainly a management decision.

A Member noted that the proposals were highly sensitive. It was acknowledged that option two was recommended by the Service's management team, but this was a matter of judgement for the Fire Authority. The Member noted that there was a political dynamic to the subject being considered. It was important to receive evidence from witnesses to allow an evidence-based approach to be undertaken.

The Working Group discussed whether the meeting should be deferred in light of the points raised above. The Chair acknowledged the points raised but noted that witnesses and information were available. It was possible for Members to

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defer any recommendation at the end of the meeting if required. Members agreed that the meeting would continue.

The Committee then considered the information provided by each of the witnesses who were in attendance for the meeting, in order of:

- Representative of the Fire Brigades Union
- Representatives of an external provider who could provide option two
- An Officer from a Fire and Rescue Service which had implemented a contingent workforce (option one)
- An Officer from a Fire and Rescue Service which had implemented the services of an external provider (via written submission only)
- A Health and Safety Legal Advisor
- ACFO Sarah Warnes in an advisory capacity to the Committee

Witness 1 - Representative of the Fire Brigade's Union

The witness advised the committee that further information had been requested but had not been forthcoming. Therefore, a written brief had not been provided prior to the meeting.

It was noted that the information requested by the Fire Brigade's Union (FBU) would have been redacted and therefore would not have been available due to its confidential nature.

The witness advised the Working Group of the following key points:

- The FBU did not agree with the second option, as recommended by the Service's management team.
- The FBU's view of private companies operating within the Fire and Rescue Service was not a positive one. It was believed that such an arrangement was very expensive, particularly over a period of time for a service that may never be called upon. The public

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might have a dim view of such a use of public money, especially in a time of austerity.

- Research carried out into other Fire and Rescue Services who used similar arrangements had found concerns regarding the competence of such a workforce. The witness also noted from professional experience how difficult it could be to maintain competencies.
- More defensive firefighting was adopted rather than offensive firefighting when such a workforce was deployed.
- Such an arrangement could have a very negative impact upon industrial relations, particularly when the Service is coming out of a previous industrial dispute. The FBU would rather see management work with staff and the representative bodies to ensure such a situation never got to a point where such arrangements would need to be utilised.
- Additionally, the Service has a recall to duty system in place plus the Voluntary Additional Shifts. As a result, it is believed that the Service already has the facilities and capacity in place.

A Member noted that it had been stated that there were contingency arrangements in place with firefighters at a time of industrial action and enquired what assurances the FBU could provide in such a situation.

The witness advised that the Brigade Committee would meet before and during a period of industrial action and it would be a decision for the committee. It was noted that volunteers comprising Officers of all ranks had been available during previous periods of industrial action.

It was confirmed that the Service had used volunteers in the past. However, the Service was required to provide a guarantee and assurance of the level of cover that would be available during a period of industrial action. The assessment had been made and was included within the contents of the Fire Authority report. It provided the evidence that the required levels of assurance could not be provided

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by the Service. It would not be appropriate for the Fire Authority to base a decision on a level of assurance on good will from the FBU.

It was confirmed that the Service, in agreement with the FBU, had arrangements in place if there was a major incident. In such a situation, strike action would cease for that period. However, this would be for larger incidents. The Service was required to provide a guarantee and assurance of the level of cover available in reference to normal day to day business and these arrangements did not cover this.

A Member noted that it was important to have an insurance policy in place if such a situation ever arose.

It was noted that the financial implications were contained within the deferred Fire Authority report, which had been circulated to all Members as part of the private section of the agenda pack for the meeting held on 30 September 2019. The two options were similar in terms of the financial figures. However, option one would result in extra demand placed on the Service, in particular the Organisational Learning and Personal Development department.

A Member asked how the Service would monitor the training of an external workforce.

It was confirmed that the Service would ensure that the training requirements including monitoring and competencies would be clearly defined in any contract.

A Member noted that it was important to remember that business continuity arrangements were not solely about industrial action.

A Member noted that the options being proposed could have an impact upon industrial relations. There was a need for the Service to move back to a position of having good industrial relations, something which was currently being progressed but these proposals were not necessarily a way forward.

The Member also noted that they were not sure how the figures regarding the level of cover had been reached and wondered if there was a way to increase availability.

A Member noted the Home Office interpretation of the evidence supplied by the Service and there was a need to understand this in more detail.

Witness 2 – Representatives of an external provider (option two)

Written answers provided by the witness to Members' questions were circulated to the Working Group.

The witnesses advised the Working Group of the following key points:

- The provider were currently contracted to a number of Fire and Rescue Services.
- An overview of the structure and strength of the organisation was provided including resources, size and availability of the contingent workforce.
- An overview of the training, competencies and experience of the workforce, workforce capability, command and control, the deployment process, and concept of operations.
- Examples of current contracts with Fire and Rescue Services were provided and it was advised that any solution provided to a Fire and Rescue Service could be bespoke for that particular service.

A Member asked what number of women were in the organisation.

The witnesses advised the organisation actively recruited women into the workforce. However, the pool of applicants remained male dominated.

A Member asked if the contractors used their own appliances.

The witnesses confirmed that the relevant Fire Authority provided the use of their existing appliances. However, there would be no access to Fire Stations, with appliances located elsewhere. Familiarisation sessions would be undertaken for contingent staff.

The witnesses advised that the training of contingent workers was delivered by the Fire Service College, which included an initial training course and annual refresher training. Supervisors received a further assessment and drivers underwent emergency driver training. It was noted that contingent workers would not carry out all elements of a wholetime firefighter's role, for example hazmats. National best practice was adopted for contingent workers who worked within the associated standard operating procedures. They were trained to national standards and would have the core skills of a firefighter, for example, fighting fires, attending road traffic collisions; but not periphery skills such as rope and water rescue.

ACFO Sarah Warnes acknowledged individuals would not have the same level of experience as existing staff in either option.

It was confirmed that there would not be any mixed crews comprising WMFS and contingent workers.

A Member noted their concern regarding the availability of staff in the event of multiple Fire and Rescue Services requesting contingent workers at the same time and asked how the organisation ensured staff were available and how it was invoked.

The witnesses advised that the availability of resources was closely monitored, and the organisation never double sold a contract. Additionally, the organisation did not support services on an ad-hoc basis, only those where contracts were already in place, ensuring sufficient availability was always maintained.

A Member noted that in terms of health and safety, the organisation would be responsible for the contingent workers

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when they worked on their own. However, what would the situation be in the eventuality of a WMFS Officer entering the fireground.

The witnesses advised that arrangements were in place and detailed within their standard operating procedures. In the event of a WMFS Officer assuming control of an incident, this would be done via clear communication and confirmation of their intentions. Management of contingent workers would have to be via a contingent crew manager. All arrangements would be in accordance with the Conduct of Employment Agencies and Employment Business Regulations.

A Member asked in what manner the contingent workers were employed by the organisation.

The witnesses advised that it varied depending on the individuals, for example, some were on casual contracts, others were existing members of staff employed in other roles within the organisation who had the opportunity to join the scheme, complimenting their career.

A Member noted the high standards expected and that the Service whittled down applicants and asked what the organisations failure rate was.

The witnesses advised that robust reporting of performance was provided to the Fire and Rescue Services using such arrangements. Performance reporting included training pass and failure rates (there was a failure rate as expected but it was not very high).

A Member asked if the organisation had scrutiny in place in addition to that of other Fire and Rescue Services, and if any concerns had ever been raised as a result.

The witnesses advised that departmental scrutiny was in place internally. Fire and Rescue Services were allowed to audit and review the service as they wished. No concerns had been raised to date. Additionally, the organisation reviewed and audited all of its suppliers.

Witness 3 – An Officer from a Fire and Rescue Service which had implemented a contingent workforce (option one)

The witness advised the Working Group of the following key points:

- An overview of the approach taken by the Service was provided, including the recruitment and provision of a contingent workforce comprised of community response operatives and drivers to supplement existing staff in the event of industrial action.
- The community response operatives were recruited to undertake limited firefighting.
- An overview of the structure of firefighting was provided, including time required to ensure a good level of competence.

The witness advised that the approach had been resource intensive with a lot of resources required to undertake recruitment and training.

A Member asked if the service still had an inhouse capacity.

The witness advised that the service no longer had an inhouse incapacity following the reduction in numbers of staff available. It was noted that nearly all of the individuals had gone onto become full time firefighters into the service or elsewhere in the country. Therefore, maintaining numbers had proved difficult.

A Member asked if there had been any reaction from existing staff to the introduction of the contingent workforce.

The witness advised that although such a situation was never easy, there had been no adverse reaction.

A Member asked if there was a reason why the service had decided to use an inhouse capacity rather than an external provider.

The witness advised that they had found that an external provider was expensive and did not necessarily provide the

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level of assurance that the service would have if they recruited and trained individuals themselves.

Witness 4 – An Officer from a Fire and Rescue Service which had implemented the services of an external provider (via written submission only)

The witness had provided a written response to Members' questions which was circulated to the Working Group at the meeting. There were no specific issues arising.

Witness 5 – A Health and Safety Legal Advisor

Written answers provided by the witness to Members' questions were circulated to the Working Group.

The witness advised the Working Group of the following key points:

- An overview of who carried responsibility for the health and safety (and other related issues such as the training and competencies of individuals) of staff employed by private contractors when providing firefighting services for a Fire and Rescue Authority.
- Guidance was provided regarding how responsibility would be impacted when staff employed by a private contractor were under the direction of WMFS Officers at an incident.

The witness noted that, to the best of their knowledge, there were no examples in case law relating to this or other examples of legal action that had taken place in the UK or elsewhere. It was noted that there were examples of broader scenarios of using contractors, but these were not in the fire sector or similar sectors. There were case studies where the contract had been found to be wrong in its assumptions regarding responsibilities, and secondly, where legal, it had been the contractor which had been found to have the responsibility for the health and safety and training of their staff.

The witness noted that there was a need for any arrangements to be clear for both organisations as to who provides supervision. It was clearer if the contractor managed its own people rather than mixing teams. A linear approach was less risky.

ACFO Sarah Warnes – advisory capacity to the Committee

ACFO Sarah Warnes, in an advisory capacity to the Committee, offered the Working Group the opportunity to ask further questions of the Service and the proposed two options.

A Member noted that when it was considered that industrial action could be taken as a result of the industrial dispute during 2018, through the implementing business of its continuity arrangements, a request for volunteers was made to WMFS non-striking operational staff.

ACFO Sarah Warnes advised that the request for volunteers had indicated a level of cover that was below the assurance rate required. A further factor to consider was, although individuals could indicate they would volunteer, whether they would in a real situation could be a different matter.

Members were advised that discussions had taken place with the Home Office with regard to the Service's blended fleet and that the Home Office recognised the Service's blended fleet as part of expected resilience levels. The Service would intend to continue to provide a blended fleet in such periods of reduced appliance availability as the Service knew that it was the best way to meet risk. The use of resources must also take into consideration the ability to attend High Rise. Based on the request for volunteers through the period of the trade dispute the level of assurance required could not be reached by using the number of PRL's in isolation or with the inclusion of the BRV's.

A Member noted the historic position of the Service in terms of the assurances that could be provided regarding levels of cover and communications with the Home Office to this effect.

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ACFO Sarah Warnes advised that industrial action could take place over a long period of time. Evidence from the previous period of industrial action had indicated that levels of cover varied throughout such periods. At the start of the last period of industrial action, the level of resources available was below the requirements set by the Home Office.

Members were advised that the Fire Authority must ensure they have effective business continuity arrangements in place in accordance with their duties under the Civil Contingencies Act 2004. Based on the evidence provided by Officers, the Fire Authority did not have the level of assurance to be able to provide sufficient business continuity arrangements and resource availability against the expectations set by the Home Office.

A Member asked if there were any written communications regarding the Home Office expectations regarding appliances.

The Member was advised that the Home Office understood that the Service was different with regard to how its service delivery model was configured. Calculations had been based on pump rescue ladder appliances and Brigade Response Vehicles. There was a need to take into account the number of appliances that could be available and therefore the required number of people.

A Member noted that the Service and the Fire Authority did not know how many people would be available in the event of industrial action. There was a likelihood that the number of people available, and therefore the level of cover, would be below the expectations set by the Home Office which were clear. Therefore, there was a need to put in place an additional scheme or be prepared to gamble.

A Member noted that due to the significant nature of the decision, there was a need to carry out more research into this subject and further information was required.

ACFO Sarah Warnes acknowledged that it could be seen as a sensitive decision for the Fire Authority. However, the expectations were clear from the Home Office. Additionally, the issues flagged within the National Security Risk Assessment had led to the Service updating Corporate Risk 6 accordingly.

A Member noted that further research into the position of Fire Authorities across the country would be beneficial, reflecting that there were different models across the country. There was a need to seek further clarity from the Home Office regarding how they calculated the level of assurance of different services. Additionally, the Service's service delivery model had changed; what impact would this have on the calculations by the Home Office.

ACFO Sarah Warnes advised that the recommendations of Officers and the evidence base to support such a decision, was quite clear. Based on the evidence provided within the report officers were not able to provide the required levels of assurance to the Authority in relation to the resource availability in the event of industrial action as set out by the Home Office.

Karen Gowreesunker, Clerk to the Authority, advised that there was a need to be clear about the timelines, bearing in mind the nature of the decision, and a recommendation to be put forward by the Committee ahead of the Fire Authority scheduled to take place on 18 November 2019.

Following the extensive deliberation throughout the meeting, Members agreed that further information would be required. Information was requested on:

- the guidance issued by the Home Office
- the expectations of the Home Office with regard to the levels of assurance required
- the calculation methodology used in determining levels of assurance

As a result of the above, Members agreed that it was not appropriate to make a recommendation regarding either

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option at that current time. It was agreed that a further meeting of the Committee would be called to enable the provision of the further information with a view for Members to come to a decision and to conclude the review.

Resolved that the recommendation of the Committee is to be deferred and that a further meeting of the Scrutiny Committee Working Group be called.

The meeting finished at 14:28pm.

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