

REPORT TO CABINET

05 June 2019

Subject:	Governance of West Midlands Fire & Rescue Service – Approval of proposed Constitutional detail
Cabinet Member	Councillor Y Davies – Leader of the Council
Director:	Surjit Tour Director of Law and Governance and Monitoring Officer
Contribution towards Vision 2030:	
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DECISION RECOMMENDATIONS

That Cabinet:

1. Considers whether to confirm its acceptance or non-acceptance of the revised draft Local Government, The West Midlands Combined Authority (Fire and Rescue Functions) Order 2019 (“the draft Order 2019”) and the proposals set out in this report for governance of the West Midlands Fire and Rescue Authority by the Combined Authority (‘Governance Proposals”).
2. Pursuant to recommendation 1, the Chief Executive, in consultation with the Leader of the Council, be authorised to confirm (as necessary) the Cabinet’s decision in respect of the draft Order 2019 and Governance Proposals.

1 PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to provide detail on proposals for the Constitution of the West Midlands Combined Authority and through a Chief Fire Officer Framework of accountabilities, as developed between West Midlands Fire and Rescue Service and the Combined Authority and approved by the West Midlands Combined Authority Board on 22nd March 2019. CA Board confirmed its consent to the laying of the Order. It also agreed to the additional constitutional measures subject to the approval of the constituent authorities. The arrangements cannot be put in place without agreement of all the constituent Local Authorities.
- 1.2 Sandwell Council is asked to consider whether these proposals and the resulting constitutional changes in relation to the exercising of the Chief Fire Officer functions are agreed.
- 1.3 Outline the indicative timeline and next steps should the draft be agreed subject to this decision.

2 IMPLICATIONS FOR VISION 2030

The work of the West Midlands Fire Service directly contributes to the ambition that by 2030 our communities are built on mutual respect and taking care of each other, supported by all the agencies that ensure we feel safe and protected in our homes and local neighbourhoods.

3 BACKGROUND AND MAIN CONSIDERATIONS

- 3.1 The extensive background to this item is set out in the September 2018 report to the West Midlands Combined Authority (WMCA).
- 3.2 A strong evidence base has established the direction of this governance change which has included a multi stakeholder 'Future Governance Working Group', consistent engagement with the Fire Authority and Local Authorities, joint working between the WMCA, WMFRA and Home Office. This culminated into the development of a governance review and scheme which, following public consultation, formed the basis of a submission to the Home Secretary as set out below in paragraph 3.4.
- 3.3 The benefits of the Mayoral WMCA governance model provides substantial opportunities for the joint transformation of public services to West Midlands communities, providing value for money in the delivery of public safety.

The benefits can be broadly summarised under four main themes: public safety delivered through a broad range of responses to emergency services, a workforce to support joined up services and reduce vulnerability, continued improvement and transformation, and operational independence.

- 3.4 At the 25 May 2018 Board meeting, it was agreed that the Scheme be submitted to the Home Office to enable the development of the draft Statutory Order. Following receipt of the draft Statutory Order specific proposals set out in the report to progress key local 'asks' were confirmed at the 14 September 2018 Board meeting. The Chief Executive and Monitoring Officer of the WMCA were given delegated authority to consent to the laying of the Order in Parliament subject to the outcome of the final local constituent council cabinet meeting on 19 September 2019 and all of the constituent Local Authorities agreeing.
- 3.5 The proposed Final Draft Statutory Order (Appendix A) from the Home Office was sent out to each Constituent Council, the Combined Authority and West Midlands Fire and Rescue Authority on the 9th January 2019 with a request to provide consent. The proposed Order however contained an amendment that led the Chief Fire Officer to advise that the Order not be consented to on the basis that the change was too significant and compromised the intent of the proposed governance changes.
- 3.6 The single change in the proposed Order received back from the Home Office was in Part 2 Section 7 regarding delegations of Chief Fire Officer Functions by a Mayor. The title for this section was altered from 'Functions of the Chief Fire Officer' to 'Delegation of functions to the Chief Fire Officer.' Furthermore 7 (1) was amended to '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 Chief Fire Officer....' It was felt that this change, particularly replacing the use of 'must' with 'may' in 7(1), compromised the intent of the proposed governance changes which had been consulted upon and previously agreed by Board members.
- 3.7 As a result of this change and the subsequent advice provided by the Chief Fire Officer, the Order was not consented to by the Constituent Councils and the CA.

3.8 Response to Parliamentary Process

- 3.8.1 The Home Office have confirmed that Parliamentary Lawyers advising the Joint Committee on Statutory Instruments have stated that the Order is required to be in its current form as a reflection of primary legislation. The current form is the final Draft Order and cannot be altered. As a result of this change the Combined Authority and West Midlands Fire Service have been working together to develop proposals to mitigate the amendment made to the Order.
- 3.8.2 Following discussions with the Home Office, the proposals below were identified as local solutions to enable the transfer to go ahead and were agreed by the WMCA Board on the 22 March 2019. The Constitutional amendments were subject to the approval of Constituent Authorities. The Amendments put the proposals back on the same footing that they were in September 2018 in terms of the expected operational independence of the Chief Fire Officer.

Constitutional Amendment to the Mayor's Fire Function

- 3.8.3 In order to deliver additional assurances around the operation of a Mayor's Fire Function, a number of constitutional amendments are proposed which are detailed in full at **Appendix B**. These amendments provide the assurances required as to functions that must be delegated to the Chief Fire Officer by a Mayor, which were not able to be provided in the Draft West Midlands Combined Authority (Fire and Rescue Functions) Order 2019 and are as follows:-
- (a) **Delegation of Operational and Organisational Fire Functions to the Chief Fire Officer:** The intention is to guarantee that the delegations to the Chief Fire Officer previously agreed to must be provided to the Chief Fire Officer as the person with the competencies to prepare and deliver the Integrated Risk Management Plan.
 - (b) **Procedure to be followed in the event of any proposed changes to delegation:** The intention of the procedure set out is to ensure a robust process is undertaken when a Mayor wishes to amend any delegation of Operational and Organisational Fire Functions to the Chief Fire Officer. Any proposals would need full consideration through the Combined Authority governance processes including Overview and Scrutiny and Audit Risk and Assurance. The Chief Fire Officer would be fully engaged and consulted as a part of those processes and the final decision as to any changes would be for the WMCA Board.

- (c) **Clarity that no other officer other than the Chief Fire Officer (or an officer delegated by the Chief Fire Officer) can undertake the functions as set out in the draft Order.**

Framework of Delegated Accountabilities

- 3.8.4 It is also proposed that an additional Framework of Delegated Accountabilities relating to the Mayor's Fire Function, a draft of which is attached at **Appendix C** be adopted into the Combined Authority constitution in addition to the amendments set out in 3.3. The purpose of this Framework would be to build upon the amendments proposed in 3.3 and to set out (in accordance with the West Midlands Combined Authority (WMCA) Fire Functions Order 2019) how the functions of the Mayor, Chief Fire Officer, WMCA and MFC would be exercised in relation to each other and in support of delivering fire and rescue functions as aligned to relevant the legislative framework. Significantly this scheme of accountabilities sets out clearly how the Chief Fire Officer will enable the preparation and delivery of the Integrated Risk Management Plan, through an agreed Strategic Plan and Budget. The WMCA would become the Fire and Rescue Authority and as such would provide statutory officer roles through its staffing structure, however to support the Chief Fire Officer in the delivery of delegated accountabilities and working directly with WMCA Statutory Officers, a Deputy Section 151 Officer and a Deputy Monitoring Officer and Clerk will exist as part of the WMFS structure.
- 3.8.5 It is the view of both the Combined Authority Officers and the Chief Fire Officer that these proposals in Appendix B and Appendix C outlined in paragraphs 3.3 and 3.4 above, provide the additional assurances required to ensure that the intent of the proposed transfer is maintained and subsequently allows for the recommendation that the Order be consented to through the Combined Authority Board. This view was subsequently supported by the WMCA Board on the 22 March 2019.
- 3.8.6 At the September 2018 WMCA Board meeting a number of local mitigations to key asks were agreed by the Board. These are detailed in the September 2018 Board report and are not affected by the proposals within this report that have been agreed by the WMCA Board.

3.9 Next Steps

- 3.9.1 Discussions with the Home Office indicate that in such circumstances they would look for a date to lay the Order around the beginning of June 2019. Further discussions would take place during the parliamentary process to finalise a transfer date.

- 3.9.2 This report enables consideration of the proposed constitutional provisions by Sandwell Council so that the Council is in a position to consider giving its consent to the Order being laid when requested by the Home Office
- 3.9.3 The financial implications have been included in previous reports to Board. Specific issues have arisen at this stage in relation to a number of points that were raised by the Home Office following formal submission of the Governance Review and Scheme.
- 3.9.4 The original timeline projected a commencement date for the governance transfer at the beginning of the financial year. As a result of the delay outlined in this report the 1st April commencement date is no longer achievable. If a commencement date is achieved which is part way through the financial year, there will be implications for the accounting processes for the existing Fire Authority and part year accounts will need to be prepared covering the period up to the relevant date. Discussions have already taken place to scope the relevant implications of this between WMCA and WMFS finance leads and external auditors. Additionally, the draft Order has identified Mayoral Fire Committee member allowances.

4 STRATEGIC RESOURCE IMPLICATIONS

- 4.1 The financial implications have been included in previous reports to Board. Specific issues have arisen at this stage in relation to a number of points that were raised by the Home Office following formal submission of the Governance Review and Scheme.
- 4.2 The original timeline projected a commencement date for the governance transfer at the beginning of the financial year. As a result of the delay outlined in this report the 1st April commencement date is no longer achievable. If a commencement date is achieved which is part way through the financial year, there will be implications for the accounting processes for the existing Fire Authority and part year accounts will need to be prepared covering the period up to the relevant date. Discussions have already taken place to scope the relevant implications of this between WMCA and WMFS finance leads and external auditors. Additionally, the draft Order has identified Mayoral Fire Committee member allowances.

5. LEGAL AND GOVERNANCE CONSIDERATIONS

- 5.1 The legal implications have been included in previous reports to Board. The specific issues that were raised by the Home Office following formal

submission of the Governance Review and Scheme are covered in the September 2018 Board report.

- 5.2 The proposed changes to the WMCA Constitution set out in this report, if agreed, will provide assurance to the Chief Fire Officer regarding the delegation of the operation services by the Mayor should these matters become Mayoral functions. Although the WMCA constitution is subject to change, the process set out in the proposed sections ensures that the implications of such proposals will receive full consideration as part of any change process.

6. EQUALITY IMPACT ASSESSMENT

There are no direct equalities implications arising out this report.

7. IMPACT ON ANY COUNCIL MANAGED PROPERTY OR LAND

These proposals only have effect within the Constituent Council areas, i.e. the WM metropolitan area.

8. BACKGROUND PAPERS

WMFRA response to the Enable Closer Working between the Emergency Services

Consultation – the prelude to the Policing and Crime Bill (October 2015)

11.2 WMFRA Integrated Risk Management Plan Public Outcomes Report (20 February 2017)

11.3 WMFRA report - 'Route Map to Mayoral Governance' (20 February 2017)

WMFRA report – 'Route map to Mayoral West Midlands, Combined Authority Governance - a Reformed Fire Authority (RFA) and decision (10 April 2017)

WMCA Board (8th September 2017)

WMCA Board – WMFRA Governance Review and Scheme (8th December 2017)

The National Framework for Fire and Rescue Services England 2018

WMFRA report – Widening CFO Accountabilities 16 April 2018

Governance of WMFS Public Consultation Outcomes Report (25 May 2018)

WMCA Board (14th September 2018)

WMCA Board (22nd March 2019)

9. APPENDICES:

Appendix A - Draft West Midlands Combined Authority (Fire and Rescue) Order 2019

Appendix B – Proposed Constitutional Amendments to the Mayor’s Fire Function

Appendix C – Proposed Draft Scheme of delegated accountabilities

Appendix D – Draft Explanatory Notes for Draft Scheme of delegated accountabilities