

West Midlands Combined Authority (WMCA) Constitutional Framework for West Midlands Fire Service (WMFS) Fire Functions

Scope:

This framework of fire functions is set out in accordance with the West Midlands Combined Authority (Fire and Rescue Functions) Order 2019 ('the Order'). This document sets out how the functions of the Mayor, Chief Fire Officer and Mayoral Fire Committee (MFC) will be exercised in relation to each other and in the delivery of fire and rescue functions as aligned to the legislative framework set out below.

An effective, constructive working relationship is more likely to be achieved where communication and clarity of understanding are at their highest. Mutual understanding of, and respect for, each party's functions will serve to enhance the delivery of prevention, protection and response services to the local communities.

All parties are expected to abide by the principles of good governance.

This section of the WMCA constitution should be read in conjunction with the '*Fire Functions Explanatory Guide*'.

Fire Functions Legislative Framework

The legislative framework for the delivery of fire and rescue functions comprises of the primary, secondary legislation and related guidance as out below. The Mayor is accountable for ensuring these functions are discharged through the Chief Fire Officer. The Chief Fire Officer will be accountable for the delivery of these services through an evidence based Integrated Risk Management Plan.

The Fire and Rescue Services Act 2004

The Fire and Rescue National Framework England 2018

The Regulatory (Fire Safety) Reform Order 2005

The Fire and Rescue Services (Emergency) Order 2007

Civil Contingencies Act 2004

The legislation below informs the governance arrangements and the responsibilities placed on the WMCA, Mayor and Chief Fire Officer to deliver those legislative fire functions as set out above.

The West Midlands Combined Authority (Fire Functions) Order (2019)

The Local Democracy, Economic Development and Construction Act (2009)

The Policing and Crime Act (2017)

Section 1 - Accountabilities of the Chief Fire Officer

The Chief Fire Officer and those officers to whom the Chief Fire Officer has delegated duties or responsibilities, will have full accountability to make decisions on all matters relating to the delivery of the role of a fire service as set out in the Fire and Services Act 2004, Regulatory Reform Order, Civil Contingencies Act, Emergency Order and other enabling legislation. The National Framework references specifically the need to undertake the fire services of 'prevention', 'protection' and 'response' with the aim of reducing vulnerability within the community through an effective IRMP. The delivery of this will rely upon the most appropriate configuration of WMFS resources as determined by the Chief Fire Officer on a day-to-day basis.

Setting Strategy

1.1 A clear framework of accountabilities for the Chief Fire Officer as delegated by the Mayor are set out in the Order. The application of these functions will ensure the delivery of the fire function legislative framework as detailed below.

1.2 The Chief Fire Officer will be accountable for the following:

- preparation and presentation of an evidence Integrated Risk Management Plan (IRMP) to the Mayor, along with
- a proposed budget (supported by the deputy Section 151 officer) and
- a 3 year corporate rolling strategic plan, recommending how WMFS fire and rescue services will be delivered to meet the requirements of the IRMP.

1.3 On the agreement of the IRMP, WMFS budget and priorities and objectives as set out in the Strategic Plan by the Mayor, the Chief Fire Officer will deliver this agreed strategy through the delegated accountabilities.

1.4 The Chief Fire Officer is accountable for reviewing the IRMP on an ongoing basis. An IRMP consultation should take place once every 3 years, or when changes impact on WMFS's ability to meet the needs of the agreed IRMP and strategic priorities and objectives as referred to in 1.10.

Delivering Strategy through the operational and organisational independence of the Chief Fire Officer

1.5 As the accountable figure for operational decision making, the Chief Fire Officer will make decisions on a day to day basis regarding the development, structure and allocation of the work force, finance and assets to enable the balancing of competing operational needs and or re-allocation of resources according to risk, thereby ensuring the delivery of the IRMP through the agreed framework of strategic priorities and objectives.

1.6 To enable this the operational independence of the Chief Fire Officer is a fundamental principle of the governance arrangements WMFS.

1.7 The Chief Fire Officer must be the Officer who has the necessary operational and technical competencies to deliver the IRMP. Competencies for this role will be defined by national frameworks and/or guidance provided by the fire sector through the National Fire Chiefs Council.

1.8 The CFO will be accountable for leading and resolving incidents locally and at times regionally and nationally to ensure that during these circumstances, resilience is created within local communities and are restored to normality.

1.9 The Chief Fire Officer will lead collaborative arrangements with public services and with other emergency services as defined in the Policing and Crime Act 2017. This will be aligned to enabling the delivery of strategic priorities, where it is in the interests of efficiency, effectiveness to do so.

1.10 Where services to local communities are to be impacted in a way which fundamentally changes or reduces services received and thereby impacts on WMFS's ability to meet the needs of the agreed IRMP and strategic priorities and objectives, the Chief Fire Officer will ensure that the Mayor is informed in a timely manner. Where the impact of change(s) is permanent the CFO will make evidence-based recommendations to the Mayor the IRMP and 3 year rolling Strategy to align the delivery of services to the changing environment.

1.11 An IRMP consultation process will commence to engage communities in the changes proposed to the delivery of services through revised strategic priorities and objectives. This will inform the process as set out above in 1.1-1.3.

Delivery of Fire Safety functions through the Regulatory Reform Order

1.12 To submit comments on any town & country planning matter, Building Regulations, Safety of Sports Grounds and other applications or licences, where the WMCA is a consultee, statutory or otherwise.

1.13 Under the Regulatory Reform Order the Chief Fire Officer will exercise all the powers of the WMCA as an enforcement Authority and without prejudice the Chief Fire Officer may in particular:

- authorise the commencement of criminal proceedings (after consultation with the Monitoring Officer and deputy Monitoring Officer) for any breach of any law or regulation, the enforcement of which the WMCA is empowered to undertake;
- take appropriate enforcement action on behalf of the WMCA under the Regulatory Reform (Fire Safety) Order 2005;
- designate persons as Inspectors under Article 26 of the Fire Safety Order 2005 and the Health and Safety at Work Act 1974; and
- authorise named members of staff in writing to exercise statutory powers conferred on the Authority under Article 27 of the Fire Safety Order 2005.

1.13 To delegate to Fire safety officers to undertake fire safety inspections under the Regulatory Reform (Fire Safety) Order 2005 on behalf of the Crown Property Inspection Group.

Leadership, appointment and development of all WMFS staff and staffing structure

1.14 The Chief Fire Officer will lead WMFS and set its direction and culture.

1.15 The Chief Fire Officer will have full direction and accountability for decisions made, which impact on the staffing structure, both temporary and permanent, workforce planning and the dynamic approach to workforce development. This will ensure the requirements of the IRMP are met through the agreed WMFS strategic priorities and objectives.

1.16 All decisions taken will embrace the WMFS behavioural 'Core Values' and 'Standards' which are managed through an effective performance and disciplinary management framework as determined by the Chief Fire Officer.

1.17 The Chief Fire Officer will be accountable for the varying of all staffing arrangements, appointments and acting-up arrangements for all WMFS staff as is considered necessary, to carry out the functions of the WMFS in pursuance of the IRMP from time to time.

1.18 The Chief Fire Officer will, in consultation with the Deputy Section 151 Officer (Fire), authorise the implementation of any nationally agreed pay award in respect of all WMFS employees. This will be subject to any element of discretion being referred to the Authority for consideration.

1.19 The Chief Fire Officer will make determinations, in consultation with the WMCA Section 151 Officer and Deputy Section 151 Officer (Fire) and the Mayor, in relation to discretionary elements of the (relevant) Local Government Pension Scheme/ Firefighters Pension Scheme and the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations.

1.20 The Chief Fire Officer will be accountable for the disciplining of all WMFS staff (up to and including dismissal) in line with policy and appropriate advice.

1.21 This Chief Fire Officer will be accountable for the determination of appeals against dismissal or other disciplinary action in respect of all staff, other than those who report directly to the Chief Fire Officer.

1.22 The Chief Fire Officer will be accountable for disputes under the first stage of the Internal Disputes Resolution Procedure, lodged in relation to the relevant Firefighters Pension Scheme or the relevant Local Government Pension Scheme.

Financial and resource management

1.23 The Chief Fire Officer will be accountable for the management of budgets, use of and allocation of all assets such as fleet, estate and equipment, to achieve the delivery of the IRMP in line with agreed strategic priorities and objectives.

1.24 The Deputy Section 151 Officer (Fire) working as part of the WMFS Strategic Enabling Team (SET) will work with the Chief Fire Officer to support effective financial and resource management and to ensure professional and timely reporting to the WMCA Section 151 Officer.

1.25 Where the Chief Fire Officer proposes changes to assets, property, finances and reserves, which will fundamentally change WMFS's ability to deliver services aligned to the agreed IRMP and strategic priorities and objectives, this will be agreed with the Mayor. This will have regard to the requirements of the evidence-based IRMP, advice and recommendation(s) of the Chief Fire Officer and the requirements of the Fire and Rescue National Framework for England 2018 (as amended). Any such changes would need to recognise the 'ring-fenced' nature of the WMFS's budgets, assets and reserves as set out in section 3 (below)

1.26 The Chief Fire Officer will explore and lead income generation activity by WMFS in order to support delivery of 'the Plan' and IRMP.

The management of trade union and employee relations.

1.27 To enable the most effective delivery of strategic priorities and objectives aligned to the IRMP, the Chief Fire Officer will be accountable for the management of all trade union relations relating to employee relations as set out in (and via use of) the WMFS Employee Relations Framework.

1.28 This will ensure that there is sufficient opportunity, flexibility and independence for the Chief Fire Officer (and/or the Strategic Enabling Team) to work with trade union representative bodies at an early stage. The Chief Fire Officer (and/or the Strategic Enabling Team) will use a structured and evidence based approach to solve employee relations issues with a focus on achieving 'shared solutions'.

Section 2 - Functions of the Mayor and WMCA

2.1 The WMCA is the Corporate Body which employs all staff and owns all properties and assets.

2.2 Except where set out below 'fire functions' are 'excluded functions' and can only be exercised by the Mayor on behalf of the WMCA.

2.3 The budget approvals proposals for WMFS is aligned to sections 1 and 1.1 to 1.4 and underpinned by the professional advice and recommendation(s) from the Chief Fire Officer, Deputy Section 151 Officer (Fire) and the WMCA Section 151 Officer. The Mayor will subsequently present the 'fire budget', the government grant, precept, business rates and other sources of income, related to the delivery of WMFS services to and on behalf of the WMCA.

2.4 The 'fire budget' and reserves as well as other funding streams are 'ring-fenced' for the delivery of services to support the sustainability of WMFS in reducing risk and vulnerability for the communities the WMCA and WMFS serve.

2.5 The Mayor has the legal power and duty to agree the IRMP and strategic priorities and objectives of WMFS on the recommendation of the Chief Fire Officer, having regard to the requirements of the Fire and Rescue National Framework for England 2018.

2.6 The Mayor of the WMCA has a statutory duty to hold the Chief Fire Officer to account in performance of the Chief Fire Officer's accountabilities.

2.7 Functions exercisable only by the Mayor:

- a) the following provisions of the Fire and Rescue Services Act (2004):
 - (i) section 13 (reinforcement schemes), other than subsection (5),
 - (ii) section 15 (arrangements with other employers of fire-fighters), and
 - (iii) section 16 (arrangements for discharge of functions by others);
- b) approving the IRMP and the 'fire and rescue declaration';
- c) scrutinise, support and challenge the overall performance of WMFS against the priorities agreed within 'the Plan' and IRMP; and
- d) approving plans, modifications and/or amendment to plans for the purpose of ensuring that—
 - (i) so far as is reasonably practicable, the WMCA is able to continue to perform its fire and rescue functions if an emergency occurs,
 - (ii) the WMCA is able to perform its functions so far as necessary or desirable for the purpose of preventing an emergency, or reducing, controlling or mitigating the effects of an emergency, or taking other action in connection with it;
- e) approving any arrangements for the co-operation of the WMCA in relation to its fire and rescue functions and other general 'Category 1' responders and general 'Category 2' responders in respect of the performance of the WMCA's duty as a Fire and Rescue Authority under section 2 of the Civil Contingencies Act 2004 and any duties under Regulations made in the exercise of powers under this Act;
- f) hold the Chief Fire Officer to account for -
 - (i) the delivery of the functions of the Chief Fire Officer and the functions of those under the direction and control of the Chief Fire Officer; and
 - (ii) the performance of the WMFS against the requirements of the IRMP and staff; ensuring the maintenance of an efficient and effective fire service;
- g) setting the fire service budget and the subsequent precept for the WMFS;
- h) appointing, or dismissing, the Chief Fire Officer;
- i) approving the terms of appointment of the Chief Fire Officer;
- j) hear appeals against dismissal from any Assistant Chief Fire Officer (including any Deputy CFO);

- k) appoint the Mayoral Fire Committee (MFC); and
- l) to approve the appointment of members to the MFC and in consultation with the WMCA to appoint the Chair of the MFC.

2.8 The Mayor and Chief Fire Officer must work together to safeguard WMFS operational independence as defined within this Constitutional Framework while ensuring that both parties can fulfil their respective roles as defined by the 'Order' and this Constitutional Framework.

Section 3

3.1 Ring-fencing of the WMFS/Fire Service budget, assets and reserves

A. To enable the most efficient and effective delivery of the agreed IRMP, strategic priorities and objectives and budget for WMFS the Combined Authority will maintain a separate budget known as the Fire Service budget "the budget". All receipts due to the Combined Authority in relation to the discharge of Fire Service operations and functions as set out in the Statutory Order West Midlands Combined Authority (Fire and Rescue Functions Order 2019), must be paid into "the budget" and all expenditure related to the same matters, must be paid out of "the budget". Page 61

B. All assets relating to the discharge of Fire Service operations and functions will be owned by the WMCA as set out in the Order, but ring fenced for use in relation to Fire Service Operations

Any receipts, income or proceeds of sale in relation to Fire Service Assets will be retained within "the budget".

C. Any reserves associated with the Fire Service at the point of transfer should be purely for the use of the Fire Service. Future movement in the Fire Service reserves need to be directly linked to the budgetary arrangements set out in A and B above.

D. The CFO together with the officer responsible for the proper administration of financial affairs, the Deputy Treasurer (fire) and the WMCA section 151 officer, will propose and be accountable for an annual budget for the fire and rescue service which will ensure the most effective and efficient delivery of services to local communities as set out in the Fire Service Strategy.

E. Nothing in these provisions shall be taken as precluding any shared services, shared use of assets or other forms of joint working involving assets, personnel or services maintained by "the budget" as determined by the CFO and with the consent of the Mayor.

Section 4 - Statutory Officer roles (Fire)

4.1 The Statutory Officers for WMFS as the Mayors Fire Function, will be the WMCA Monitoring Officer and WMCA Section 151 Officer.

4.2 It is recognised that deputies will be appointed in consultation with the WMCA statutory officers.

4.3 It is recognised that a deputy Section 151 Officer (Fire), deputy Monitoring Officer (Fire) and Clerk (Fire) will exist for WMFS to ensure:

- the Chief Fire Officer is sufficiently supported in the delivery of key fire functions and accountabilities:
- the development and delivery of the IRMP, through the delivery of a balanced budget and agreed strategic priorities and objectives, and
- that the ring fenced arrangements of the WMFS budgets and reserves are appropriately considered.
- The appropriate support to the Mayoral Fire Committee and Mayor

4.4 To provide the appropriate level of support the deputy Section 151 Officer (Fire) and Clerk (Fire) will need to exist within the WMFS Strategic Enabling Team (SET).