

Report of the Chief Fire Officer

Day Crewing Plus Consultation and Options

Purpose of report

1. To agree and mandate the implementation of appropriate duty system(s) for the three fire appliances currently operating the Day Crewing Plus (DCP) system at Hereford, Worcester and Bromsgrove Fire Stations, in light of the recent legal challenge brought against South Yorkshire Fire Authority (linked to the Working Time Regulations (WTR)) by the Fire Brigades Union (FBU) and the limitations of the Service's medium and longer-term financial position.
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Recommendations

It is recommended that:

- (1) Based on the assessment of the financial, legal and organisational risks involved, the continued use of the DCP duty system within the Service be ruled out;**
- (2) Bromsgrove Fire Station moves from DCP to a 2-2-4 shift crewing pattern to maintain an immediate 24/7 response capability, as soon as practicable on a date to be determined by the Chief Fire Officer;**
- (3) The second appliances at Worcester and Hereford Fire Stations (currently DCP) in future be crewed:**
 - (i) utilising the agreed 12-Hour Day Duty system during the daytime and**
 - (ii) on the Retained Duty System at night,**

these changes to be implemented as soon as practicable on such date(s) as may be determined by the Chief Fire Officer.

Introduction and Background

2. At the Fire Authority meeting in December 2018, it was reported that a High Court challenge brought by the FBU against South Yorkshire Fire Authority had determined that South Yorkshire's 'close proximity crewing' arrangements, which were broadly similar to our DCP, were in breach of the Working Time Regulations 2015 (WTR) including insofar as night-time working was concerned. The current DCP arrangements in HWFRS were therefore likely to be unlawful unless the Service secured a collective agreement with the unions

to modify the impact of the WTR. Without such an agreement, the Authority would potentially be criminally liable and this was therefore not a sustainable position for the Authority to maintain. Consequently it was resolved (minute 198) among other things, that:

‘a further report be brought to the next meeting of the Fire Authority, if no local agreement has been reached by that time, with a view to:

- (i) Implementing a suitable duty system for the second full-time fire appliances at Hereford and Worcester stations. The duty system would need to be economically viable in respect to the Service’s Medium Term Financial Plan (MTFP), as well as meeting the existing CRMP analysis from 2014 (which itself was subject to full public and staff consultation at the time); and*
 - (ii) undertaking an immediate CRMP analysis in respect to Bromsgrove Station to determine a duty system that is the most suitable and economically viable to replace the current DCP system, whilst also taking into account the Service’s MTFP’*
3. At the subsequent Fire Authority meeting on 11 February 2019, it was resolved (minute 209) that:

‘Because of the inability to reach a local agreement with the FBU in respect to the existing DCP duty system, standard crewing arrangements on the full-time appliance at Bromsgrove and the second full-time fire appliances at both Hereford and Worcester stations be changed at the earliest opportunity’.

‘Proportionate public and staff consultation be undertaken in respect to future emergency cover arrangements at Hereford, Worcester and Bromsgrove, including the option to move the existing DCP appliances to a Day-Duty type system in line with the Fire Authority’s original 2014-2020 Community Risk Management Plan (CRMP) recommendation and/or the latest CRMP analysis.’

Previous Rationale for Using DCP

4. DCP was originally introduced into the Service back in 2013 at Bromsgrove Fire Station as a more cost-effective and affordable way of maintaining 24/7 immediate response resources for lower activity fire appliances. This was subsequently extended to the two second wholetime appliances at Worcester and Hereford Fire Stations in response to the consultation feedback on the (then) draft 2014-2020 CRMP. Initially, the draft CRMP had actually recommended the removal of these two appliances based at Worcester and Hereford Stations (along with a further eight On-Call fire appliances from across the Service).

5. This original recommendation was based primarily on the low operational activity levels of these fire appliances and their respective operational risk exposure. However, following public and staff consultation, when published, the final CRMP recommended instead for an enhanced position, using DCP for the two highlighted Wholetime fire appliances (in addition to Bromsgrove) and maintaining all but two of the earmarked On-Call fire appliances. In order to sustainably fund this position going forward, however, the Service also needed to reduce crewing on all other Wholetime fire appliances across the Service from five to four.
6. The changes to crewing levels were delayed for a further two years by the use of £800k of unallocated reserves and a combination of 'excess' wholetime firefighter establishment levels (as the retirement profile, secondments and voluntary redundancies allowed for their phased and managed reduction to the new establishment level) - as well as paying overtime to firefighters to cover remaining crewing shortfalls, as and when required.
7. To meet its on-going efficiency requirements, since 2017, all wholetime fire appliances have successfully moved to riding with crews of four and DCP was continued to be effectively maintained on the three fire appliances at Bromsgrove, Worcester and Hereford. Despite this, in December 2018, Her Majesty's Inspectorate of Constabulary, Fire & Rescue Service (HMICFRS) criticised the previous use of reserves to temporarily maintain 'crews of five' between 2014-2016, which it saw as unsustainable and, in turn, contributed to the Service being judged as 'requiring improvement' in respect to the Efficiency pillar of the inspection.

Collective Agreement for DCP with FOA

8. As part of the national issues that were generated in light of the South Yorkshire legal challenge, the Chief Fire Officer (CFO) received correspondence from the Health and Safety Executive (HSE), who are the enforcing authority for the purposes of the WTR, on 6 June 2019 requesting an update on the Service's DCP arrangements, making it clear that:

"HSE now expects non-compliant Services to achieve compliance with Regulation 6 of the Working Time Regulations and if Fire and Rescue Services do not have such arrangements in place then the HSE may take enforcement action"

9. The FBU has made it clear they will not enter into a collective agreement in respect of DCP. Consequently, in an effort to explore all options that might have enabled the Authority to retain DCP, which is well liked by the staff involved and is a cost-effective means of providing immediate 24/7 fire cover, Officers entered into formal negotiation with the Fire Officers' Association (FOA) to seek to achieve a local collective agreement for DCP¹.

¹ FOA (along with the FBU) is recognised locally by the Fire Authority to provide individual and collective representation to their members from Firefighter to Area Commander. At the National Joint Council (NJC), FOA represent FRS uniformed Middle Manager roles through membership of the Middle Manager's Negotiating Body.

10. On 5 July 2019, the Service signed a local collective agreement with FOA and responded to the HSE formally on 12 July 2019 with copies of the following documents:
 - Collective agreement
 - DCP revised Service Policy
 - DCP risk assessment
 - Human Resources - Health monitoring report
 - Health and Safety monitoring report
11. The HSE has since indicated that it does not intend to make specific assessments of the arrangements for individual Fire and Rescue Services who have confirmed that they have either discontinued DCP or have reached a collective agreement. Officers therefore do not anticipate that the HSE will look to progress with any proceedings against HWFRS but the HSE has stopped short of expressing a view on the adequacy of the collective agreement with FOA.
12. The Authority has received correspondence from the FBU, including copy correspondence between the FBU and the HSE, making it clear that the FBU does not accept the legitimacy of the collective agreement with FOA and strongly dispute that an agreement reached only with FOA is sufficient to satisfy the requirements of the WTR. Furthermore, it is clear from the correspondence that the FBU would be likely to bring a legal challenge against any Authority that relied upon an agreement with FOA as a basis for continuing with DCP.
13. Therefore, the opportunity to maintain DCP at the three locations within HWFRS' area would carry a significant risk of legal challenge. The Head of Legal Services advises that there is very real doubt that a collective agreement signed only with FOA would be sufficient to satisfy the requirements of the WTR and the Authority therefore cannot be recommended to continue with DCP.

Alternatives to DCP – Considerations

Crewing Systems

14. Appendix 1 to this report reproduces a comparison of the possible alternative duty systems that could be considered for the three existing DCP appliances and which is an updated version of the one originally presented at the meeting on 11th February (latest financial estimates and 12-Hour Day Duty agreement).

Call Volumes

15. Similarly, Appendix 2 to this report reproduces the information around call volumes that was presented to the Authority in February. This demonstrates that during the periods currently covered by the existing 12-hour stand-down period on DCP (i.e. 8pm-8am – where DCP appliances remain immediately available but the crews stand-down from all other duties) operational activity is very low. These activity levels are very similar to the current operational activity levels at Evesham, Droitwich and Malvern stations during the evening and

night-time periods, all of which are successfully covered by utilising the on-call duty system at night.

Finance

16. Members will be aware of the significant financial challenges facing the Authority, as shown in the medium term financial plan. The Treasurer therefore advises that:
- it is important that any replacement for the current DCP arrangements remain within the existing overall cost envelope;
 - the MTFP is already reliant upon the use of reserves in order to bridge the structural budget deficit. Even with the impact of the one year settlement for 2020/21, the uncertainty around funding means that reserves are fully used before a balanced budget is achieved, leaving a gap of £1.3m by 2023/24. Any attempt to use reserves to increase resources for a replacement of DCP, for example, by moving all three current DCP appliances to a wholetime shift system would be unaffordable and would result in a the budget gap being £1.0m bigger and occurring a year sooner in 2022/23. This would need to be funded by further significant reductions in expenditure elsewhere in the organisation, on top of the savings already needed.
17. The comparative costs of the present DCP arrangements and the two options consulted upon (see below) are as follows:

Current DCP arrangements	£2.040m
Option 1 – day duties on all three appliances	£1.510m
Option 2 - wholetime shift (2-2-4) at Bromsgrove / day duties on second appliances at Worcester & Hereford	£2.010m

Consultation Process

18. Between May - June 2019, the Service entered a six-week period of proportionate public consultation on the alternatives to DCP. A consultation document outlining the issues and proposals under consideration was produced by HWFRS (see [Appendix 3](#)).
19. The proposals were designed to ensure that any changes in emergency cover should not only align to the most recent CRMP analysis (or at the very least the 2014 - 2020 CRMP) but also be financially sustainable going forward. Taking these factors into account, therefore, the only viable option for the two fire appliances at Worcester and Hereford (based on their very low operational night-time activity levels of only two incidents per week each, on average) was to move them to a suitable day duty system. In contrast, the CRMP analysis and the remaining level of revenue funding allowed for a two options to be put forward regarding Bromsgrove Station (i.e. day duty or 2-2-4 shift, based on the 5-7 night-time incidents per week the station responds to, which is comparable

to the operational activity levels at the existing day crewing stations of Malvern, Droitwich and Evesham).

20. Accordingly, the two options put forward for consultation were as follows:

Option 1 – all three DCP fire appliances changed to a day duty system (with any financial savings invested in prevention and protection).

Overall for the Worcester and Hereford Stations, this meant that the current three-appliance combination at the station changed to:

- **Daytime:** two fire engines immediately available, one being crewed by staff working the traditional Shift Duty system (2-2-4) and the other day-staffed for 12 hrs - plus one On-call fire engine; and
- **Night-time:** one fire engine immediately available by staff working the traditional Shift Duty system (2-2-4) and two fire engines On-call.

For Bromsgrove, as well, the current two-appliance combination on that station changed to:

- **Daytime:** one fire engine immediately available (Day Duty) and one fire engine On-call; and
- **Night-time:** two fire engines On-call.

Option 2 – Worcester & Hereford Day Duty and Bromsgrove to Shift (with no financial savings)

For this option, the changes at Worcester and Hereford were exactly the same as for 'Option 1'. However, for Bromsgrove the first fire appliance is able to be kept as being immediate availability, but this is achieved by using the cost reductions at Worcester and Hereford to fund to the more expensive 2-2-4 Shift system at Bromsgrove. In other words, for Bromsgrove:

- **24 hours per day:** one fire engine immediately available by staff working the traditional Shift Duty system (2-2-4) and one fire engine On-call.

21. With that foundation information and proposals, Opinion Research Services (ORS) and HWFRS designed a questionnaire inviting respondents to express a preference for one of the two options, or to specify an alternative proposal. The questionnaire was available for anyone - either via the dedicated consultation page on HWFRS's website or through requested paper versions. In total, 512 responses were received (respondent profiles can be found in Appendix 2).

22. In total, just over two thirds (68%) of questionnaire respondents preferred 'Option 2', whilst only 6% preferred 'Option 1', and the remaining 26% felt an alternative should be sought.

23. In addition, during the formal consultation process, three organisations and individuals also provided written submissions. ORS has considered all the written submissions carefully and summarised them in the full report (Appendix 4). The contributors were:
- Fire Brigades Union (FBU)
 - Bromsgrove Liberal Democrats
 - A local resident
 - Online petition from retired Watch Commanders
24. Finally, ORS was commissioned to host, analyse and report the responses not only to the online consultation questionnaire but also a number of focus groups with residents of the three affected areas (one group was held in each, Bromsgrove, Hereford and Worcester).
25. The focus groups were designed to inform and engage the participants both with the issues and with HWFRS - by encouraging them to reflect in depth about the fire and rescue service, while both receiving and questioning background information and discussing important issues in detail.
26. The focus groups in Hereford and Bromsgrove both favoured Option 2 whereas the Worcester focus group unanimously favoured Option 1, as follows:

Option 1	Option 2	Don't Know
Hereford = 3	Hereford = 6	Hereford = 1
Bromsgrove = 0	Bromsgrove = all (9)	Bromsgrove = 0
Worcester = all (10)	Worcester = 0	Worcester = 0

27. As part of the background briefing, the focus groups were provided with a good understanding of the Service's financial position, as well as the fact it had been unable to reach a collective agreement with the FBU in relation to the continuation of DCP. As a consequence, they were able to fully consider the two different options put forward within the context of the Service's limited operating environment.

Suitable day duties system

28. Members will see elsewhere on this agenda that agreement has been reached with the FBU and FOA on the introduction of a new 12-Hour Day Duty system. This is compliant with the WTR and it is envisaged that this would in due course be utilised for all Day Duty fire appliances across the Service, including the two second appliances at Worcester and Hereford.

Conclusion/Summary

29. In summary, Officers were tasked by the Fire Authority to carry out proportionate public consultation regarding the use of DCP and to find an alternative way of crewing its assets to meet the risk profile identified by recent and extant CRMP analysis. In addition, such duty systems needed to employ staff in a lawful manner and meet the Working Time Regulations (either in total or by lawful modification, via collective agreement).
30. The overwhelming majority of respondents to the public questionnaire (68%) were in favour of 'Option Two' of the consultation. If instigated, this would result in the 2nd fire appliances at Hereford and Worcester Stations becoming day duties appliances and on-call at night, with the 1st appliance at Bromsgrove maintaining its current immediate availability status, but through the more expensive transition to a 24hr shift station.
31. The opportunity to maintain DCP in its current form has been fully explored with the HSE but, due to the position adopted by the FBU nationally, now presents a significant risk of legal challenge and cannot be recommended.

Corporate Considerations

Resource Implications (identify any financial, legal, property or human resources issues)	The changes suggested within this report will require the implementation of a new 12 hour day duty system and also amendments to employment contracts.
Strategic Policy Links (identify how proposals link in with current priorities and policy framework and if they do not, identify any potential implications).	The changes brought about by this paper will align the Service fully to the CRMP 2014 – 2020
Risk Management / Health & Safety (identify any risks, the proposed control measures and risk evaluation scores).	N/A
Consultation (identify any public or other consultation that has been carried out on this matter)	Consultation regarding the 12 Hour Day Duty policy needed to support the change has been negotiated with Representative bodies and been carried in accordance with Service procedures.
Equalities (has an Equalities Impact Assessment been completed? If not, why not?)	The CRMP 2014-2020 was approved with a full EIA and therefore remains in place to support the proposed change.

Supporting Information

Appendix 1 – Duty Systems matrix

Appendix 2 – Comparative operational activity levels

Appendix 3 – Background document for DCP consultation

Appendix 4 – Opinion Research Report

FRA paper – 11th February 2019

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Duty Systems Matrix:

Duty System	Advantages	Disadvantages / Barriers
Shift (2-2-4 watch)	<ul style="list-style-type: none"> Local agreement in place 24/7 immediate availability (same as DCP) 	<ul style="list-style-type: none"> Significant additional cost – circa +£300k extra per year, per appliance (circa up to £1m extra overall) Need to employ, train & equip circa 30 extra full-time Firefighters Enhanced level of emergency cover, compared to latest CRMP analysis of what is most effective and efficient Enhanced level of emergency cover compared to current DC stations with similar activity levels
Day Crewing Plus (DCP)	<ul style="list-style-type: none"> No change to current provision or costs 24/7 immediate availability 	<ul style="list-style-type: none"> No local agreement Unlawful due to inability to get local agreement with FBU Voluntary (subject to WTR 48-hour opt-out) Threat of legal challenge
Day Crewing (DC)	<ul style="list-style-type: none"> 10-hour immediate availability in line with CRMP analysis 	<ul style="list-style-type: none"> 10 second increase (average) in response time (if implemented at Worcs, Hereford and Bromsgrove in place of DCP) Inefficient use of full-time resources (2 hours per day shift on-call and not immediately available) Rostered on-call night cover no longer enforceable – same level of resilience as Retained Duty System
7-Day Flexible Day Duty	<ul style="list-style-type: none"> Local Agreement in place Maximises 42-hour duty Additional shifts (resilience) compared to DC system Can cover both 10 and 12-Hour options 	<ul style="list-style-type: none"> Requires individual flexibility to align to 10-hour or 12-Hour duty pattern
12-hour Day Duty	<ul style="list-style-type: none"> Affordable & Sustainable In line with CRMP analysis Smaller increase in average response times (four seconds) Locally agreed systems already in neighbouring Services More incidents covered in day by immediately available appliance 	<ul style="list-style-type: none"> Not as efficient as 10-Hour system

10-Hour Day Duty	<ul style="list-style-type: none">• Affordable & Sustainable• In line with CRMP analysis• Already TAP outcome – Grey Book & WTR compliant• More efficient compared to 12-Hour system• Provides more resilience (31 extra shifts per person)	<ul style="list-style-type: none">• May require some level of imposition if no local agreement in place• 10 second increase (average) in response time
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APPENDIX 2

Table 1: Average Number of Mobilisations to False Alarm Incidents per week (at night) - Bromsgrove versus Day Crewing Stations:

	Apr15/Mar16	Apr16/Mar17	Apr17/Mar18	Apr18/Dec18	Overall Average
Bromsgrove DCP appliance 6pm-8am	2.67	3.17	3.42	4.10	3.34
Bromsgrove DCP Appliance 8pm-8am	2.00	2.40	2.63	3.28	2.58
Malvern DC appliance 6pm-8am	2.29	2.08	2.06	2.41	2.21
Evesham DC appliance 6pm-8am	1.56	1.52	1.46	2.10	1.66
Droitwich DC appliance 6pm-8am	1.35	1.35	1.15	1.28	1.28

Table 2: Average Number of Mobilisations to Fire and other Emergency Incidents (excluding False Alarms) per week (at night) – Bromsgrove versus Day Crewing Stations:

	Apr15/Mar16	Apr16/Mar17	Apr17/Mar18	Apr18/Dec18	Overall Average
Bromsgrove DCP appliance 6pm-8am	3.63	3.65	3.33	4.31	3.73
Bromsgrove DCP Appliance 8pm-8am	2.65	2.60	2.48	3.10	2.71
Malvern DC appliance 6pm-8am	2.04	1.96	2.06	2.41	2.12
Evesham DC appliance 6pm-8am	2.06	1.63	2.00	3.08	2.19
Droitwich DC appliance 6pm-8am	2.25	2.19	2.40	3.18	2.50

Table 3: Average of Mobilisations to All Types of Incidents (including False Alarms) per week for DCP appliances at Hereford & Worcester Stations (at night) only:

	Apr15/Mar16	Apr16/Mar17	Apr17/Mar18	Apr18/Dec18	Overall Average
Hereford DCP appliance 6pm-8am	2.23	3.38	2.08	2.49	2.55
Hereford DCP Appliance 8pm-8am	1.40	2.44	1.33	1.62	1.70
Worcester DC appliance 6pm-8am	3.17	2.83	3.57	3.28	3.21
Worcester DC appliance 8pm-8am	2.08	1.75	2.54	1.69	2.02