

## **Report of Chief Fire Officer/Chief Executive**

### **Update on Implementation of Crewing Changes**

#### **Purpose of Report**

1. To seek final confirmation of the Fire Authority's agreed position regarding the implementation of crewing changes that sit outside of agreed contractual arrangements, as well as changes that are within agreed arrangements.

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#### **Recommendations**

##### ***It is recommended that:***

- (1) ***Standard crewing on full-time appliances will remain at four - in line with the Fire Authority's original 2014 Community Risk Management Plan (CRMP) decision. This is due to the current inability to reach a local agreement with affected staff groups to implement the appropriate contractual changes which would have achieved crews of five, despite an agreement being negotiated with respective trade union representatives back in January 2018 (referred to in previous Authority papers as the 'Terms of Agreement' document).***
- (2) ***Officers enter into immediate discussions with the relevant representative bodies, with the view to reaching a local agreement in respect to the Day Crewing Plus (DCP) system.***
- (3) ***In respect to the DCP system, 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.***

## Background

2. In 2014, the Authority's agreed Community Risk Management Plan (CRMP) confirmed the standard crewing on full-time appliances (Wholetime (WT), Day Crewing (DC) & Day Crewing Plus (DCP)) would be four but additional funding of £800,000 was released from reserves to provide crews of five on as many occasions as possible for a period of up to two years. It also agreed that the second full-time appliances at Hereford and Worcester stations would be staffed using a day duty system (although this was superseded with the introduction of DCP for these appliances on a trial basis).
3. In February 2017, the Authority received a paper confirming the additional funding from reserves had been exhausted and Members subsequently requested Officers to produce a plan to provide for crews of five on those respective appliances across the Service (on as many occasions as possible, at no additional cost to the Service and with no change to service provision). In addition, the Service had to take into account both the medium term financial pressures on the organisation and the need to provide a more resilient approach to maintaining appropriate operational cover arrangements across the Service.
4. In March 2017, in response to this FRA request, the Service published proposals to change crewing arrangements on all WT, DC & DCP stations, with the primary aim of providing extra capacity and resilience (through more flexible working and reallocation of resources) to ride the first appliances at those stations with crews of five (and with the second full-time appliances at Worcester & Hereford stations remaining with crews of four). In addition, the proposals sought to:
  - Provide additional support to the Retained Duty System (RDS) and the crewing of RDS appliances across the Service.
  - Introduce modern, flexible working conditions that are attractive for people to work and that could encourage diversity across the Service.
  - Retain existing emergency cover wherever possible.
  - Review the number of operational managerial posts to meet the new arrangements.
  - Develop solutions to help resolve the issues with recruiting staff to the Day Crewing Duty System.
  - Resolve the complications around the allowances for Droitwich/USAR personnel.
  - Create savings of circa £300,000 pa to meet the Medium Term Financial Plan.
5. In August 2017, following detailed consultation, a new set of proposals was presented to the Representative Bodies (RBs). These proposals were designed to include the suggestions and feedback from both the RBs, staff and the public - and dealt with the major issues that had been identified by them over the previous four months (most notably the proposed changes to emergency cover

in Malvern and Evesham). These proposals then formed the basis for further significant negotiations between the FBU and the Service.

6. In November 2017, following a full and appropriate process, a 'Terms of Agreement' document was agreed with the FBU, which also recognised the considerable progress that had been made from the starting position in March. Furthermore, it was acknowledged by both parties that the main elements of 'Terms of Agreement' were the best that could be achieved through negotiation, within the parameters that had been set back in February of that year.
7. At the same time, FBU officials urged members to attend the local branch meetings to have their views heard, seek further information on the details, discuss the consequences of the choice before them and, ultimately, vote to accept the proposals.
8. In addition, in early January, further station-based joint communication meetings with affected staff and the negotiators from both the Service and from the FBU took place in order to give everyone a final opportunity to discuss the details and rationale of the 'Terms of Agreement'. As a result of these meetings, a number of minor changes and clarifications were incorporated into the document, with a view to resolving last-minute concerns raised by staff.
9. However, in February, the local FBU Brigade Committee (made up of representatives from the station branches) voted to reject the proposed changes to contracts.
10. In response to that decision, the Fire Authority mandated Officers, if required, to use the dismissal/re-engagement process (if suitable progress could not be made to resolve the extant issues facing the Service).

### **Progress on Meeting the Identified Challenges - February 2018 to Present**

11. After the decision by the local membership of the FBU, the Chief Fire Officer and the local FBU Brigade Secretary made a joint statement in March this year to all affected staff which highlighted the continued commitment from all parties to continue to try and work together to seek agreement. However, the statement also recognised that, *"In the meantime, the Service will continue to manage the crewing arrangements with crews of four – and move forward with any appropriate changes that are required to maintain operational resilience and effectiveness by utilising existing contractual arrangements."*
12. As a consequence, the Service has now progressed with a number of organisational changes in two key areas – namely, in respect to the more effective and efficient use of Supervisory Managers across the Service and by the introduction of a day-duty system for firefighters to improve the sustainability of the full-time staffing arrangements at Evesham, Droitwich and Malvern Stations – all within existing contractual arrangements.
13. Implementing these changes has meant that the Service has been able to:

- provide much-needed additional managerial support to the Retained Duty System (RDS) and the crewing of RDS appliances
  - introduce flexible day-duty working systems that could be attractive for people to work and are also aimed at encouraging diversity across the Service in the future
  - make full-time staffing at Evesham, Droitwich and Malvern Stations more sustainable without impacting on the conditions of existing staff working the current Day Crewing system
14. Furthermore, discussions are continuing about how best to resolve the complications around the allowances for Droitwich/USAR personnel.
  15. However, only minimal progress has been made in respect to all full-time appliances riding with crews of five – and, in reality, this issue will not be able to be resolved satisfactorily without changes to employment contracts (such as those set out in the January 2018 ‘Terms of Agreement’). Having said that, because of the progress that has been made to date in meeting the other identified priorities and issues facing the Service, it has not been necessary to commence with any dismissal/re-engagement process – although this remains an option for the Fire Authority in the future, if required.
  16. Another area where limited progress has been made to date is in relation to developing alternative on-call night-time cover arrangements at Evesham, Droitwich and Malvern to help replace the existing long-term vacancies to the DC duty system, as well as vacancies arising from those firefighters that have either requested transfers off the DC system or who have recently retired from these stations. To complicate matters further, because such rostered on-call night-time cover (i.e. where individuals are not able to readily book-off duty) is now likely to be determined as being positive hours in respect to the Working Time Regulations (WTR) 1998 (following the result of a recent court decision (*Matzak v Ville de Nivelles*)) – any alternative cover arrangements would require a local agreement to be brokered in order to address the WTR issues.
  17. More importantly, however, because of the *Matzak* ruling, the night-time on-call cover arrangements provided for in the existing HWFRS DC duty system contracts are highly unlikely now to be contractually enforceable going forward, because despite a local agreement being in place, individuals will still have the right to refuse to sign the WTR 48-hour opt-out, at any time.
  18. As a consequence, Officers have started discussions with the FBU and FOA with a view to jointly identifying and solving these two issues. There are a number of possible alternatives including bolstering the on-call units on the affected stations in order to crew two appliances at night instead of just one. This arrangement works well in other areas of the Service where availability for the first on-call appliance is maintained at very high levels (95%-100%) throughout the year. Furthermore, bolstering the respective on-call units at these stations would not have any impact on the day-time cover arrangements, as these can be easily maintained by utilising the suitable day duty contract (which does not breach the WTR).

19. However, to complicate matters further, the recent adoption by the FBU of a national conference resolution now means that any changes to local duty systems (outside of those specific examples currently quoted in the Grey Book) must be 'ratified' by the national FBU Executive Committee before local officials can agree to them. In other words, local FBU representatives are unable to sign up to any locally negotiated changes without first agreeing it with their national counterparts. This has happened in HWFRS, where a recently negotiated 10-hour day duty system could not be signed off locally by the FBU, despite constructive engagement with both local and regional officials. In contrast, it has been agreed by local FOA officials.
20. As a consequence of this action, the Fire Authority is now in a very difficult position. On the one hand, it is being directed by the government (in the latest National Framework document published in May 2018) to "*manage their budgets and spend money properly and appropriately, and ensure the efficient and effective use of their resources, pursuing all feasible opportunities to keep costs down while discharging their core duties effectively. Fire and Rescue Authorities should regularly review the numbers and deployment of firefighters and other staff to ensure that their Fire and Rescue Service has a workforce that is commensurate with the risks that they face*". On the other hand, it is unable to deliver such changes without the prior agreement of national FBU officials - unless, of course, it resorts to using a dismissal/re-engagement process. Effectively, going forward with even minor changes to working arrangements that diverge from the duty systems quoted in the Grey Book may only be progressed at the risk of major employee relations conflict.

### **Impact of Recent High Court Ruling – South Yorkshire Fire Authority**

21. Following a prolonged legal challenge by the FBU, in May this year, the High Court ruled that the Close Proximity Crewing System in South Yorkshire was deemed as being unlawful in relation to the WTR – substantially due to the absence of a local collective agreement.
22. Although the voluntary DCP system in HWFRS is not the same as the one in South Yorkshire, in light of that decision it now appears that HWFRS DCP system does not comply with the WTR in a number of key areas. Having said this, the regulations do allow for such variations to become lawful, if a local agreement with the relevant representative bodies can be reached. To date, in HWFRS, there is no local agreement in place.
23. Without such an agreement, the Fire Authority runs the risk of being challenged in the courts in the foreseeable future and it is likely the current DCP arrangements would be held to be in breach of the WTR. This would also have potential criminal liability and is not therefore a sustainable position for the Authority to maintain. Officers have entered into discussions with the FBU and FOA with a view to jointly identifying and resolving the issues, however, it would be advised that in the absence of any local agreement, HWFRS should not continue with the DCP system locally.

24. Taking into consideration the 2014 CRMP analysis for the second full-time appliances at Hereford and Worcester stations, together with the issue of affordability as set out in our MTFP, it would seem that the most viable option if DCP were to be discontinued would be to replace it with a day-duty system and additional on-call staff as the CRMP analysis in 2014 confirmed should be the case. This CRMP analysis was also fully consulted upon with both the public and staff. The current DCP system (as employed on these two stations) is, in fact, an over-provision of emergency cover, even though it does provide additional immediately available night-time resources (i.e. resilience) to be deployed across the two counties, as and when required. Officers have been tasked with reviewing the CRMP analysis and updating this to account for any variances over the last four years.
25. In respect to Bromsgrove, however, the replacement of the DCP system would need to be informed by an appropriate CRMP-style analysis, and any change would also require a local public consultation process to be undertaken as it would most likely result in a variation in the current speed of response of one appliance during the night-time period, under normal circumstances.
26. It is worth the Fire Authority also noting that trying to replace the DCP duty system at Bromsgrove with a 2-2-4 WT shift system would cost the Service in the region of circa £500k extra revenue funding per annum (p.a.), not to mention an additional £1m p.a. for the two appliances at Hereford and Worcester stations.

## **Summary**

27. Due to the local FBU membership not accepting a local agreement that would re-establish crews of five on most full-time appliances, the Fire Authority should formally accept standard crewing now as being four, in line with its original CRMP 2014 decision. However, in respect to any future change to the operational risk profiles across the Authority area, the Fire Authority should reserve the right to progress with an appropriate dismissal/re-engagement process, if required, in order to implement any necessary contractual changes to facilitate the delivery of crewing levels at fives within existing budgets.
28. In light of the successful legal challenge by the FBU against South Yorkshire Fire Authority, in respect its to Close Proximity Crewing duty system, HWFRS should seek a local collective agreement for DCP with the respective representative bodies, at the earliest opportunity, in order to remain compliant with the Working Time Regulations (WTR). If this cannot be achieved, then the Service should look to implement a day-duty system for the second full-time appliances at Hereford & Worcester stations – based on an updated CRMP analysis - as well as undertake an appropriate CRMP analysis and public consultation, with a view to changing the current DCP duty system at Bromsgrove Station – all whilst also taking into account the Service's MTFP.

29. Taking into account the outcome of the *Matzak* ruling, coupled with the current position of the FBU in respect to the need for national agreement of any changes to local duty systems, if no such agreement can be reached, the only affordable option available to the Fire Authority would be to utilise the current locally agreed DC duty system, but without including the on-call night time element, as this would breach the WTR.
30. In respect to maintaining the same level of speed and weight of emergency response at night (under normal circumstances) for those stations currently crewed using the DC duty system (Evesham, Droitwich and Malvern), the bolstering of existing on-call units should be considered as a viable option along with other potential options, but at the same time, the practical achievability of any option should also take into account the right of individuals currently contracted to the DC duty system to withdraw from that contract (either now or in the future). If that were the case, day-time cover can continue to be maintained using a suitable day duty system that is WTR compliant.

### Corporate Considerations

<b>Resource Implications</b> (identify any financial, legal, property or human resources issues)	Yes – implementation will require the relevant management, legal and financial resources to be allocated, as well as some potential minor investment in some properties to allow the changes to be accommodated.
<b>Strategic Policy Links</b> (identify how proposals link in with current priorities and policy framework and if they do not, identify any potential implications).	Yes – the implementation of the changes has a direct impact both the CRMP and the MTFP.
<b>Risk Management / Health &amp; Safety</b> (identify any risks, the proposed control measures and risk evaluation scores).	Organisational and operational risks are highlighted in the paper, along with associated mitigation approaches.
<b>Consultation</b> (identify any public or other consultation that has been carried out on this matter)	Yes – extensive staff consultation is on-going and has taken place over 20+month period – in addition, proportionate public and staff consultation has and will take place, where appropriate.
<b>Equalities</b> (has an Equalities Impact Assessment been completed? If not, why not?)	Yes – EIA's were undertaken for original crewing changes and for riding on fours. EIA has been undertaken for a 10-hour day duty system. If a local agreement on DCP cannot be reached, an EIA for future recommended changes will be undertaken, as appropriate.

**Supporting Information**

N/A

**Background Papers**

Fire Authority 15 February 2017: Review of Crewing Levels

Fire Authority 27 June 2017: Crewing Proposals

EIA Crewing Changes November 2017

Fire Authority 15 December: Crewing Proposals (Members Briefing)

Fire Authority 14 Feb 2018: Implementing Crewing Changes

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