

## **Report of Head of Legal Services**

### **Judicial Review - Update**

#### **Purpose of report**

1. To inform members of the conclusion of the judicial review proceedings brought jointly by this authority and Shropshire & Wrekin Fire Authority against the decision of the Home Secretary to approve a business case for the transfer of governance of the Fire & Rescue Service.
- 

#### **Recommendation**

***It is recommended that the report be noted***

#### **Introduction and Background**

2. The Fire Authority resolved in May 2018 to seek judicial review of the Home Secretary's decision to approve the transfer of governance of the Hereford & Worcester Fire and Rescue Service to the West Mercia Police & Crime Commissioner. This followed a similar decision by Shropshire & Wrekin Fire Authority. For procedural reasons, this resulted in two sets of proceedings being issued by both ourselves and Shropshire & Wrekin:  
Claim 1 - to review the Home Secretary's initial decision  
Claim 2 - to review the Home Secretary's subsequent refusal to re-consider that decision in light of changing circumstances
3. Claim 1 was heard in the High Court in June 2019 and in a reserved judgement issued in October 2019, the Court found in favour of the Fire Authorities that the Home Secretary had misapplied the statutory test of whether the proposed business case was in the interests of 'economy, efficiency and effectiveness'. However, the Court concluded that if the Home Secretary had applied the correct test, the outcome was likely to have still been the same and so on that basis, no relief was granted. Leave to appeal that decision to the Court of Appeal was refused in February 2020.
4. Claim 2 had been stayed pending the outcome of the application for leave to appeal in relation to claim 1.
5. The Minister for Crime & Policing wrote to the Police & Crime Commissioner on 18<sup>th</sup> June 2020 saying that:

*It is right that, given the passage of time, we take stock of any significant developments that may affect the business case and reconsider whether the proposal is still in the interests of the statutory tests, based on all available evidence. In order to do that we will require an updated business case.*

The Minister went on to say that the earliest the Home Office would consider a business case was after the PCC elections in May 2021.

6. The Minister’s letter effectively concedes the argument both Fire Authorities were making in relation to claim 2 and makes it unnecessary for us to continue with those proceedings any further. This may therefore be seen as a vindication of the Authorities’ position.
7. In light of the above, a consent order has now been agreed with the Home Office in the High Court withdrawing claim 2. The order makes it clear that the Home Secretary’s original decision in March 2018 to approve the PCC’s business case has been withdrawn. The Government’s lawyers have also confirmed in writing that if any new or updated business cases are submitted then the statutory procedure for consultation and criteria for decision would be followed in any subsequent process.
8. Members will be aware that the Government is currently undertaking a review of the role of Police & Crime Commissioners and have said that the review “*will consider further options and opportunities to strengthen fire governance and accountability*”.

## **Conclusion**

9. In May 2018, Members unanimously decided that it was in the public interest to challenge the Home Secretary’s decision by way of judicial review. The recent consent order now brings the legal proceedings to a close.

## **Corporate Considerations**

<b>Resource Implications</b> (identify any financial, legal, property or human resources issues)	
<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).	
<b>Risk Management /</b>	

<b>Health &amp; Safety</b> (identify any risks, the proposed control measures and risk evaluation scores).	
<b>Consultation</b> (identify any public or other consultation that has been carried out on this matter)	
<b>Equalities</b> (has an Equalities Impact Assessment been completed? If not, why not?)	