



WMCA Board

Date	25 May 2018
Report title	Governance of West Midlands Fire Service Public Consultation Outcomes Report
Portfolio Lead	Councillor Steve Eling - Cohesion & Integration and Public Service Reform
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Report to be/has been considered by	WMCA Programme Board - 11 May 2018

Recommendation(s) for action or decision:

The WMCA Board is recommended to:

- (1) Note the outcomes of the public consultation.
- (2) Note constituent council responses to the public consultation outcomes.
- (3) Consent to proceed with submission of the Governance Review, Scheme and consultation outcomes to the Home Office.

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- (4) Delegate authority to the Chief Executive of the Combined Authority together with the Monitoring Officer to approve the draft order (aligned to paragraph 2.16) once received from Government, in consultation with the Chief Fire Officer and Chair of the West Midlands Fire Authority.

1.0 Purpose

- 1.1 This report seeks to update the Board on the outcomes of the public consultation of the Scheme to enable the Mayoral WMCA to assume governance of WMFS, including letters received in support of this direction from key stakeholders.
- 1.2 This report also seeks to inform the Board on the outcomes of all constituent council considerations of the public consultation evaluation report, and seeks the consent of the Board to submit the Governance Review, Scheme and the outcomes of the Consultation to the Secretary of State for the Home Office, the Home Secretary.

2.0 Background

- 2.1 In response to the Government direction for fire sector reform and the high level duty placed on emergency services for greater collaboration, West Midlands Fire and Rescue Authority (WMFRA) commissioned an independent review and appraisal of future governance options. A public consultation was subsequently held, which in part looked at other possible governance models. The findings identified a Mayoral WMCA model of governance for WMFS as preferred.
- 2.2 Having reviewed the evidence base, the WMCA on the 3 March 2017 supported the WMFRA's broad proposal for the transfer of its functions to the Mayoral WMCA, initiating discussions between the Mayor, WMCA, WMFRA and the Home Office for this proposed route.
- 2.3 On the 8 September 2017, the WMCA Board noted an indicative timeline for the proposed governance route and approved the development of a Governance Review and Scheme for Mayoral WMCA governance of WMFS, pursuant to Sections 111 and 112 (1d) of Local Democracy, Economic Development and Construction Act 2009.
- 2.4 The Governance Review provides a review of existing governance arrangements and functions, this includes the proposed new model and its benefits under the Mayoral WMCA. The Scheme details the roles, accountabilities, and powers required by each individual and body in the proposed governance model.
- 2.5 The benefits of the Mayoral WMCA governance model provides huge 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.
- 2.6 Both documents were formally considered and consulted upon by all constituent councils between October and November 2017, in adherence to section 112 of Local Democracy, Economic Development and Construction Act 2009.
- 2.7 Unanimous support for the Scheme was received from all constituent councils, along with approval to proceed to a public consultation. Comments received from councils included:
 - the fire budget and fire reserves be ring-fenced,
 - the Mayor appoint the Chair of the Mayoral Fire Advisory Committee (MFAC) in consultation with constituent council Leaders,

- the MFAC be composed of no fewer than 15 members to ensure sufficient representation from all constituent councils,
- Support for this direction and accountabilities of the Chief Fire Officer (CFO) to include operational independence of the service were also expressed. This direction, the model of governance proposed, including CFO accountabilities provides alignment with the recent launch of the National Framework for Fire and Rescue Services England 2018.

The Scheme, was subsequently revised to reflect areas raised (see Appendix 1).

- 2.8 The Governance Review and Scheme were considered at the WMCA Board on 8 December 2017, where the outcomes of constituent council meetings were presented and approval provided to proceed to a formal public consultation of the Scheme.

Consultation

- 2.9 An eight week public consultation was subsequently undertaken between 11 January and 8 March 2018 pursuant to section 113 (3) Local Democracy, Economic Development and Construction Act 2009. The consultation is a requirement for the making of an order, which stipulates that the Secretary of State must not only consult constituent councils within a combined authority's area but also must have 'due regard to the need - (a) To reflect the identities and interests of local communities and (b) To secure effective and convenient local government'. The consultation was led by the WMCA and was supported by its constituent councils and the WMFRA.
- 2.10 The consultation sought views on the detail of the proposed Scheme, this included the roles of the Mayor and WMCA, the proposed MFAC and the Chief Fire Officer. The consultation also sought the views of the communities of the WMCA's area on the benefits of the proposed governance change and the transfer of powers to the Combined Authority.
- 2.11 The consultation approach consisted of an animation, answers to frequently asked questions, the Scheme, a survey (see Appendix 2) with plain English text covering the governance journey and key roles. Advice and guidance was sought from constituent council communications departments and public relations and public affairs firm - the Built Environment Communications Group (BECG), a member of the Consultation Institute which promotes best practice within public consultations across the UK.
- 2.12 To reach all sections of the society the consultation was promoted through a comprehensive range of digital and non-digital forums, a full list is provided in the consultation results report in Appendix 3.
- 2.13 Overview of responses to the consultation are as follows (see Appendix 3 for full consultation outcomes report):
- Outcomes of question 1: 47% of respondents 'strongly agreed' or 'agreed' that the WMCA should take on the responsibility for the functions of the West Midlands Fire and Rescue Authority. Conversely, 40% of respondents strongly disagreed or disagreed with the proposed governance change.

- Outcomes of question 2: 59% of respondents 'strongly agreed' or 'agreed' that there should be a Fire Advisory Committee, consisting of members from the WMCA constituent councils, the Police and Crime Commissioners Office, Health and Ambulance Trust, that will advise, support and review decisions made by the Mayor. Conversely, 32% of respondents either 'strongly disagreed' or 'disagreed' with this element of the proposed governance changes.
- Outcomes of question 3: 55% of respondents 'strongly agreed' or 'agreed' that the Chief Fire Officer should be accountable to the Mayor for the operational functions of the Fire Service, whereas 35% either 'disagreed' or 'strongly disagreed'.
- Outcomes of question 4: 42% of respondents 'strongly agreed' or 'agreed' that the Mayoral WMCA taking on responsibility for the function of West Midlands Fire and Rescue Authority would achieve those aims outlined within the questions posed. Conversely, 42% of respondents 'strongly disagreed' or 'disagreed' with one or more of the aims listed.
- Outcomes of question 5: 39% of respondents 'strongly agreed' or 'agreed' that the Order to transfer the Fire Service into the Combined Authority is likely to: improve the statutory functions in the Combined Authority area; reflect the local communities; and secure effective and convenient local government. 41% of respondents either 'strongly disagreed' or 'disagreed' with the question. The outcomes for question 5 also show the highest number of 'don't know' responses (4% of respondents), as well as the highest number of 'neither agree or disagree' (15% of respondents).
- Questions 6 – 14 enquire about the identity of the respondent to inform the Home Secretary's need to give due regard to views of the communities of the West Midlands. The identities of respondents broadly reflect the communities of the West Midlands, however, numbers for Asian and Black communities is lower than targets.
- Outcomes also show that 46% of respondents were public sector employees.

Stakeholder Letters

- 2.14 To date, letters have been received from the following stakeholders and are largely in support of the changes proposed (letters are provided in the full consultation report in Appendix 3):
- Andrea McIntyre Member of the European Parliament for the West Midlands,
 - Professor Simon Brake, Chief Officer of Walsall Clinical Commissioning Group and Vice Chair of the West Midlands Clinical Senate,
 - Cllr John Edwards, Chair, West Midlands Fire and Rescue Authority,
 - Richard Bacon, Pricewaterhouse Coopers, partner responsible for Public Sector,
 - Paul Faulkner, Chief Executive at Greater Birmingham Chambers of Commerce,
 - Nick Page, Chief Executive, Solihull Council,
 - Cllr Robert Sleight OBE, Leader, Solihull Metropolitan Borough Council,
 - Kiran Kenth, Wider Workforce Development Manager at Royal Society for Public Health,
 - Office of the West Midlands Police and Crime Commissioner, and
 - West Midlands Fire Brigades Union.

Constituent Council Consideration of Consultation Outcomes Report

2.15 Constituent councils formally noted the outcomes of the public consultation and approved to consent to the submission of this governance proposal to the Home Secretary.

2.16 Notable discussion areas arising from these meetings were as follows:

- The functions of MFAC- At the WMCA Board meeting on the 8th December 2017, questions were raised about the future role of Overview and Scrutiny (O&S) and it was the unanimous recommendation of the O&S Committee that there was a need to demonstrate clear separation between the advisory and review functions of the MFAC and the statutory role of O&S. This was in recognition of the already established O&S WMCA function, which has a remit covering all aspects of the WMCA's operation. At this meeting the WMCA board resolved to ensure that the O&S committee were involved in further developing the proposals for governance. Following the consideration of the recent report by constituent authorities during March and April 2018, Sandwell Cabinet noted that 'the function of reviewing decisions made by the Mayor of the WMCA in relation to the West Midlands Fire Service should sit with the WMCA Overview and Scrutiny Committee and that this should be included in the final submission.'

Retaining the MFAC and its composition, as a component of the governance model to retain fire experience and maintain constituent authority engagement with the fire service has the support of all constituent councils. It is however recommended that the principal of the separation of these functions should be noted in the final submission and be the subject of more detailed discussion with the Home Office during the development of the legislative orders.

- The composition of MFAC – MFAC will be composed of four representatives from Birmingham City Council, one from Solihull Metropolitan Borough Council and two representatives from the remaining five councils. There will also be representation from the Police and Crime Commissioner (in accordance with the Policing and Crime Act 2017) and two further co-opted members from Health and Ambulance to promote greater challenge, transparency and further collaboration.
- All councils consented to proceed with the submission of the proposal to the Home Secretary.
- All councils agreed to delegate authority to the Leader and Chief Executive/Managing Director of the council, to approve the draft Order received from Government to be laid before parliament and to enable the changes for the Mayoral WMCA to assume governance of WMFS. However, all councils including the WMCA will need to be formally consulted should there be any major changes to the proposals in the Scheme made in the draft Order.

Indicative Timeline and Next Steps

2.17 Indicative timeline:

DETAILS	DATE
WMCA approved a governance review and scheme to be developed	8 September 2017
Development of governance review and scheme, which considered the business case for the change in governance.	September 2017
Constituent Council approval of the content of the governance review and scheme.	October-November 2017
WMCA approval of the content of the governance review and scheme and approval to proceed to public consultation.	8 December 2017
Consultation of proposals set out in the scheme on behalf of the Secretary of State	January- March 2018
Analysis of consultation responses locally	March 2018
Constituent councils and WMCA consider outcomes of the public consultation. Seek consent to submit proposal to Secretary of State.	March - May 2018
Governance review, scheme and analysis of consultation reviewed by Secretary of State (4-12 weeks).	June 2018
Government development of order required to give effect to the proposed changes.	July - September 2018
Constituent council and WMCA approval of detail of order	October - November 2018
Order enters Parliamentary process	December 2018 - January 2019
Home Secretary approves order	February 2019
The West Midlands Fire and Rescue Authority functions transfer to the WMCA	1 st April 2019

3.0 Wider WMCA Implications

3.1 Planning for implementation has already begun although it is acknowledged that final approval has yet to be obtained. The changes represent a significant piece of work in terms of planning and implementing the changes in governance and ensuring that the WMCA has robust arrangements in place to deliver an orderly transfer and secure the changes set out in the scheme and governance review. A joint implementation team will shortly be convened to enable delivery of the proposals over the coming months, aligned to the strategic intent of the governance change as identified in the governance review and scheme. Due diligence work has also commenced in regard to financial issues. There will be resource implications for staff from both WMFS and WMCA, as Officers lead the transfer process through project management disciplines

4.0 Financial implications

4.1 The costs of preparing the governance review that considered the business case for the proposed change in governance arrangements have primarily been met by WMFRA, with additional support provided by WMCA Corporate Services team from within existing approved resources.

4.2 WMFRA and WMCA will now be engaging with stakeholders and partners and in particular the Home Office, to ensure that the additional costs of delivering the proposed change in governance arrangements are quantified and appropriately funded and to understand the flexibilities available to minimise the impact of changes on council tax payers in the West Midlands region.

4.3 The existing pension arrangements for the Firefighters Scheme include an annual top up grant from MHCLG to fund the payment of retirement benefits due. WMCA will be seeking assurance from central government that the existing arrangements to provide the top up grant will continue following the proposed change in governance arrangements. The potential mechanism to ring-fence WMFRA funding and existing reserves within WMCA's accounts to protect essential fire services was proposed as part of the recent public consultation exercise and will be evaluated as part of the due diligence process that is now underway.

5.0 Legal implications

5.1 The legal implications and process for devolving powers to the WMCA are set out in this report and were included in the previous reports to the Board. The WMCA and the WMFRA have consulted legal officers from the seven West Midlands constituent Councils for advice and guidance throughout the development of the proposals. All the relevant legislation relating to the proposed governance route are reflected in the Governance Review and Scheme

6.0 Equalities implications

6.1 Advice was taken from Equalities department and the BECG to inform the public consultation in reaching hard to reach groups within the West Midlands, to meet the requirements of the Local Democracy, Economic Development and Construction Act 2009 section 113, which stipulates that the consultation must reflect the identities and interests of local communities.

7.0 Schedule of background papers

WMFRA response to the Enable Closer Working Between the Emergency Services Consultation – the prelude to the Policing and Crime Bill (October 2015)

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

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

8.0 Appendices

Appendix 1 – Scheme for submission to Secretary of State for the Home Office

Appendix 2 – Consultation Survey

Appendix 3 – Full Outcomes Summary Report

Appendix 1 – The Scheme

West Midlands Combined Authority Scheme

This scheme is prepared and published following the decision of the West Midlands Combined Authority (WMCA) on 8 September 2017.

The scheme provides as follows:

1.1 It is proposed that the functions exercisable by the West Midlands Fire and Rescue Authority (WMFRA) across the area that the WMCA covers, should become functions of the WMCA pursuant to sections 105 A of the Local Democracy, Economic Development and Construction Act 2009.

These functions are those as set out in the following acts and other relevant identified sections:

- Local Government Act 1985 (including Part IV, schedule 10).
- Local Government in Housing Act 1989.
- Fire and Rescue Service Act 2004.
- Fire and Rescue Order 2007.
- National Framework for Fire and Rescue Services in England 2012.
- Regulatory (Fire) Reform Order 2005.
- Civil Contingencies Act 2014.

The requirements for change are set in 1.16 of this scheme.

1.2 It is proposed that the properties, rights and liabilities of the WMFRA would become functions of the WMCA.

1.3 It is proposed that the functions relating to fire and rescue referred to in 1.1 should become WMCA functions.

1.4 It is proposed that the fire and rescue functions once they become functions of the WMCA are exercisable only by the Mayor (section 107D (1) Cities and Local Government Devolution Act 2009).

1.5 For the purposes of the exercise of the fire and rescue functions, the Mayor may do anything that the WMCA may do under section 113A of the LDEDC Act 2009 (general power of EPB or combined authority) (1).

1.6 It is proposed that the WMCA has the same borrowing powers in respect to its functions, relating to fire and rescue as are currently exercised by the WMFRA.

1.7 It is proposed that the WMCA retain the same core grant and precept funding arrangements in respect to its functions relating to fire and rescue, as currently exercised by the WMFRA.

1.8 It is proposed that both the funding and reserves for fire are ring fenced within the Mayoral WMCA.

1.9 Any decisions or acts made before abolition of the WMFRA should have effect as if agreed by, or, in relation to the Mayoral WMCA. For example, the setting of the precept for, under section 40 Local Government Finance Act 1988 to the constituent councils in respect of the financial year beginning before transfer in governance, should have effect as if issued by the Mayoral WMCA.

1.10 It is proposed that Members of the WMCA may assist the Mayor in the exercise of the fire and rescue functions in line with delegations, provided that the functions may not include:

- Functions relating to the budget and setting of the precept,
 - Functions relating to statutory plans such as the Integrated Risk Management Plan (IRMP)
- and strategies,
- Functions relating to all properties, rights and liabilities,
 - The appointment of the Chief Fire Officer and Principal officers.

Mayoral Fire Advisory Committee

1.11 It is proposed that the Order should contain provision for the Mayor to arrange for a committee of the WMCA (the Mayoral Fire Advisory Committee), consisting of members appointed by the constituent councils, to advise and support the Mayor in relation to West Midlands Fire Service (WMFS).

1.12 It is proposed the committee appointed should consist of a minimum of fifteen elected members from across the constituent councils, the Police and Crime Commissioner (in accordance with the Policing and Crime Act 2017) and two further co-opted members from Health and Ambulance to promote greater challenge, transparency and further collaboration.

1.13 The following additional provisions are proposed to apply to the Mayoral Fire Advisory Committee (the Committee):

Governance

- Appointment of elected members from each of the constituent councils will be made so that the members of the committee taken as a whole, reflect as far as reasonably practicable, the overall balance of political parties prevailing amongst the constituent councils.
- The majority of members of the committee must be members of the constituent councils, all of those members have one vote.
- Where a member is not from a constituent council (a co-opted member) they will not have voting powers.
- Two-thirds of members must be present for a meeting to be quorate.
- The Chair of the Committee will be appointed by the Mayor in consultation with constituent council leaders.

Functions

- The Committee will not be a decision-making committee this responsibility will remain with the Mayor and Chief Fire Officer, as appropriate.
- The Committee will advise the Mayor, support the Mayor and review decisions made by the Mayor.
- Where decisions are reviewed, the Committee will submit a report to the WMCA Overview and Scrutiny Committee.
- The Committee will support the Mayor in providing advice around exercising fire functions, to ensure the right level of detail and understanding is provided to inform the Mayor's role as the Authority.

- The Committee will represent the priorities and strategy of the Mayor and WMFS in their respective local authorities and will report on performance in relation to fire functions.
- The Committee will represent the priorities and strategy of the Mayor and West Midlands Fire Service (WMFS) within the seven constituent councils, regionally with other Fire and Rescue Services, and nationally through the National Joint Council and Local Government Association.
- The Committee will seek to influence the Government on behalf of the Mayor in matters related to the delivery of fire and rescue services locally, regionally and nationally.
- The Committee will enable the development of partnerships and services to the community through constituent council engagement.

A member's allowance scheme for the committee will be payable by the WMCA.

1.14 The Chief Fire Officer (CFO) as head of paid service will be accountable to the Mayor in the operation of their duties.

1.15 It is proposed that the CFO maintains full accountability for the operational functions of the Fire Service. This will include:

- The management of the Fire and Rescue Service,
- The appointment and development of staff,
- The delivery of WMFS Strategy (including matters relating to exercising functions of the Fire and Rescue Services Act 2004 and other relevant legislation),
- The delivery of staffing structures and models which support current and future Strategy,
- The deployment of resources to meet risk,
- The transformation of services and reform of the workforce to meet WMFS and Mayoral/WMCA priorities.

1.16 Modification requirements of enactments in their application to the WMCA as a Fire and Rescue Authority.

Primary Legislation

Local Government Act 1972

1. In section 138(5) of the Local Government Act 1972 (powers of principal councils with respect to emergencies or disasters) (a), the reference to "metropolitan county fire and rescue authority" is to apply as if it included "the WMCA as a fire and rescue authority".

Local Government in Housing Act 1989

2. (1) The Local Government and Housing Act 1989(c) is modified as follows.

(2) In section 67 (application of provisions about companies in which local authorities have interests), subsection (3)(k) applies as if the reference to "joint authority established by Part IV of that Act" included a reference to "the WMCA as a fire and rescue authority".

(3) In section 155 (emergency financial assistance to local authorities) subsection (4)(g) applies as if the reference to a "joint authority established by Part IV of the Local Government Act 1985" included a reference to "the WMCA as a fire and rescue authority".

Crime and Disorder Act 1998

3.— (1) The Crime and Disorder Act 1998(d) is modified as follows.

(2) In the definition of “fire and rescue authority” in section 5(5) (authorities responsible for strategies), the reference in paragraph (b) to a “metropolitan county fire and rescue authority” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.

(3) In the definition of “relevant authority” in section 115(2), the reference in paragraph (j) to a “metropolitan county fire and rescue authority” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.

Local Government Act 2003

4. Section 23(1) of the Local Government Act 2003 (meaning of “local authority” for purposes of Part 1) (a) the reference in paragraph (k) to “a joint authority established by Part IV of that Act” is to apply as if it included a reference to “the WMCA as a fire and rescue authority.”

Fire and Rescue Services Act 2004

5.— (1) The FRS Act 2004(b) is modified as follows.

(2) Section 4A (power to provide for police and crime commissioner to be fire and rescue authority) has effect as if at the end of subsection (3)(b) there were inserted—

“, and (c) outside the Area.”;

(3) Section 4B (1) (changes to existing fire and rescue authorities) has effect as if the reference to fire and rescue authorities in England outside Greater London did not include the WMCA.

Secondary legislation

6. In section 1 of the FRS 2004 Act (1), after subsection (4) insert—

“(5) This section is also subject to an order under Part 6 of the Local Democracy, Economic Development and Construction Act 2009 which transfers the functions of a fire and rescue authority to a combined authority established under section 103 of that Act”.

7. In paragraph (a) of the definition of “local authority” in regulation 2(1) of the Pipelines Safety Regulations 1996 (interpretation)(c) the reference to a “metropolitan county fire and rescue authority” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.

8. In article 1(2) of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (application of order to best value authorities) (d) the reference in paragraph (c) to a “metropolitan county fire and rescue authority” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.

9. In regulation 3 of the Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012 (relevant authorities) (e) the reference in paragraph (a) to a “metropolitan county fire and rescue authority established under section 26 of the Local Government Act 1985” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.

10.— (1) The Local Government Pension Scheme Regulations 2013(f) are modified as follows. (2) After regulation 64(8), insert—

“(8A) Paragraph (8B) applies where the exiting employer is the WMFRA and the liabilities of the fund in respect of benefits due to the WMFRA’s current and former employees (or those of any predecessor authority) have been or are to be transferred to the WMCA by virtue of this Order.

(8B) Where this paragraph applies, no exit payment is due under paragraph (1) and paragraph (2) does not apply.”.

11. In regulation 2(1) of the Explosives Regulations 2014 (interpretation)(g) in the definition of “local authority”, the reference in paragraph (c) to “a metropolitan county fire and rescue authority” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.

12. In regulation 2(1) of the Control of Major Accident Hazards Regulations 2015(a) in paragraph (b) of the definition of “local authority”, sub-paragraph (ii) is to apply as if there were substituted for that sub-paragraph—

“(ii) the Area, the WMCA as a fire and rescue authority;”.

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Appendix 2 – Consultation survey (Included in full report Appendix 3)

<https://www.wmca.org.uk/media/1997/wmca-consultation-online.pdf>

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Appendix 3 – Summary of Consultation Responses Report