

- iii) note that Alison Greenhill, the CFA's Treasurer has agreed to take on responsibility as Scheme Manager for the Firefighters Pension and Compensation Schemes;

Constitution/Governance

- 3. The CFA is asked to:
 - iv) agree that, whilst there is no legal requirement for a written Constitution, as a matter of good practice, a Constitution should be agreed by the CFA;
 - v) agree the amendments to the Constitution which give effect to the CFA decisions of 9th July 2015 and should the CFA agree, that the County Solicitor of LCC acting as the CFA Monitoring Officer;
 - vi) determine whether the CFA or the Employment Committee should have responsibility for decisions in relation to terms and conditions of employment for statutory officers;
 - vii) determine the size of the two Committees, Employment and Corporate Governance (Appendix 2 sets out possible options for achieving political balance and reflecting the comparative size of the constituent authorities);
 - viii) note that further amendments to the Constitution will be required in the event of a joint Pension Board being established;
 - ix) subject to the above recommendations, the CFA to review the Constitution annually.

Report Detail

Previous Decisions

- 4. On the 9th July the CFA agreed changes to its governance arrangements, moving away from an Executive/Scrutiny Model of decision making to a Committee system, where the key decision making body is the CFA itself.
- 5. On 24th September the CFA noted that the former Director of Finance and Corporate Services had agreed to terminate his employment with the Authority and as a result his role and responsibilities were re-assigned. The CFA agreed that the statutory role of Chief Finance Officer required under Section 112 of the Local Government Finance act 1988 should be undertaken by Alison Greenhill, the Director of Finance at Leicester City Council.

Role of the Monitoring Officer

6. As part of the on-going review of the CFA's management structure and following discussions, the CFA's Monitoring Officer has agreed to the termination of his employment with the Authority.
7. With regard to the statutory role of Monitoring Officer, advice received is that Section 113 of the Local Government Act 1972 allows for an officer of another authority to undertake that role. Members of the CFA will be aware that for many years the County Solicitor at Leicestershire County Council has acted as Deputy Monitoring Officer to the CFA. The County Council has been approached and its Monitoring Officer is willing to also act as the Monitoring Officer of the CFA. The position of the Deputy Monitoring Officer is strictly a personal appointment of the Monitoring Officer but the understanding would be that he/she would appoint the City Council's Monitoring Officer acting as Deputy. The latter would be a useful provision in the event of a conflict for the Monitoring Officer for the CFA/LCC. LCC's Monitoring Officer with support of LCC's Democratic Services Team would assist in administering the decision making process at the CFA.

Firefighters' Pension and Compensation Scheme

8. On 24th September, the CFA agreed that given the complexities of the Firefighters' Pension and Compensation Scheme and the experience of the then CFA Monitoring Officer, responsibility as Scheme Manager for the scheme should be vested with the Monitoring Officer. With the departure of the Monitoring Officer this decision has been revisited and it is now proposed that the Scheme Manager responsibilities should be vested with Alison Greenhill, the CFA's Treasurer, on the basis that the County Council is the Firefighters Pensions Administering Authority, thereby avoiding any conflicts of interest.

CFA Constitution

9. Following the decision of the CFA in July to adopt a new governance model, David Morgan, recently retired County Solicitor and CFA Deputy Monitoring Officer was asked to undertake a review of the CFA's Constitution. A copy of his report is attached as Appendix 1. A paper copy of the Constitution has been circulated to all members of the CFA as a separate document pack.

Resource Implications

10. The salary and on cost of the Solicitor and Monitoring Officer amounted to approximately £70,000. There was an additional £50,000 budget for legal advice. The County Solicitor will now act as Monitoring Officer and the legal team at County Hall will provide advice at an agreed hourly rate. An evidenced estimate of the annual cost of the County's Monitoring Officer and his legal team's advice will take time to emerge given the newness of the arrangement. The estimated saving of the change is approximately £50,000per annum.

Background Papers

Report to the CFA on 7th July 2015 – Revised Governance Structure for the CFA

Report to the CFA on 24th September - The Director of Finance and Corporate Services

Appendices

Appendix 1 – Independent report on the review of the Constitution

Appendix 2 – Size of the Employment and Governance Committees

(A copy of the revised Constitution is attached as a separate document pack for members of the CFA)

**THE CONSTITUTION OF THE COMBINED FIRE AUTHORITY
INDEPENDENT REPORT**

Introduction

1. In light of my previous experience of working on the Constitution of the Leicestershire County Council (LCC) and having been the Deputy Monitoring Officer of the Combined Fire Authority (CFA), I was asked by LCC to review the constitution of the CFA and changes proposed to it, particularly those intended to achieve a change from the previous Executive/Scrutiny model of decision-making. I have undertaken that work in consultation with the County Solicitor who also acts as Deputy Monitoring Officer to the CFA and officers from Democratic Services at the County Council. Leicester City Council have also been involved in the review.

The Legal Framework

2. The Local Government Act 2000 introduced the Executive/Scrutiny model into local authorities. That legislation does not apply to combined fire authorities with the following consequences:
 - (a) it was not legally necessary for that model to be introduced or considered; the CFA chose to do so;
 - (b) processes which have to be followed, including publication of proposals to amend the model, which apply to local authorities do not, therefore, apply to the CFA;
 - (c) the expectation that there be a constitution, following a model recommended by the government in guidance under the 2000 Act, does not apply;
 - (d) the CFA may decide to adopt a process for amendment to the constitution which does not require the approval of the CFA .

The implications of this position are considered below.

General Issues

3. The effect of decisions at the CFA meeting on 9th July is that a new governance model has been adopted. That is to be incorporated into the Constitution without further process being required and consequent amendments are therefore needed. The

opportunity arises to review all parts of the constitution and to ask, more fundamentally, whether it is needed and what should be included in it.

4. The purpose of the type of constitution in operation in local government should be to set out the respective roles and responsibilities of members and officers, principles relating to their conduct, and rules relating to the proper and lawful conduct of local authority business and to do so in a publicly available document. There is a balance to be struck; it would be excessive to include all operational policies and rules that support this objective. The CFA constitution achieves these ends through the inclusion of a range of provisions normally found in such documents.
5. A review of the whole of the CFA constitution to ensure compliance with the principles set out above has been undertaken. The process adopted has been to:-
 - (a) incorporate changes required by the new decision-making arrangements;
 - (b) comply with other changes required by law, particularly in relation to procurement(Contract Procedure Rules) ;
 - (c) amend other parts of the constitution to ensure where appropriate consistency with the approach of constituent authorities as new operating arrangements are introduced. Thus, on the basis that the County Council takes responsibility for legal and governance arrangements, the Articles and Meeting Procedure rules have, so far as is appropriate, been amended to be consistent with those at LCC. With Leicester City Council(the City) taking responsibility for Finance functions, the Financial Procedure Rules have been reviewed by them in light of that change.
6. It would be possible to delegate the process of amending the constitution to officers. However, this could result in criticism of members for failing to demonstrate leadership. The constitution provides that changes to the constitution can only be made by the CFA and it is proposed that this should remain the case. It is suggested that, save where more urgent action is required, a practice be adopted that the CFA receive an annual report on any changes to the constitution.

The new decision-making model

7. The Articles of the Constitution have been amended to provide for the functions to be undertaken by the CFA, Employment Committee and Corporate Governance Committee. The Policy Committee and Overview and Scrutiny Committee are to be abolished, in accordance with the CFA decision on 9th July and a Corporate Governance Committee established to assume the responsibilities previously undertaken by the Standards Committee and to promote and maintain standards relating to governance, risk management, financial reporting and audit.

8. Article 4 makes provision for the functions of the CFA. The CFA will have overall responsibility for policy, strategy, budgets and performance and for changes to the constitution, appointments to outside bodies and the appointment of the Chief Fire Officer (and Deputy), Chief Finance Officer and Monitoring Officer.
9. Articles 5 and 6 provide for the composition and functions of the Corporate Governance Committee and the Employment Committee (including the creation of Panels). The CFA will have to decide on the size of those Committees and representation from the three constituent authorities. The Statutory Instrument establishing the CFA provides that the CFA shall have a membership which, "so far as is practicable" reflects the comparative size of the three authorities. The size of the CFA, at 17, reflects this requirement. That does not apply to the Committees, but the CFA will wish to consider representation from the authorities and the effect of the application of political balance rules at each authority in making its nominations. As the position may change following elections, the size of the Committees is not prescribed in the constitution, but will have to be determined by the CFA. A committee of 17 is likely to prove unwieldy. The two committees do not have to be the same size. As no more than a suggestion for members to consider, a size of 9 for the Corporate Governance Committee may be appropriate, comprising 5 LCC members, 3 from the City and 1 from Rutland County Council. The Monitoring Officer has authority under the Articles to establish Panels to deal with member conduct issues.
10. The provisions in the proposed constitution relating to the Employment Committee enable the Committee to appoint panels as will be required, particularly in relation to the consideration of individual cases and appeals. Provision is made to allow members not on the Committee to serve on Panels to avoid any difficulties arising from members being compromised by previous involvement. The CFA will have to decide whether decisions on terms and conditions for civilian staff and on local conditions for uniformed employees should be a matter for the CFA or the Committee; this may necessitate further amendment to the constitution. The Employment Committee could be given responsibility for advising the CFA on any such proposals and making recommendations to it. The CFA will also have to decide the membership and size of the Committee, having regard to the issues identified above and the fact that the committee is of a different nature. As it is more operational in nature (subject to resolution of the issue relating to terms and conditions), a smaller membership may be appropriate.
11. The Articles of the Constitution provide for a Local Pension Board in accordance with the decision of the CFA on 9th July. Work is being undertaken to establish a joint Pensions Board with Nottinghamshire and Derbyshire Fire Authorities and should be the subject of further reports to the CFA, at which time consideration may be given to amending the Constitution.

12. In the current constitution, the role of the Chairman of the CFA has been included both in Article 5 and in Schedule 2 of the Articles. In the proposed, amended version of the Constitution, Schedule 2 has been retained with only minor, consequential amendments. Article 5 emphasises the civic and ceremonial role of the office and involvement in public and community consultation. Different Chairmen will have different approaches to the job and different styles. It is therefore proposed that Article 5 be removed, but the views of the Chairman on this issue should be sought. Section L of the Constitution also provides for a Protocol to assist the Chairman and Chief Fire Officer in forging and maintaining an effective relationship and this has not been changed.
13. In light of decision of the decisions of the CFA on 9th July the provisions in the Articles and Meeting Procedure Rules on public participation in meetings have been amended and the Rules have also been amended to include procedural changes to the right of recognised trade unions to make representations. No other amendments have been made to the Rules.
14. The proposals under consideration to change the arrangements for support to the CFA, as outlined at paragraph 5(c) above allow for consideration as to whether the role of the Monitoring Officer could be undertaken by an officer at LCC. I have not been asked to comment on those proposals, but note that s. 113 Local Government Act 1972, which allows local authorities to make staff available to other authorities, would apply. Changes have been made to the Constitution, to provide for this action to be undertaken with the further proviso that the Deputy Monitoring Officer should be the Monitoring Officer at the City. This would be a useful provision in the event of conflict for the Monitoring Officer for CFA/LCC.

Recommendations

15. I make the following recommendations, which, if accepted, should be reported to the CFA:
- a. That the CFA agrees that, whilst there is no legal requirement for a written constitution, as a matter of good practice, a Constitution should be agreed by the CFA;
 - b. That the amendments to the Constitution in relation to the new decision – making processes and to give effect to the CFA decisions of 9th July 2015 be adopted and that in so doing, the CFA notes that LCC is in agreement with those proposals, given its role in relation to matters of law and governance;

- c. That, in the event that the CFA agrees to officers from LCC and the City acting as the statutory officers, the amendments to the Constitution now proposed be adopted;
- d. That the CFA determines whether the CFA or the Employment Committee should have responsibility for decisions in relation to terms and conditions of employment;
- e. That it be noted that further amendments to the Constitution will be required in the event of a joint Pension Board being established;
- f. That, subject to the above recommendations, the CFA review the Constitution annually.

David Morgan

SIZE OF THE EMPLOYMENT AND CORPORATE GOVERNANCE COMMITTEES

The Constitution does not specify the size of the two Committees. It is up to the CFA to decide. Options include:-

11 members

Conservatives (5)	Labour (4)	Liberal Democrat (2)
County (4) Rutland (1)	County (1) City (3)	County (2)

9 members

Conservatives (4)	Labour (4)	Liberal Democrat (1)
County (3) Rutland (1)	County (1) City (3)	County (1)

(Note – A 9 member committee would mean that the County would need to give up a one of its six seats to allow a Rutland member to serve on the Committee which would mean the County representation would be 3 Conservatives, 1 Labour and 1 Liberal Democrat).

Note – Political Make-up of the CFA is as follows

17 members

Conservatives (7)	Labour (7)	Liberal Democrat (3)
County (6) Rutland (1)	City (5) County (2)	County (3)