

**Status of Report:** *Public*

**Meeting:** **Combined Fire Authority**

**Date:** **27 September 2019**

**Subject:** **Industrial Action Business Continuity Planning**

**Report by:** **The Chief Fire and Rescue Officer**

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**For:** **Decision**

### **Purpose**

1. This report informs the Combined Fire Authority (CFA) of actions taken regarding Business Continuity Planning following receipt in January 2019 of the Home Office report of the review of the Authority's Business Continuity Plans. This issue was considered by the CFA at its meeting in December 2018 prior to the receipt of the Home Office report;
2. This report also seeks the CFA's agreement that future progress updates relating to Industrial Action Business Continuity Planning be presented to the Corporate Governance Committee (CGC).

### **Recommendation**

3. The CFA is asked to:
  - a) Acknowledge the content of the report and the progress made against the recommendations in the Home Office review into Industrial Action Business Continuity Planning of Leicestershire Fire and Rescue Service (LFRS);
  - b) Agree that future progress reports against the recommendations in the Home Office review into Industrial Action Business Continuity Planning of LFRS are presented to the CGC.

### **Executive Summary**

4. The CFA is required by law to have effective Business Continuity Plans and make every effort in the event of Industrial Action to maintain the full range of response services.
5. National issues such as pay and pensions could influence Representative Bodies to lobby their members for Industrial Action as could the impact of any developments associated with the provision of the Day Crewing Plus (DCP) duty system and compliance with the working time directive.

6. The Home Office suggest that Leicestershire Fire and Rescue Service maintain 25% of their total number of operational fire engines as their minimum response during periods of industrial action. Senior Officers have previously provided assurance to the Home Office that the Authority's minimum response of six fire engines (the Authority has 24 fire engines) is achievable. Although the Urban Search and Rescue provision is reliant upon a Return to Work agreement (RtW) with the Fire Brigades Union (FBU), this agreement is still not in place.
7. Based on previous industrial action crewing arrangements, including lessons learnt from experiences associated with managing "Reservists" and support staff who crewed fire engines, Senior Officers are no longer confident that the number of staff that would be available to work in the event of industrial action would be sufficient to maintain the minimum response. The only way to forecast how many staff will work during periods of industrial action is by communicating with them directly. This is not desirable until absolutely necessary and even then, employees can indicate they will work, where in fact at the time of the industrial action occurring they decide not to (details of industrial action crewing arrangements are shown in Appendix A).

## **Background**

8. The National Framework for Fire and Rescue Services 2018 states that "Fire and rescue authorities must have effective business continuity arrangements in place in accordance with their duties under the Civil Contingencies Act 2004. Within these arrangements, fire and rescue authorities must make every endeavour to meet the full range of service delivery risks and national resilience duties and commitments that they face. Business continuity plans should not be developed on the basis of armed forces assistance being available".

### Home Office Report

9. The Home Office review of the Authority's Industrial Action Business Continuity Plans was completed in May 2018, with the final report being received in January 2019. Work commenced on the recommendations contained within the draft report and this was presented to the CFA at its meeting in December 2018 (the recommendations and progress at that time are shown in Appendix B). A letter was sent to the Minister of State for Policing and the Fire Service from the Chair of the CFA on 29 January 2019, which provided an update on the progress the Authority was making against the recommendations. It is proposed that the CFA agree that future progress reports against the recommendations are regularly monitored by the CGC and escalated to the CFA as needed.
10. A brief summary of activity that is complete or in progress in relation to strengthening Business Continuity Planning arrangements is as follows:
  - a) Senior Management Team (SMT) agreed the reviewed Service Continuity Plan, Industrial Action – Operational Staff in July 2018. This plan supports the logistical requirements needed to provide an operational response and communications plan to our communities during periods of industrial action. The approach is to crew fire engines with staff that are willing to work and if needed, agency staff that are brought in for specific

times to do a specific job. “Reservist” or zero hours contract solutions will not be used due to the difficulties in sourcing, training and managing them, especially as there are no guarantees they will work when they are needed, an outcome reached from experiences during the previous industrial action in 2014/15 (as detailed in Recommendation 3, Appendix B).

- b) SMT agreed in February 2019, to formalise payment arrangements for those staff who work during periods of industrial action outside of their normal working hours. An exempt report covering this will be considered later on the agenda;
- c) A letter was sent to the National Fire Chiefs Council (NFCC) Chair in March 2019 asking if there was any progress in relation to a refresh of the nationally agreed RtW (2013) agreement’ with the FBU Executive Council. The content of the RtW agreement needs to be strengthened and aligned to the TUCs Code of Conduct for the provision of emergency services during periods of Industrial Action. The NFCC Chair advised that this is not complete at this stage;
- d) Senior Officers commenced discussions in April 2019 with FBU officials through the Staff Consultation Forum, to review local RtW agreements in the event of industrial action;
- e) Contact was established in April 2019 with a third-party contingency provider to explore the levels of provision and costs associated with their services. An exempt report covering this will be considered later on the agenda;
- f) In May 2019 SMT agreed not to approve further expenditure, time or effort on the development of a programme to use support staff for front line firefighting in times of staff shortage, with the exception of those staff qualified to drive fire engines. Difficulties associated with training and managing support staff during periods of industrial action influenced this decision, along with the increased likelihood of damaged working relationships and conflict post-industrial action between operational and support staff. This was experienced during the previous periods of industrial action absorbing weeks of management time and effort across all levels. It is further compounded by the fact there is no guarantees that support staff will work when they are needed.

### Partial Performance

11. Any actions that arise as a result of periods of industrial action should minimise the impact to communities and on the Authority’s wider activities and reputation. The use of Partial Performance procedures can include the deduction of pay from employees who breach their contract during periods of industrial dispute, which includes periods of action short of strike (ASOS), where the employee chooses not to carry out the necessary range of duties expected of them.

12. Section 229(2A) of the Trade Union and Labour Relations (Consolidation) Act 1992 ('TULR(C)A') states that "action short of a strike" will include "an overtime ban and a call-out ban", however, beyond this provision, the legislation does not define what amounts to ASOS.
13. Partial Performance procedures have never been implemented and need to be developed to ensure the impacts of them are carefully considered and appropriate processes are in place to:
  - a) Communicate to employees, managers and representative bodies in advance of any industrial action starting, their contractual requirements and expectations in respect of work expected to be delivered;
  - b) Manage staff during the period of industrial action who may be in breach of their contract;
  - c) Deduct pay as agreed from employees as necessary.
14. The financial penalty associated with the use of Partial Performance procedures should influence employees not to undertake their contractual duties in a wilfully disruptive manner, such as by applying rules or instructions in a pedantic or literal manner.

#### **Report Implications/Impact**

15. Legal (including crime and disorder)
  - a) The Authority has a legal obligation to provide fire and rescue cover under the Fire and Rescue Services Act 2004.
  - b) The Authority has a statutory obligation to ensure continuity of business under the Civil Contingencies Act 2004.
16. Financial (including value for money, benefits and efficiencies)
  - a) Assessing the value and benefits of implementing business continuity arrangements that support the provision of our minimum response requirements during periods of industrial action has discounted some methods. A different approach may need to be considered to guarantee our minimum response requirements.
  - b) Reviewing industrial action planning arrangements enables the Authority to re-examine their effectiveness and value for money and to consider whether alternative provisions in preparation for industrial action is necessary and appropriate.
17. Risk (including corporate and operational, health and safety and any impact on the continuity of service delivery)
  - a) Industrial action by operational staff is recorded on our Corporate Risk Register with a current risk rating of High and even with the activity that is

complete or in progress in relation to strengthening Business Continuity Planning arrangements, it is difficult to be able to provide the CFA with assurance that the minimum response of six fire engines during periods of industrial action can be achieved without using an alternative approach. An exempt report covering this will be considered later on the agenda;

- b) The complexities associated with sourcing, training and managing suitable people, including those from other blue light and partner agencies, to crew fire engines during periods of industrial action are wide ranging and there are no guarantees that they will be available if needed.

18. Staff, Service Users and Stakeholders (including the Equality Impact Assessment)

- a) Experience shows that the impact of industrial action by operational staff has a detrimental impact to all employees leading up to, during and after periods of industrial action resulting from additional workloads, financial uncertainty as well as damaged working relationships between employees that exist long after the industrial action concludes;
- b) Service users may be negatively impacted by industrial action because of limitations on normal resources and our ability to meet public expectations;
- c) Affected stakeholders include the other emergency services, local authorities and health authorities who all rely on the fire and rescues service to some extent to deliver their service and may be negatively affected by any industrial action.

19. Environmental

There are no environmental impacts as a result of this paper.

20. Impact upon Our Plan Objective

Our ability to maintain normal service delivery is severely hampered during periods of strike action. Prevention and Protection work will be maintained by staff on different terms and conditions not taking any industrial action.

**Background Papers**

CFA December 2019, Agenda item 9, Home Office Industrial Action Business Continuity Plan Review

<https://leics-fire.gov.uk/wp-content/uploads/2018/12/industrial-action-resilience-final.pdf>

**Appendices**

Appendix A – Details of Industrial Action Crewing Arrangements

Appendix B – Recommendations and Progress reported to the CFA in December 2018

## **Officers to Contact**

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