

For Publication

Bedfordshire Fire and Rescue Authority
Executive Committee
14 March 2023

REPORT LEAD: CHIEF FIRE OFFICER

SUBJECT: CONSTITUTIONAL UPDATES

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Background Papers: FRA Executive Committee Report, 18 March, 2022 See [HERE](#)
FRA minutes 24 March 2022 See [HERE](#)
FRA Executive report from 26 May 2022 entitled Independent Review of Governance See [HERE](#)
FRA report from 7 June 2022 on the Member Development Programme See [HERE](#)
FRA Executive report from 2022 June on Final Resourcing Options for Monitoring Officer role See [HERE](#)
FRA report from 20 July entitled Independent Review of Governance see [HERE](#)
FRA report from 8 September 2022 entitled Monitoring Officer Report See [HERE](#)
FRA report from 31 October entitled FRA's Action Plan Following LGA Governance Review see [HERE](#)
FRA Executive Report from 15 November 2022 entitled Revised Governance Action Plan and Timetable See [HERE](#)
FRA Executive Minutes from 15 November 2022 see [HERE](#)
FRA report from 14 December 2022 entitled New Member Development Programme see [HERE](#)
FRA Executive Committee report 10 January 2023 See [HERE](#)

Implications

This table provides a short statement of the impact of the recommendations in this report and/or a reference to the relevant paragraph/s in the report.

Will this report affect any of the following?

	Yes / No	Impact / Reference
Financial Implications	No	
Risk Management	Yes	Robust governance arrangements will reduce the risk to the Service by employing clear procedure to base decision making on. This will serve to increase accountability and transparency.
Legal Implications	Yes	These documents have been subject to legal review and scrutiny.
Privacy and Security Implications	No	
Duty to Collaborate	No	
Health and Safety Implications	No	
Equality, Diversity and Inclusion	Yes	By amending the protocol on public participation, we must ensure that we remain open and accessible to a wide range of individuals. One thing that we must be careful of is that we have an alternative means of communication open for members of the public so that those members of the public without access to the internet are able to participate in meetings without difficulty.
Environmental Sustainability	No	
Consultation and Communication	Yes	The Fire Authority have been well consulted throughout this process. The suggestions emanated from the LGA review of governance that was carried out in collaboration with officers and members.

PURPOSE:

The purpose of this report is to present to the Executive Committee revisions to certain constitutional documents of the Authority that are intended to

- a) reflect the Local Government Association's independent review of governance, and subsequent discussions with Members; and

- b) take into account recommendations from the desktop document review of governance documents conducted by Shahin Ismail, Monitoring Officer at Cambridgeshire and Peterborough Fire Authority ('the Desktop Review').

RECOMMENDATION:

It is recommended that the following documents be recommended to the Authority for approval:

- i. draft Terms of Reference for the Authority and the Executive and Audit and Standards committees;
- ii. draft Procedural Rules for Task and Finish Groups (including Call In Task and Finish Groups)
- iii. draft Procedural Standing Orders for the Authority and its Committees
- iv. an additional Procedural Standing Order (6b for call-in)
- v. draft Scheme of Delegation to Officers

1. Summary

- 1.1 The Authority, unlike its three appointing councils, was unaffected by section 37 of the Local Government Act 2000, the introduction of which required local authorities operating executive arrangements to prepare and keep up to date a constitution, including a copy of its standing orders and code of conduct, nor was it impacted by the Local Government Act 2000(Constitutions) (England) Direction 2000 which prescribed the form and content of a single modular constitution for those authorities; and remains unaffected by the similar requirements imposed under section 9P of the Local Government Act 2000 introduced by the Localism Act 2011.
- 1.2 Whilst a few functions, such as setting the precept, adopting a members' code of conduct, and pay policy statement, are reserved by legislation for the full Authority, the Authority may otherwise arrange for its functions to be discharged on its behalf by a committee, by an officer, or by another local authority. In each case the person or body making the delegation can resume the powers at any time and can set conditions to the delegation.

- 1.3 The revised Terms of Reference, Standing Orders, and Scheme of Delegation, if approved, would be a positive step in maintaining officers' focus on continually improving the effectiveness of service delivery with decision making at the appropriate level within the Authority.
- 1.4 Section 101 of the Local Government Act 1972 (LGA 1972) provides that the Authority can decide what 'arrangements' to make with regard to the discharge of functions by committees or officers, and Schedule 12 paragraph 42 of the LGA 1972 grants the power for the Authority to adopt standing orders and subject to the Local Authorities (Standing Orders) Regulations 1993, which are not relevant in this context, the Authority has discretion as to what those standing orders contain.
- 1.5 Section 106 of the LGA 1972 provides that 'Standing orders may be made as respects any committee of a local authority by that authority [...] with respect to the quorum, proceedings and place of meeting of the committee [...]' .

2. Background

- 2.1 At its meeting on 31 October 2022 the Authority considered an Action Plan proposed by officers following the independent review of governance and the findings of the Desktop Review (Appendix A). The Action Plan, which was approved subject to certain requested amendments, included a review of constitutional aspects of the Member's Handbook to include reviews and options for strengthening:
 - 2.1.1 FRA terms of reference;
 - 2.1.2 The function and role of scrutiny;
 - 2.1.3 Call-in procedures and the function and role of task and finish group(s);
 - 2.1.4 The role of the Monitoring Officer;
 - 2.1.5 The process of Member appointments;
 - 2.1.6 The review of the terms of reference of the Audit and Standards Committee;
 - 2.1.7 The terms of reference of the Executive Committee;
 - 2.1.8 Member code of conduct;
 - 2.1.9 Scheme of Delegation to Officers; and
 - 2.1.10 Financial regulations and financial instructions.

The role of the Monitoring Officer

- 2.2 In respect of 2.1.4, at its meeting on 20 July 2022 the Authority considered a report 'Resourcing the Monitoring Officer Position Options' which included a proposed 'job description' and the Authority confirmed the appointment into role at its meeting on 8 September 2022. A Service Level Agreement was subsequently entered into between the Authority and Buckinghamshire & Milton Keynes Fire Authority which reflects the reporting line to the Chief Fire Officer with accountability to the Authority with 'a dotted line to the Chair', as presented to the Authority at its 20 July 2022. As the consultant's July report confirms, this mirrors the approach vis-à-vis the Authority's Chief Finance Officer and the approach in other local authorities.
- 2.3 The proposed revised Scheme of Delegation in respect of the Monitoring Officer has been expanded upon to confer other ancillary responsibilities for which a Monitoring Officer will usually be designated as the proper officer.

Member code of conduct

- 2.4 In respect of item 2.1.8, the Code of Conduct was reviewed annually by the Authority's Audit and Standards Committee between 2019 and 2022, the last review was on 14 July 2022 being ratified by the Authority on 8 September 2022 to not adopt the Local Government Association's Model Code of Conduct. The Authority's extant Code of Conduct includes a requirement to notify the Authority's Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £50 which has been accepted as a Member from any person or body other than the Authority. This inclusion pre-empts the Committee for Standards in Public Life's review and recommendations that a members' Code of Conduct include such requirements and, with a slight omission, reflects the LGA model Code of Conduct. The consultant's July report referenced that 'Bedfordshire Fire & Rescue Authority benefits from members who demonstrate appropriate behaviours, and as such has a low level of code of conduct issues requiring management'

Terms of reference of the Authority, and the Executive and Audit and Standards Committees [Appendix B]

- 2.5 In respect of items 2.1.1; 2.1.6; and 2.1.7, the Terms of Reference of the Executive Committee have been revised to create certainty as they were currently opaque. They contained only one specific function, together with role descriptions for the respective Lead Members the latter of which are separate from the role that these Members undertake when sitting as a committee. These have been removed from the Terms of Reference to avoid any ambiguity or confusion referenced in paragraph numbers 8 to 12 of the Desktop Review.
- 2.6 The revisions to the Terms of Reference of the Audit and Standards Committee (ASC) are less substantial and the revisions are shown as shaded and underlined or struck-through.

Process of Member appointments [Standing Orders Appendix C]

- 2.7 In respect of 2.1.5 'process of Member appointments' within the parameters of the Bedfordshire Fire Services(Combination Scheme) Order 1996 that a) constituent councils appoint councillors onto the Authority for a period of their choosing and b) that the Chair of the Authority (and a Vice Chair, if appointed) hold office for a period of one year, the proposed revisions to Standing Orders 1(4) and 2(5) propose a position statement of the Authority of its preference for 4-year appointments from the constituent councils and thereby that the Chairperson of the Authority should align for the same period. Proposed Standing Order 2(6) binds the Authority to the respective post holders of Chair and Vice Chair of the Executive Committee to being Chair and Vice Chair for the Authority.
- 2.8 Standing Order 27(1) has been revised/corrected to reflect the extant practice of the Vice Chairperson of ASC not being appointed by the Authority; 27(2) to reflect the extant practice of such appointments being made by the Authority; and 27(4) for the process of appointment in the event of absences of the postholders at committee meetings.
- 2.9 Standing Order 25 has been elucidated to confirm that the appointment onto the two committees by the Authority is mutually exclusive and must be done in accordance with proportionality rules (under sections 15 and 16 of the Local Government and Housing Act 1989). It gives an option for the Authority to appoint co-opted members onto a committee, and provides (at 25(9)) for the speedy appointment of Members onto any Call-in Task and Finish Group that may be required.
- 2.10 Finally, the amended Terms of Reference of the Authority confirm its role in making Member appointments into specified roles.

Call-in procedures and the function and role of task and finish group(s)

- 2.11 The revised Terms of Reference of the Executive Committee and ASC provide for them the ability to establish time limited Task and Finish Groups (and in respect of the ASC, for it to provide members from it to sit on a Call-in Task and Finish Group). In respect of the call-in procedure, as identified in the Desktop Review, there are no executive arrangements at the Authority nor is there a legal power to introduce them. A new proposed Standing Order 6b [Appendix D] mirrors the call-in powers available in principal councils for decisions of their executives to be called in. A new document 'Procedural Rules for Task and Finish Groups (including Call In Task and Finish Groups) has been drafted for recommendation for approval by the Authority [Appendix E]

Scheme of Delegation to Officers

- 2.12 As mentioned above, these have been amended [Appendix F] in respect of the Monitoring Officer to confer other ancillary responsibilities for which a Monitoring Officer will usually be designated as the proper officer. It also has additions to reflect extant practice at the Authority such as attesting the Authority's Seal and issuing summonses to meetings of the Authority and its committees. Similar modifications have been made, for the same reasons, for the role of Treasurer. The designation "Treasurer" derives from a former requirement, before the Authority raised its own precept, under the Bedfordshire Fire Services (Combination Scheme) Order 1996 for the Authority to appoint a treasurer to the erstwhile combined fire service fund. The statutory role is that of "chief finance officer" which the Authority is required to appoint under section 112 of the Local Government Finance Act 1988 (not under section 151 of the Local Government Act 1972 which has no application to the Authority).
- 2.13 In respect of the Chief Fire Officer/Chief Executive it can be observed from the proposed amendments that the intention is to make delegation efficient by reference to what that postholder cannot do. The deletions of functions that are not delegated have been added to the Terms of Reference of the Authority from where they had been absent. While the long list of specific delegations has been retained these are not intended to be a job description nor performance monitoring tool.
- 2.14 It will be noted that the Scheme of Delegation was revised and adopted in March 2022 after presentation by the former Monitoring Officer to a meeting of the Executive Committee on 18 March 2022 at which amendments were made at the request of the Committee in respect of delegations to the Chief Fire Officer/Chief Executive before being recommended for adoption

by the Authority at its meeting on 24 March 2022. These amendments, which were moved as amendments in the meeting, required the following exemptions from delegations to be added: Budget and Medium Term Financial Strategy; Treasury Management Strategy; Asset Management Strategy/Plans; and Decision of closure and/or relocation of fire stations. As stated above at 2.13 it appears that no functions nor Terms of Reference have previously be set out for the full Authority. This is now addressed in the proposals [Appendix B]. In respect of the last requested addition from March 2022, any such decision would in any event require consultation and would be comprised in any extant CRMP, or revisions to it, the determinations of which are expressly a function of the full Authority the proposed Terms of Reference.

Other matters

- 2.15 Additional revisions have been made to the Standing Orders [Appendix C]. There was a recommendation in the Desktop Review that consideration be given to reviewing them. The opportunity has been taken to review and amend Standing Order 6a to reflect the current practice of allowing public participation at the committees despite not being contemplated in the extant Standing Orders which contemplate 'participation' at Authority meetings only. Participation is amended to 'questions' rather than including permission for public 'comments' and 'statements' as this reflects current practice, and amendments are proposed to provide for proper notice of questions and ensuring that the scenarios envisaged in respect of untoward questioning (Standing Order 6a (9)) can be handled in advance of a meeting rather than left for a Chairperson on the day to navigate as events unfold. Given the spotlight on the conduct of fire and rescue service employees nationally, the previously blanket limiting aspects of Standing Order 6a (9) have been removed in the proposed amendments subject to the proviso that such questions should not be defamatory nor give rise to the Authority breaching its data protection obligations.
- 2.16 In respect of Standing Order 20 (Voting) the proposed additions (20(5) and (6) reflect legal requirements. Other amendments are intended to create consistency, for example in references to 'Chairperson' and deletions of 'Secretary'.

3 Next Steps

- 3.1 The Committee is invited to approve the revisions and additions to the constitutional documents for submission to the Authority whereupon they would be in place in advance of the 2023/24 Annual Meeting. In respect of item 2.1.10, the financial regulations and financial instructions review will be undertaken in 2023/24 once the new Authority has been constituted.

4 Recommendations

4.1 It is recommended that the following documents be recommended to the Authority for approval:

- i. draft Terms of Reference for the Authority and the Executive and Audit and Standards committees;
- ii. draft Procedural Rules for Task and Finish Groups (including Call In Task and Finish Groups)
- iii. draft Procedural Standing Orders for the Authority and its Committees
- iv. an additional Procedural Standing Order (6b for call-in)
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