

Report title	Delivery of Emergency Planning and Business Continuity Management	
Decision designation	AMBER	
Cabinet member with lead responsibility	Councillor Paul Sweet Public Health and Wellbeing	
Corporate Plan priority	Confident Capable Council	
Key decision	Yes	
In forward plan	Yes	
Wards affected	All Wards	
Accountable Director	Keith Ireland, Managing Director	
Originating service	Public Health	
Accountable employee	Jennifer Brake	Service Director - Public Service Reform
	Tel	01902 555332
	Email	jennifer.brake@wolverhampton.gov.uk
Report to be/has been considered by	Corporate Directorate Leadership Team	26 March 2018
	People Directorate Leadership Team	26 March 2018
	Place Directorate Leadership Team	26 March 2018
	Strategic Executive Board	03 April 2018

Recommendations for decision:

The Cabinet is recommended to approve:

1. The Council entering into a Collaboration Agreement with West Midlands Fire Service, whereby:
 - a. The overall day to day management and delivery of City of Wolverhampton Council's emergency planning and business continuity management service is delegated to the West Midlands Fire Service;
 - b. The City of Wolverhampton Council remains the principal authority as regards its statutory obligations for civil contingencies;
 - c. The Council Cabinet portfolio holders retain overall responsibility for the strategic direction, budget setting and performance monitoring of the civil protection and emergency management service;

- d. The Council's Resilience Board oversees WMFS delivery of the service.
2. The Transfer of Undertakings (Protection of Employment) (TUPE) of City of Wolverhampton Council employees to West Midlands Fire Service.
3. The delegation of authority to the Leader of the Council and Cabinet Member for Public Health and Wellbeing, in consultation with the Managing Director and Director of Public Health, to proceed with the implementation of the proposal.

1.0 Purpose

- 1.1 To propose the transfer of the day to day management and delivery of emergency planning and business continuity management (civil contingencies) service to the West Midlands Fire Service in order to achieve a more resilient, co-ordinated inter-agency and effective service, benefiting from existing synergies between the City of Wolverhampton Council (CWC) and the West Midlands Fire Service's (WMFS) respective emergency planning functions.
- 1.2 To gain the required authorisation to proceed with a Collaboration Agreement between CWC and WMFS which sets out the services the West Midlands Fire Service would provide to the Council in respect of civil contingencies, and the Transfer of Undertakings (Protection of Employment) (TUPE) of City of Wolverhampton Council employees to West Midlands Fire Service. The details of the Collaboration Agreement are set out in paragraph 3.0 of this report.

2.0 Background

- 2.1 As a principal local authority, CWC meets its statutory duties for civil contingencies (category 1 responder) through the work of its Resilience Team of 2 FTE. The team are responsible for:
 - assessing the risk of emergencies occurring and using this to inform contingency planning;
 - putting in place emergency plans;
 - putting in place business continuity management arrangements;
 - putting in place arrangements to make information available to the public about civil protection matters and maintain arrangements to warn, inform and advise the public in the event of an emergency;
 - sharing information with other local responders to enhance co-ordination;
 - co-operating with other local responders to enhance co-ordination and efficiency; and
 - providing advice and assistance to businesses and voluntary organisations about business continuity management.
- 2.2 As part of our public service reform agenda to work collaboratively with other public service providers to improve the effectiveness, efficiency and resilience of our services, senior management and Cabinet Members have been considering how the West Midlands Fire Service and City of Wolverhampton Council can work closer together.
- 2.3 This is within the context of the proposal to transfer WMFS to the Combined Authority in 2019 to foster a more joined up way of working to deliver public services between the Fire Service and local authority partners in the West Midlands.
- 2.4 As part of this work, options for the future delivery of this service have been considered by the senior management and Cabinet Members and this paper sets out a full proposal for the preferred option to transfer the CWC's emergency planning function to the WMFS

who are also a category 1 responder under the Civil Contingencies Act 2004. Further details of the options appraisal is provided in paragraph 5.0 of this report.

3.0 Collaboration Agreement for the management and delivery of emergency planning and business continuity management services

3.1 The proposal is for the day to day management and delivery of CWC's emergency planning and business continuity management service to be delegated to WMFS under a Collaboration Agreement.

3.2 Legal advice has indicated that CWC cannot divest itself of responsibility for emergency planning and business continuity management, although it can discharge the day to day management of these functions through a Collaboration Agreement.

3.3 It is proposed that CWC enters into a Collaboration Agreement with WMFS which sets out the service required for CWC to fulfil its statutory responsibility as a 'category 1 responder' and other emergency preparedness, resilience and response duties, such as those under the Health and Social Care Act 2015. The Collaboration Agreement will include:

- Service specification detailing the service to be delivered by West Midlands Fire Service to CWC, including the requirement to deliver against a performance management framework which will be regularly monitored by CWC's Resilience Board;
- Transfer of 2 CWC employees employed to deliver services within the Resilience Team, to include provisions for remuneration, benefits and entitlements;
- Transfer of equipment not exceeding the value of £5,000;
- Liabilities and conduct of claims between CWC and WMFS, transfer of indemnities and arrangements for resolution of disputes;
- Provision for termination of contract where issues of poor performance are not adequately addressed;
- A contractual period of 3 years, with an annual review cycle in addition to regular monitoring arrangements;
- Annual budget setting arrangements and work programme approval.

3.4 The service specification will set out the key areas of work required to meet the duties under the Civil Contingencies Act 2004 and Health & Social Care Act 2015:

- Assessing the risk of emergencies occurring and using this to inform contingency planning;
- Putting in place emergency plans;
- Putting in place business continuity management arrangements;
- Putting in place arrangements to make information available to the public about civil protection matters and maintain arrangements to warn, inform and advise the public in the event of an emergency;
- Sharing information with other local responders to enhance co-ordination;
- Co-operating with other local responders to enhance co-ordination and efficiency;

- Providing advice and assistance to businesses and voluntary organisations about business continuity management.

3.5 A work plan will be agreed by the Resilience Board which will include the required activities to be undertaken, including:

- Emergency planning;
- Business continuity planning;
- Exercising to validate emergency preparedness, response and business continuity plans;
- Support for senior management to govern emergency preparedness and compliance with relevant guidance and legislation;
- Coordination of no notice incidents and planned disruptive events during office hours;
- Debriefing of incidents to identify issues and best practice to be reflected in updated plans, response resources and training;
- Liaison to coordinate planning with the NHS, emergency services, neighbouring councils and other relevant partner agencies;
- Maintenance and improvement of emergency response resources;
- Competency based emergency response role training.

4.0 CWC's role and responsibilities

4.1 In the Collaboration Agreement, CWC will remain responsible for the following:

- Providing the strategic direction for CWC's emergency planning and business continuity management arrangements;
- Setting of the annual budget for the collaboration;
- Performance monitoring WMFS's delivery of the Agreement;
- Chairing and providing appropriate representation to the Wolverhampton Resilience Board, Health Protection Forum, and CONTEST Board. Providing a Director level representative to the West Midlands Local Resilience Forum.
- Providing a pool of Duty Managers, Duty Directors and other response roles.
- Maintenance of the duty officer rota and out of hours contact directory.
- Delivery of the Emergency Communications Plan and its associated training.
- Provision of a Senior Responsible Officer for each civil emergency and business continuity plan, including identified subject matter experts for public health plans.
- Staff and management attendance at the required training sessions.
- Compliance with civil emergency and business continuity plan reviews, testing and debriefing activity and information requests.
- Operation of the customer service centre in hours and a contract with Wolverhampton Homes out of hours to take the initial emergency call notification and call triage.
- Maintenance of the contracts, SLAs and MOU's and ICT systems in place to deliver this function.

5.0 Governance and management

- 5.1 WMFS Deputy Chief Fire Officer will be responsible for the delivery of the service in line with the Collaboration Agreement.
- 5.2 CWC's Resilience Board will act as the management board for the Collaboration Agreement, providing strategic direction, agreeing WMFS' work plan and approving the annual budget. The Chair of the Resilience Board will be the CWC's Strategic Director of People. In addition, the Board will be responsible for monitoring the performance of the WMFS and its delivery of the Collaboration Agreement. Through the Board, CWC's Strategic Director of People will satisfy himself that CWC has met its statutory duties as set out in the Civil Contingencies Act (2004), Health & Social Care Act (2015) and other relevant legislation.
- 5.3 WMFS will attend the Strategic Executive Board regularly to report on emergency planning and business continuity matters and provide briefings to the Cabinet Portfolio holders as necessary.

6.0 Other considerations

- 6.1 The Collaboration Agreement will allow for a budget review will be triggered if WMFS enters into other arrangements with other parties. Through this clause in the Collaboration Agreement, CWC will seek to benefit from any efficiencies achieved.
- 6.2 The West Midlands Fire and Rescue Authority (WMFRA) is in the process of consulting on a proposal to transfer the governance of the WMFS to the West Midlands Combined Authority in 2019. In this event, the Collaboration Agreement will be novated to the West Midlands Combined Authority.

7.0 Timescales

- 7.1 Subject to Cabinet approval, an effective date of 1 June 2018 will be targeted.

8.0 Evaluation of alternative options

- 8.1 Four options have been considered for the future delivery of civil contingencies and business continuity management services. A full options appraisal is detailed in Appendix 1 to this report with a summary provided below:
- Option 1: Delegate Civil Contingencies to WMFS and CWC retains Public Health emergency planning, business continuity management and the Prepare (counter-terrorism).
 - Option 2: Delegate Civil Contingencies and Public Health emergency planning, business continuity management and the Prepare (counter-terrorism) coordination role to WMFS.

- Option 3: Another category 1 responder delivers CWC's Civil Contingencies and Public Health emergency planning, business continuity management and the Prepare (counter-terrorism) coordination role.
- Option 4: Retain the status quo and continue to manage Civil Contingencies and Public Health emergency planning, business continuity management and the Prepare (counter-terrorism) in house.

8.2 The preferred option, which has been developed in response to feedback from CWC stakeholders, is Option 2.

9.0 Reasons for decision

9.1 Transferring the management and delivery of emergency planning and business continuity management to WMFS will achieve a more resilient, co-ordinated inter-agency and effective service by joining the capability of the CWC's Resilience Team with the West Midlands Fire Service Emergency Planning Team.

9.2 A joint team of 5 FTE (plus management) would be created (from CWC 2 FTE currently) supported by WMFS' 24/7 incident control room staff out of hours. As such, CWC would benefit from additional resources and a wider pool of subject matter expertise from the WMFS but within the existing budget.

10.0 Financial implications

10.1 The 2018-2019 annual budget allocation available to be transferred to West Midlands Fire Service to cover staffing costs, equipment (e.g. rest centre provisions), and training is £112,000.

10.2 There are also several IT systems and SLAs/MoUs which CWC has entered into agreements with providers. Contracts with external providers will be retained by CWC, with a view to the Resilience Board reviewing future commissioning at the point of contract expiry. Responsibility for the maintenance of the ICT equipment carried by the duty officers and those in the Major Incident Control Room will remain with CWC.

10.3 The objective of this proposal is not to make efficiency savings but rather achieve a more resilient, co-ordinated inter-agency and effective service, strengthened by the joining of CWC and WMFS emergency planning resources into a single team.

[MI/22032018/T]

11.0 Legal implications

- 11.1 Regulation 8 of the Civil Contingencies Act (2004) (Contingency Planning) Regulations 2005 enables general Category 1 and general Category 2 responders to make arrangements with each other for the discharge of its duties of general Category 1 responders under section 2 of the Act jointly, or, for one responder to perform those duties on behalf of another.
- 11.2 This regulation therefore allows CWC to delegate its emergency planning functions to the West Midlands Fire Service without reference to section 101 of the Local Government Act 1972.
- 11.3 However, whilst the regulations allow the discharge of duties to another category 1 responder, under the regulations, CWC cannot divest itself of the legal obligations it has in respect of the Civil Contingencies Act 2004.
- 11.4 In addition, Regulation 4 requires general Category 1 responders which have functions which are exercisable in a particular area in England or Wales to co-operate with each other. This form of co-operation is referred to as the Local Resilience Forum, and CWC should maintain direct representation at this Forum.
- 11.5 The Director of Public Health has a statutory duty for any of the Secretary of State's public health protection or health improvement functions that s/he delegates to local authorities, either by arrangement or under regulations. These include services mandated by regulations made under section 6C of the 2006 Act, inserted by section 18 of the 2012 Act. The Director of Public Health is also responsible for exercising their local authority's functions in planning for, and responding to, emergencies that present a risk to public health.
- 11.6 This proposal is exempt from Public Contracts Regulations as the following conditions will be met.
- the Collaboration Agreement establishes or implements a co-operation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;
 - the implementation of that co-operation is governed solely by considerations relating to the public interest; and
 - the participating contracting authorities perform on the open market less than 20% of the activities concerned by the co-operation.

12.0 Equalities implications

- 12.1 An equalities analysis has been completed which assessed the impact of this proposal. The council's existing plans and capabilities strive to protect vulnerable groups (including children and older people) during emergencies. The TUPE transfer and close working with CWC officers through the Resilience Board, the duty rota and business continuity management activity will retain the local knowledge of the City of Wolverhampton's communities.

13.0 Environmental implications

- 13.1 There are no environmental implications relating directly to this report.

14.0 Human resources implications

- 14.1 Transfer of Undertakings (Protection of Employment) (TUPE) regulations apply to the 2 posts in scope of this service. Consultation with employees and union representatives for TUPE will follow the agreed council policy and procedures.

15.0 Corporate Landlord implications

- 15.1 CWC's dedicated Major Incident Control Room in the Civic Centre and back up facility will remain on CWC premises.
- 15.2 The team will be based at Civic Centre, Wolverhampton and West Midlands Fire Service headquarters in Birmingham.

16.0 Appendices

Appendix 1 - Options appraisal