

Minutes

**5<sup>th</sup> June, 2006 at 2.30 p.m.**  
**at Staffordshire Fire and Rescue Service Headquarters**

**Present:**

- Representing Hereford and Worcester Fire Authority**  
Councillors Bean, G Davis and Brigadier Jones;
- Representing Shropshire and Wrekin Fire Authority**  
Councillors Hartin and Mrs Holyoak;
- Representing Stoke on Trent and Staffordshire Fire Authority**  
Councillor Bloomer;
- Representing Warwickshire County Council**  
Councillors Chattaway, Hobbs and Shilton;
- Representing West Midlands Fire and Civil Defence Authority**  
Councillors Hinton (Chair) and Hogarth.

**Advisors:**

Chief Fire Officer Doig (Staffordshire Fire and Rescue Service);  
Chief Fire Officer Hayden (Hereford and Worcester Fire and  
Rescue Service);  
Chief Fire Officer Sheehan (West Midlands Fire Service).  
Chief Fire Officer Taylor (Shropshire Fire and Rescue Service).

Lynda Bateman (Acting Clerk/Treasurer);  
Catherine Witham (Deputy Legal Adviser);  
Steve Worrall (Programme Manager);  
Steve Haynes (Programme Risk Manager).

**Observers:** Councillor Udall;  
Peter Dartford, Ray Kings and Alan Rotchell.

**Apologies:** Councillors D Davis, Eustace and Morgan;  
Chief Fire Officer Brown;  
Sue Phelps.

11/06 **Chair's Announcements**

The Chair welcomed Councillors Chattaway and Holyoak to their first Board meeting.

He referred to the loss of Councillors Kath Banks and John Haynes from the Board, and paid tribute to their valuable contribution to regional working.

The Chair also announced that the groundbreaking ceremony for the West Midlands Regional Control Centre was to take place on 6<sup>th</sup> July, 2006, and that all Board members would receive invitations to the event. Representative bodies would also be advised of the arrangements.

## **West Midlands Regional Management Board**

**5<sup>th</sup> June, 2006**

12/06 **Minutes**

**Resolved** that the minutes of the meeting held on 27<sup>th</sup> January, 2006, be confirmed as a correct record.

13/06 **Membership of the Board**

The Interim Clerk reported that notification had been received from constituent authorities that Councillor Holyoak would be replacing Councillor Eade on a temporary basis (Shropshire Fire and Rescue Authority) and that Councillor Chattaway would serve in place of Councillor Haynes (Warwickshire County Council). A nomination in place of Councillor Banks was awaited from Stoke on Trent and Staffordshire Fire Authority.

A further report would be brought to the Annual Meeting of the Board on 28<sup>th</sup> July, 2006 with regard to membership and allocation of Senior Responsible Owner positions for 2006/07.

14/06 **Officers of the Regional Management Board**

The Board was reminded that the Regional Management Board, at its meeting on 7<sup>th</sup> May 2004 [Minute No. 8/04], had confirmed the arrangement whereby the Clerk to the West Midlands Fire and Rescue Authority also acted as Clerk to the Regional Management Board. Nigel Summers, who had been Clerk to the Board since its inception, had retired with effect from 19<sup>th</sup> March 2006. The West Midlands Fire and Rescue Authority had approved an interim arrangement whereby its Treasurer also acted as Clerk; and had now appointed Susan Phelps, Head of Governance Services of Sandwell Council, as substantive Clerk.

Furthermore, the Board's Legal Adviser, John Gregory, Secretary to the Staffordshire Fire and Rescue Authority, had announced his intention to retire on 30<sup>th</sup> June, 2006. The Deputy Legal Adviser, Catherine Witham, was leaving Warwickshire County Council to take up a post with another authority. Warwickshire County Council had offered the services of Greta Needham, its Head of Legal Services, as Legal Adviser to the Board.

Jean Cole, the Business Change Manager with Government Office West Midlands, had indicated that she would be leaving Government Office on 5<sup>th</sup> June, 2006 to take up another post. Notification had been received that Tina Thomas had been appointed as Jean Cole's replacement and would be taking up her new post with effect from 14<sup>th</sup> June, 2006.

There was no change in respect of the other support officers as set out in Minute No. 8/04.

## **West Midlands Regional Management Board**

**5<sup>th</sup> June, 2006**

### **Resolved:**

- (1) that the following arrangements for officer support and advice to the Regional Management Board be agreed:

**Clerk to the Regional Management Board**

Susan Phelps (Clerk to the West Midlands Fire and Rescue Authority and Head of Governance Services, Sandwell Council) with immediate effect.

**Legal Adviser**

Greta Needham (Head of Legal Services, Warwickshire County Council) with effect from 1<sup>st</sup> July, 2006.

- (2) that the Clerk convey the Board's thanks to Nigel Summers for his help and assistance with the establishment and working of the Regional Management Board from its inception.

15/06 **Correspondence relating to the Regional Management Board**

None received.

16/06 **Meeting of the Programme Board**

The Board approved the notes of the meeting of the Programme Board held on 21<sup>st</sup> March, 2006, subject to the addition of Councillor Hobbs to the list of attendances.

Councillor Hobbs reported that he had attended the Regional Chairs' meeting in London on 23<sup>rd</sup> May 2006. The meeting had discussed governance of Regional Control Centres [see Minute No 21/06 below], and members had received a presentation from Liz Baron, Chair of Firebuy Ltd, the national procurement body for fire and rescue services. Councillor Hobbs indicated that he felt reassured that Ms Baron understood Fire Authorities' concerns about national procurement. It was hoped that Ms Baron would also attend a future meeting of this Board.

Councillor Hobbs indicated that the Regional Chairs' meetings were open to Chairs and Vice Chairs to attend. He proposed that in future, two representatives from the Board attend the meetings.

With reference to Minute No. 31/06, officers undertook to ensure that new members received any necessary training in connection with the programme.

17/06 **2005/06 Finance Outturn**

The Board noted a report on final spend to date against the approved budget

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**5<sup>th</sup> June, 2006**

allocation for 2005/06, and the actual time spent on individual projects within the programme up to 31<sup>st</sup> March 2006.

18/06      **2006/07 Regional Annual Efficiency Statement**

The Board noted the Regional Annual Efficiency Statement 2006/07 which had been submitted to the Office of the Deputy Prime Minister on 17<sup>th</sup> April 2006.

**Resolved** that future statements include a breakdown of efficiencies achieved by each constituent Fire Authority.

19/06      **Fire and Rescue Service National Framework 2006/08**

The Programme Manager outlined how the published Fire and Rescue Service National Framework 2006/08 differed from the 2005/06 framework and the draft 2006/08 framework that had been circulated for consultation. Changes that might have a regional impact would be referred to the appropriate Project Board/Working Group for consideration. A further report on key drivers for change would be submitted in due course.

20/06      **Programme Plan 2006/08**

The Programme Manager submitted the Programme Plan for 2006/08 setting out the Region's plans for modernisation over this period.

**Resolved** that the Programme Plan be approved.

21/06      **FireControl Governance – Consultation Response**

Submitted – a proposed response to be sent to the Department for Communities and Local Government (DCLG) with regard to the governance of Regional Control Centres. The deadline for responses was 14<sup>th</sup> June, 2006. The draft response had been drawn up the regional lawyers group.

The National Framework indicated that the Local Authority Controlled Company (LACC) which would run the West Midlands Regional Control Centre should be operative by 1<sup>st</sup> January, 2007. A proposed timetable of actions to meet this deadline was submitted.

Members expressed some concern about possible conflict of interest for members of Fire Authorities who were also directors of the LACC. Assurances were given that legal advice on this aspect would be available to members in forthcoming reports on the establishment of the LACC.

## **West Midlands Regional Management Board**

**5<sup>th</sup> June, 2006**

### **Resolved:**

(1) that the draft regional response be approved for submission to the DCLG;

#### ***Committee Clerk's Note***

*A copy of that response is attached to these minutes for information.*

(2) that constituent Fire Authorities be asked to submit their own individual responses to the DCLG supportive of the regional response;

(3) that the Warwickshire County Council Legal Services be asked to investigate proposals for independent legal advice on the setting up of the local authority controlled company (LACC) for the West Midlands Regional Control Centre and to report back to the next meeting on 28<sup>th</sup> July, 2006;

(4) that the timetable for the establishment of the LACC as set out in the report be approved.

### 22/06 **Programme Organisation and Governance Arrangements**

Submitted – a revised version of the Programme Organisation document updated to include governance arrangements.

**Resolved** that the document be approved.

### 23/06 **Programme Risk Review**

The Board noted the contents of the programme risk log.

The Risk Manager indicated that he would be reporting to the next meeting on a process to identify strategic risks identified by members and Chief Fire Officers.

### 24/06 **Schedule of Meetings 2006**

The Board noted the scheduled dates, times and venues for WMRMB meetings for the remainder of 2006.

### 25/06 **Date of next meeting**

Regional Management Board - Friday, 28th July, 2006 at 10.30 am (Warwickshire)

Programme Board – Tuesday, 20<sup>th</sup> June, 2006 at 10.30 am (Telford).

**West Midlands Regional Management Board**  
**5<sup>th</sup> June, 2006**

(Meeting ended at 3.35 pm)

*Contact Officer: Georgina Wythes  
Democratic Services Unit  
Sandwell MBC  
0121-569 3791*

**FiReControl Governance Consultation – Response Form**

<b>Response Form</b>		<p>Please return by Wednesday 14<sup>th</sup> June 2006 to:</p> <p><u><a href="mailto:Daniel.Hallam@odpm.gsi.gov.uk">Daniel.Hallam@odpm.gsi.gov.uk</a></u> with "FiReControl Governance Consultation Response" in the email subject line.</p> <p>Or to:</p> <p>Daniel Hallam, Floor 4, Allington Towers, PO Box No 50200, Allington Street, London SW1E 5WY</p>
<b>Name</b>	Susan Phelps, Clerk	
<b>Organisation</b>	West Midlands Regional Management Board	
<b>Address</b>	Sandwell Council House, PO Box 2374, Oldbury, West Midlands, B69 3DE	
<b>E-mail</b>	georgina_wythes@sandwell.gov.uk	
<b>Telephone</b>	0121 569 3791	
<b>Responses to specific questions:</b>		
<b>Q1</b>	<p><b>Do the governance arrangements described above offer the most effective way of:</b></p> <ul style="list-style-type: none"> <li>• <b>delivering a resilient national control centre network and the effective management of national resilience assets; while at the same time</b></li> <li>• <b>maintaining FRA accountability and an appropriate level of flexibility for elected members in ensuring that the service meets the needs of local people?</b></li> </ul>	
	<p>In general terms the draft Articles and Memorandum are acceptable. However, although it is recognised that the financial implications and governance arrangements are distinct elements, an assessment of the overall effectiveness requires an examination of both aspects. It is therefore impossible to assess with any degree of objective analysis the overall effectiveness of the FiReControl project, given that there is still no information available regarding the robustness or otherwise of the business case, or the financial implications for individual authorities of the project. Nor has any comparative information been forthcoming in relation to the relative merits or drawbacks of any alternative solutions which the government may have considered.</p>	
<b>Q2</b>	<p><b>Should the local authority companies be restricted in the scope of their activities as described above, or should they be given the freedom to diversify?</b></p>	

	<p>At least initially, we consider that local authority companies should concentrate on their core functions. However, we would prefer that the constitutional documents are sufficiently broad and flexible to allow, in principle at least, diversification of the companies' activities in the event that that may be thought desirable in the future. As the consultation paper explains, this could include several advantages, such as the delivery of efficiencies by operating functions on a regional basis. Although there may be financial, legal or other risks associated with the operation of such arrangements, we consider that those risks are best assessed by the relevant authorities at the time that such arrangements are contemplated. For example, the risk of falling foul of EU procurement rules would clearly need to be addressed so that the company could continue to benefit from the 'in house exemption' rules set out in the <i>Teckal</i> case. Otherwise, tenders would have to be invited for the provision of a regional control facility and each company would have to bid for the work (See the advice procured by the Fire Lawyers' Network from Rhodri Williams of Counsel, and Eversheds, Solicitors). Nevertheless, we do not consider that the government should take an overly restrictive view at this time.</p>
<p><b>Q3</b></p>	<p><b>Should authorities be given complete freedom in the composition and selection of board members and the naming of their company?</b></p> <p>We would either support authorities being given complete freedom in the composition and selection of board members, or the selection of board members being limited to members and/or officers of constituent authorities. We would not support authorities being required to appoint independent members. We believe that to do so could have very serious implications in terms of the <i>Teckal</i> case (see question 2 above) and bring into question whether the 'in house exemption' could be relied upon. In addition, it would dilute the degree of control that authorities would be able to exercise in terms of reduced public accountability.</p> <p>We believe that in terms of external public recognition and branding, it would be preferable for the naming of companies to have an element of national consistency whilst allowing for a degree of regional distinctiveness. Therefore, we would not support the proposal for authorities to be given complete freedom in terms of the naming of their company. Rather we would advocate the government issuing guidance as to the generic part of the name of the company. Authorities should then be given the freedom to tailor the name to ensure regional distinctiveness.</p>
<p><b>Q4</b></p>	<p><b>Should there be a relationship between RCC companies and RMBs and if so what form should it take?</b></p> <p>The LACC will be responsible for delivery of a specific aspect of the fire and rescue service, namely, FireControl. By contrast, the RMB will continue to oversee the delivery of functions other than FireControl in accordance with the National Framework.</p> <p>Given the different nature of the two entities (a Local Authority Controlled Company (LACC) in the case of FireControl, and a joint committee in the case of WMRMB), and their differing, though related functions, it is difficult to see what formal relationship there could be between the two bodies once the company is fully functioning (see question 7 for the relationship during the project stage). We would not support a formal relationship that imposes a further layer of bureaucracy or requires the formation of another body.</p>
<p><b>Q5</b></p>	<p><b>Should RCC companies be subject to the same provisions on conduct and maladministration as local authorities and other relevant bodies, and to the rules relating to local authority indemnity?</b></p>



	<p>We take the view that LACCs should in general be subject to the same provisions on conduct and maladministration as local authorities. Each company should have its own code of conduct.</p> <p>Regarding maladministration, this is a statutory concept involving the Local Government Ombudsman by virtue of the Local Government Act 1974. LACCs are therefore already covered by the Act or not, i.e. there is either power for the Ombudsman to investigate complaints or not.</p> <p>It is suggested that the right does not currently exist. This is unlikely to be significant: the company is primarily supplying a service to its FRAs as a contractor. Maladministration complaints are very rare in the Fire &amp; Rescue Service in any event.</p> <p>With respect to indemnities, each company will be able to take out the usual directors' indemnity policies, and members acting on behalf of the FRA could also be indemnified in that capacity under the Local Authorities (Indemnities for Members and Officers) Order 2004 (SI 2004/3082).</p>
<p><b>Q6</b></p>	<p><b>Are you content with the draft Memorandum and Articles of Association? Please comment freely on both using the table below.</b></p> <p>Please see comments below taken from advice procured by the Fire Lawyers' Network from Eversheds, Solicitors.</p>
<p><b>Q7</b></p>	<p><b>Do FRAs have views about the best way to manage the relationship between the RMB and the company in the running of the project?</b></p> <p>We consider that it would be useful to have a mechanism whereby the company can be confident that the RMB decisions on the project as it develops reflects the views of the company. At this stage we have no particular view as to the best way to do that. However, we are of the view that directors of the company would have both personal and prejudicial interests in the event that they were also members of the RMB and this would have to be carefully considered in setting up any arrangements.</p>

**Please comment freely on the draft Memorandum and Articles of Association using this table.**

No.	Page Number	Paragraph Reference	Is it a comment, new wording or other (C, NW, Other)	Comment about the paragraph reference. Include alternative wording and new requirements if appropriate
1.	1	Interpretation of Articles	Comment	The list of FRA members is a list which can only be varied (after adoption of the articles) by amending the articles, which requires the unanimous consent of all members. It may be preferable to generically define FRA Members". At present there is no other criteria for membership and the members are therefore free to admit whomsoever they wish as members of the LACC.
2.	2	Article 2	Comment	Inconsistency between article 2 and appendix – part 2. Article 2 stipulates that no person shall be admitted as a member of the company unless their application is approved by the unanimous consent of the FRA members. The Appendix simply refers to the unanimous consent "...of the members..." i.e. all the members. This needs to be reconciled. As a more general point, consideration needs to be given as to membership criteria.
3.	4	Articles 14	Comment	<p>Depending upon the proposed membership a quorum of 3 may not be an appropriate number. To ensure participation it may be preferable to increase the quorum for general meetings but to have a reduced quorum requirement for any adjourned meeting.</p> <p>Membership is effectively split between FRA members and other members (are they officers, independent members or both?), the key difference being in relation to quorum provisions and the right to appoint a director. We should consider whether FRA members should be given other more favourable powers/veto rights and if so to what extent an individual FRA should be able to frustrate the wishes of the company.</p>
4.	7	Article 35	Comment	Depending upon the composition of the LACCs, Article 35 may need to be wider than simply being limited to FRA members.
5.	8	Article 36	Comment	Meetings of directors are quorate if any 4 directors attend, at least 2 of whom must be directors appointed by the FRA members. These requirements may be to be revisited.
6.	General observation		Comment	Consideration needs to be given to as to what happens in the event of winding up/dissolution of the company. Consideration needs to be given as to whether assets should be divided equally and whether they should be freely distributed or utilised in similar undertakings.

**Please add further rows as required.**