

WILTSHIRE & SWINDON FIRE AUTHORITY

REPORT REFERENCE NO.	15
MEETING	Wiltshire & Swindon Combined Fire Authority
MEETING DATE	Thursday 11 December 2014
SUBJECT OF REPORT	Combination Order & Shadow Governance Arrangements
LEAD OFFICER	Lindsay Gowland - Clerk to the Authority
RECOMMENDATIONS	<p>That the Fire Authority agree the following recommendations:</p> <ol style="list-style-type: none"> 1. That 'Dorset and Wiltshire Fire and Rescue Authority' should be adopted as the name of the new Combined Authority. 2. That the new Combined Fire and Rescue Authority should comprise 30 Members in accordance with the table set out in paragraph 10 and that a full governance review take place by April 2018. 3. That the Terms of Reference set out within page 6-8 (ToR of a Shadow Dorset and Wiltshire Fire & Rescue Authority Board) are agreed as the Terms of Reference and Membership of the Shadow Board. 4. That the Combination Oversight Board be reconstituted as a Joint Committee with the Terms of Reference set out in page 6-8 of this report and that the Joint Committee should operate until Shadow Board arrangements take their place. 5. That the Joint Committee and Shadow Board will have a Membership of 12 Members. The suggestion is for continuity these should be these Authority's existing COB Members with one additional Member. 6. That a Joint Selections Committee be established comprising the two Chairmen and Vice-Chairmen and two other Members from each of the existing Fire Authorities with the Terms of Reference set out in page 9 of this report. 7. That Members determine the quorum for the new Combined Authority, in the light of whatever recommendation is made by the Combination

	<p>Oversight Board (see Addendum 7.2 ref recommendation).</p> <p>8. Approve an amendment to the budget resolution made at the CFA meeting on 11 November 2014 regarding Combination, in light of further discussions with DCLG and Treasury to enable Combination on 1 April 2016 (See addendum 8.2)</p> <p>9. Authorise the Monitoring Officer, in consultation with the Chairman, Chief Fire Officer and the Clerk, to approve the final wording of the draft Combination Order and scheme to be submitted to the Secretary of State.</p>
EXECUTIVE SUMMARY	<p>At its meeting on 11 November 2014 the Wiltshire & Swindon Fire Authority considered scenarios set out in the “Strengthening our Fire and Rescue Service” full Business Case and resolved, with conditions, upon scenario 3, a full combination with the Dorset Fire Authority.</p> <p>Similarly, at its meeting on 4 November the Dorset Fire Authority resolved upon scenario 3. Both resolutions were subject to equalisation to the Dorset’s level of precept with Wiltshire & Swindon Fire Authority adding a further resolution which requiring equalisation of representation in the new Combined Authority.</p> <p>Following consideration at the meeting on 28 November of the Combination Oversight Board (COB) this paper makes a series of recommendations about the content of a draft Combination Order and about the shadow governance arrangements that will need to be put in place if the two Fire Authorities are to be able to combine on 1 April 2016.</p>
APPENDICES	<p>1) Draft Dorset & Wiltshire Fire & Rescue Fire Authority Combination 2015.</p> <p>2) Addendum to Report following COB (28/11/14)</p>

Introduction

1. The key legal document necessary to bring about any combined Fire and Rescue Authority is a Combination Order made by the Secretary of State under Section 2 of the Fire and Rescue Services Act 2004. A Combination Order includes as a schedule a combination scheme which is in effect the document prescribing a Combined Authority’s overall governance arrangements.
2. A Combination Scheme made by the Secretary of State may make provision about
 - The composition of the Combined Authority (including provision for the

appointment of Members from amongst the constituent authorities or by the Secretary of State).

- The proceedings of the Combined Authority
 - The financing of the Combined Authority
 - The discharge of functions
 - Officers of the Combined Authority
 - The acquisition and disposal of land
 - Transfer of staff, property, rights and liabilities
 - The payment of compensation in respect of loss suffered by any person as a consequence of the constitution of the Combined Authority.
3. The appendix to this report is the draft Combination Order and scheme recommended for submission to the Secretary of State for approval. The draft is based in part upon previous combination orders and schemes and has been prepared in consultation with DCLG and the Treasury Solicitor.
4. The draft Combination Order and scheme were considered by the COB on 3 November and was considered again on 28 November. This report reflects recommendations being made to COB on 28 November and an Addendum to this report is attached outlining the discussions and recommendations of Members from that meeting.
5. In addition to recommending the submission of a draft Combination Order and Scheme to the Secretary of State this report seeks the approval by members of 4 key issues
- Name of the authority and service
 - Fire and Rescue Authority composition
 - Shadow governance arrangements.
 - Senior team transition

Name of the Authority and Service

6. At a meeting of the COB on 3 November it was reported on the main possible options for the name of the new Authority and Service. COB's preferred name was "Wessex Counties Fire and Rescue Authority" but that if this name was unavailable for legal reasons then "Dorset and Wiltshire" was the second choice. The recommendation in the minutes of COB recognised that the name of the new Authority is needed for the Combination Order and must be decided by the two Authorities in December 2014 so that the draft order could be submitted to the Secretary of State in time to meet the combination timeline.
7. Since the meeting of COB on 3 November further specialist advice has been sought and the advice remains that another organisation, "Wessex Fire and Rescue Service"

already occupies this ground and in addition to the risks of trying to use someone else's name there are practical implications around the confusion that will arise from two organisations with such similar names working in the same area of business.

8. My firm advice to COB and now to the Authority is that use of the names Wessex Fire Authority or Wessex Counties Fire Authority are not real options. The new Authority would expose itself to legal challenge if we were to adopt either name. Even if the final outcome was that a challenge did not succeed there would be considerable delay and uncertainty and we would miss the critical path to ensure combination by 1 April 2016.

Recommendation: that the two Fire Authorities agree that they should adopt “Dorset and Wiltshire Fire and Rescue Authority” as the name of the new Combined Authority.

Fire and Rescue Authority Composition

- 9 At present the Wiltshire Authority comprises 9 members of Wiltshire Council and 4 members from Swindon Borough Council. Dorset Fire Authority comprises 8 members drawn from Dorset County Council, 4 members from Bournemouth Borough Council and 3 members from the Borough of Poole.
- 10 The Wiltshire & Swindon Fire Authority resolution to combine with Dorset is dependent not only upon Council tax equalisation in a way that does not undermine the business case but also upon equalisation of representation on the new Authority. At their meeting on 4 November Dorset Members also supported the principle of equalisation of representation. On this basis the new Authority, subject to a governance review requested by COB by April 2018, would comprise

Size of Authority	Bournemouth	Dorset	Poole	Swindon	Wiltshire
30	4	8	3	5	10

Recommendation: that the two Fire Authorities agree that the new Combined Fire and Rescue Authority should comprise 30 members (in accordance with the table set out in paragraph 10) and that a full governance review take place by April 2018.

Shadow Governance Arrangements

- 11 The draft Combination Order and Scheme provide for the new Combined Authority to come into existence on 1 April 2016. It also provides that during a “shadow” period beginning on 1 April 2015 the Order takes effect to enable preparatory action to constitute the new Authority in readiness for 1 April 2016.
- 12 At COB on 3 November Members supported a recommendation to the two Fire Authorities that a shadow board be formed based upon the current COB to operate during the shadow period. COB also recommended that the Shadow Board should comprise twelve members, with six places allocated to the DFA area and six to the Wiltshire & Swindon Fire Authority area. The quorum would be set at six with a minimum of two members from each fire authority area.

- 13 Members of COB also asked for more information about the split during the shadow period between decisions which would continue to be made by the two Fire Authorities and those to be made by the Shadow Board. It was agreed that this should be provided in more detail so that Members of each Authority understood the process. In particular a list of proposed decisions to be delegated to the shadow board was requested and that consideration is given to the time delays which could result from an insufficient level of delegation.
- 14 In drawing up Terms of Reference for a Shadow Board I have sought to make a very clear distinction between the ongoing responsibilities of the two Fire Authorities in their own areas and the forward looking responsibilities of the Shadow Board. In essence it is for the two existing Fire Authorities to continue to discharge their statutory responsibilities under the Fire and Rescue Services Act 2004. The Terms of Reference of the two Authorities, those of their committees and their schemes of delegation to officers remain unchanged.
- 15 The Shadow Board will have no such current statutory responsibilities under the 2004 Act. Those duties will only be taken on by a new combined Wiltshire and Dorset Fire and Rescue Authority from 1 April 2016 in place of the two existing Authorities. Instead the focus of the Shadow Board must be upon putting in place all that is needed to ensure that from 1 April 2016 the new combined Fire Authority is legally compliant and ready to take on its statutory responsibilities.
- 16 For completeness I have set out in this section of the report the Terms of Reference of the two existing Authorities. To reiterate there is no proposal to change these Terms of Reference and the two Authorities remain responsible for their statutory functions under the 2004 Act by making provision for:
- Promoting fire safety
 - Extinguishing fires
 - Protecting life and property in the event of fires
 - Rescuing people from road traffic collisions (RTCs)
 - Protecting people from serious harm in the event of RTCs

Terms of Reference of the Wiltshire and Swindon Fire Authority (extract from Wiltshire & Swindon Fire Authority Members' Handbook)

"What matters must be considered by the fire authority?"

In law there are a few duties which must be exercised by the authority as a whole and cannot be delegated. Examples include setting of the council tax precept (which in turn means that the authority's budget will be a matter for the Authority as a whole to determine), the adoption of a code of conduct for members and the approval on an annual basis of a pay policy.

All strategic plans and major policies are determined by the Authority and monitored on a regular basis. It is impossible to produce a watertight definition of strategy or policy. However, these will include:

- *Requirements of the national framework for the Fire & Rescue Service*

- *Integrated risk management planning*
- *Human resources policies*
- *Partnership Working*
- *Health and safety*
- *Collaboration with other Emergency Services*
- *Procurement*
- *Policy on charging*
- *Industrial relations*
- *ICT strategy”*

Terms of Reference of the Dorset Fire Authority (extract from the DFA members’ handbook)

The Fire Authority has delegated a number of its functions to committees and to senior officers but the following have not been delegated:

- *Approval of the annual community safety plan*
- *Approval of the annual budget and agreement as to the precept to give effect to the budget*
- *Approval of the best value performance plan*
- *Maintaining a comprehensive performance management system to ensure that the authority’s objectives are being met*
- *Treasury management strategy and policies*

Recommendation: Against a background of each fire authority retaining its statutory responsibilities during the shadow period the following are recommended as the Terms of Reference and membership of the Shadow Board:

Terms of Reference of a Shadow Dorset and Wiltshire Fire and Rescue Authority Board

- 1) To take all such action as is needed for the purpose of bringing the Dorset and Wiltshire Fire and Rescue Authority Combination Scheme into full operation on 1 April 2016.
- 2) To take all such action as is needed to prepare for the winding up of the affairs of the Wiltshire & Swindon Fire Authority by a new combined Dorset and Wiltshire Fire and Rescue Authority.

- 3) Within the limitations prescribed in the Dorset and Wiltshire Fire and Rescue Combination Scheme to agree the governance framework within which the new combined Fire Authority will operate including:
 - Composition, powers and duties of committees (including the Terms of Reference of the Fire and Rescue Authority)
 - The scheme of delegation to Officers
 - Standing orders
 - Contract procedure rules
 - Financial and administrative regulations
 - Code of conduct for members and any associated protocol
- 4) To agree strategic plans and major policies that need to be in place for the new combined Fire Authority by 1 April 2016, reconciling the existing plans and policies of the two existing Fire Authorities. This will include a new initial integrated risk management plan, community safety plan and key underpinning strategies.
- 5) Consideration of all issues relating to the budget of the new Combined Fire Authority including the provisional grant settlement and fire precept levels and with the benefit of recommendations from the two existing Fire Authorities to adopt a budget and set a precept for the new Combined Fire and Rescue Authority for 2016/17.
- 6) To forecast future budget requirements and savings and to ensure the development of a medium term finance plan and strategy to inform the 2016/17 budget and beyond.
- 7) To ensure arrangements are in place for the smooth transfer of assets from the two existing Fire Authorities to the new Combined Fire Authority.
- 8) To monitor the roll out of departmental functional reviews and the development of new structures necessary to make appropriate savings, taking account of the statutory compliance framework.
- 9) To monitor strategic risks associated with the shadow period (2015/16) and to establish a corporate risk register for the new Combined Fire Authority.
- 10) To monitor operational assurance plans for the transition plan.
- 11) To recommend a member code of conduct for approval by the new Combined Fire Authority.
- 12) To appoint an independent remuneration panel to make recommendations to the new combined fire authority on the adoption of a scheme of Members' allowances.
- 13) To monitor the development of a new corporate brand and image.

- 14) To monitor the implementation of the transformation bid and any associated reporting criteria.
- 15) To monitor issues associated with workforce engagement, development and cultural change.
- 16) To ensure that there is an appropriate communications and engagement strategy in place that addresses all stakeholder requirements during the shadow period and in readiness for the new Combined Fire Authority.

The Shadow Board will not:

- 17) Exercise any of the statutory responsibilities of the two existing Fire Authorities for ongoing service delivery as these remain matters for the two existing authorities.
- 18) Adopt the budget and set a precept for the new combined Fire Authority for 2016/17.
- 19) Make any appointments to Brigade Manager roles, the Clerk, Treasurer or any other Officers as these are matters for the Joint Appointments Committee of the two existing authorities and after 1 April 2016 for the new Combined Fire Authority.
- 20) Adopt a code of conduct for members of the new Combined Fire Authority.
- 21) Adopt a scheme of Members' allowances for the new Authority.

Membership: the Chairman of Wiltshire & Swindon Fire Authority, the Chairman of Dorset Fire Authority and five other Members of each Fire Authority

- 17) A separate report on the outline combination work programme was considered by COB and identified a series of actions between now and the end of March 2015 in order to progress the combination. However as things stand we have a COB without any decision making powers and a shadow decision making board which will not take on its powers under the Combination Order until 1 April 2015. In order to fill this gap it is recommended that the two Fire Authorities agree that with effect from their December meetings (until 1 April 2015) COB should be reconstituted as a Joint Committee. Its terms of reference and membership should be the same as those of the shadow board. This will ensure continuity.

Recommendation: that the two Fire Authorities agree that the Combination Oversight Board be reconstituted as a joint committee with the Terms of Reference set out in page 6-7 of this report and that the joint committee should operate until shadow board arrangements take their place.

Senior Team Transition

- 18) As set out in paragraph 2 above the provisions to be included in the Combination Order and scheme for a new Authority may include:
 - Officers of the Combined Authority

- Transfer of staff, property, rights and liabilities to or from the Combined Authority
 - Payment of compensation in respect of loss suffered by any person as a consequence of the constitution of the Combined Authority.
- 19 At the COB on 3 November I explained the critical importance of progressing the senior team transition before the Combination Order shadow period took effect from 1 April 2015. Early steps are needed to identify a Chief Fire Officer who will then advise Members about the structure of the senior team.
- 20 Legal advice has been sought on a joint basis by the two Fire Authorities as to the application of the Transfer of Undertakings Protection of Employment (TUPE) Regulations in the context of a fire to fire combination. Leading Counsel has advised verbally that TUPE does apply to the combination so that all staff of the two Authorities are entitled to transfer to the new Combined Authority on their existing terms and conditions of employment. His written advice is awaited.
- 21 Pending the written legal advice the two Authorities need to put in place arrangements to ensure that a Chief Fire Officer and other Members of the senior team can be appointed on a designate basis prior to 1 April 2016 and thereafter become the officers of the new Combined Authority. It is recommended that should selection be necessary, then this is achieved through the formation of a Joint Selections Committee comprising the two Chairmen and Vice-Chairmen and an equal number of Members drawn from the two existing authorities.

Recommendation: the COB recommends that a Joint Selections Committee be established comprising the two Chairmen and Vice-Chairmen and two other Members from each of the existing Fire Authorities with the Terms of Reference to appoint a Chief Fire Officer (designate) by January 2015 for the new Combined Authority if that situation arose following discussions with the Chief Fire Officers and, guided by the Chief Fire Officer (designate), to agree the size of and the filling of Brigade Manager (designate) roles. All such roles to remain designate and not to take effect until the Combination Order is in place.

The Combination Order and Next Steps

- 22 The latest draft combination scheme order is appended to this report. In line with the recommendations set out above the Combination Order and scheme identify the name of the new authority as the Dorset and Wiltshire Fire and Rescue Authority and prescribes a membership of 30, drawn from the constituent authorities in accordance with the table set out in paragraph 9 above.
- 23 One remaining issue on which COB had not previously been asked to express a view was the quorum for meetings of the new authority. The normal quorum for a local government meeting is that at least one third of the whole number of Authority Members must be present. For an Authority of 30 this would result in a quorum of 10. For a Combined Authority it is also usual for there to be a requirement that at least one member of each authority to be present. In both Wiltshire & Swindon and Dorset this requirement is built into Standing Orders. In addition the Wiltshire & Swindon Combination Scheme includes a requirement that the quorum shall include at least one representative from each of the two Constituent Authorities.
- 24 In drafting the new Dorset & Wiltshire Combination Scheme I have added a requirement that in order to be quorate there must be at least one representative from

each of the five constituent Authorities. However there are pros and cons to this approach. A requirement that all Authorities are represented in order for the new Authority to be quorate may help to provide Members with assurance that decisions cannot be made without a Member from each Constituent Council being present. It will though be more difficult to arrange authority meetings if all five Constituent Councils must be represented. At their meeting on 28 November Members of COB will be asked to express a view on the appropriate quorum for the new Combined Fire Authority for inclusion in the Combination Scheme. The views of COB will be reported to both Authorities as a definite recommendation. As with each of the recommendations above it is necessary that the decisions of the two Fire Authorities should be the same if the combination is to be able to progress.

Recommendation: that Members determine the quorum for the new Combined Authority, in the light of whatever recommendation is made by COB.

- 25 The next step is that an approved draft combination order and scheme will be submitted to the Secretary of State and if approved of will be laid in Parliament in January or February 2015. When the Ministerial and Parliamentary process has been completed the Order will form the legal basis not only for the new Combined Authority but also for the preparatory work to be undertaken by the Shadow Board in the 12 months prior to 1 April 2016.
- 26 Between now and 1 April 2016 the two Fire Authorities will continue to be responsible for the delivery of services under the 2004 Act in their respective areas.

Policy Implications

- 27 None other than those mentioned in this report.

Risks

- 28 Notwithstanding the current work on the harmonisation of fire precept, progress with combination now depends upon the two Fire Authorities each approving the draft Combination Order and shadow governance arrangements for submission to the Secretary of State. Failure to reach agreement in time to submit a draft order to the Secretary of State and secure approval before the purdah period ahead of the General Election in 2015 is a key risk to Combination.

HR, Equality and Diversity Implications

- 29 This paper concerns the arrangements to establish a combined Fire and Rescue Authority from 1 April 2016, building upon the consultation in respect of "Strengthening our Fire and Rescue Service". An inclusive impact assessment was completed for that consultation, the results of which were used in the design and delivery of the consultation process.

Environmental Implications

- 30 None associated with this report

Financial and Legal Implications

- 31 None associated with this report

Recommendations

32 That the Fire Authority agree the following recommendations:

1. That 'Dorset and Wiltshire Fire and Rescue Authority' should be adopted as the name of the new Combined Authority.
2. That the new Combined Fire and Rescue Authority should comprise 30 Members in accordance with the table set out in paragraph 10 and that a full governance review take place by April 2018.
3. That the Terms of Reference set out within page 6-8 (ToR of a Shadow Dorset and Wiltshire Fire & Rescue Authority Board) are agreed as the Terms of Reference and Membership of the Shadow Board.
4. That the Combination Oversight Board be reconstituted as a Joint Committee with the Terms of Reference set out in page 6-8 of this report and that the Joint Committee should operate until Shadow Board arrangements take their place.
5. That the Joint Committee and Shadow Board will have a Membership of 12 Members. The suggestion is for continuity these should be these Authority's existing COB Members with one additional Member.
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7. That Members determine the quorum for the new Combined Authority, in the light of whatever recommendation is made by the Combination Oversight Board (see Addendum 7.2 ref recommendation).
8. Approve an amendment to the budget resolution made at the CFA meeting on 11 November 2014 regarding Combination, in light of further discussions with DCLG and Treasury to enable Combination on 1 April 2016 (See addendum 8.2)
9. Authorise the Monitoring Officer, in consultation with the Chairman, Chief Fire Officer and the Clerk, to approve the final wording of the draft Combination Order and scheme to be submitted to the Secretary of State.

Simon Routh-Jones
Chief Fire Officer & Chief Executive

Lindsay Gowland
Clerk to the Authority

Unpublished documents used in the preparation of this report :

None

Author :

Jonathan Mair (Dorset Clerk to Combination Oversight Board)
(01305 224181)

Media enquiries concerning this report should be made to:

Simon Routh-Jones - 01380 731104 simon.routh-jones@wiltsfire.gov.uk
Lindsay Gowland – 01380 737243 lindsay.gowland@wiltsfire.gov.uk