

Report to	Fire Authority
Date	18 December 2023
Lead Officer	Stewart Forshaw, Deputy Chief Fire Officer (Corporate Policy & Planning)
Contact Officer	Anthony Jones, Head of Planning, Performance and Transformation
Subject	Emergency Cover Review



PURPOSE OF REPORT

1. To provide Members with an update following the ninth North Wales Fire and Rescue Authority (the Authority) Member led Emergency Cover Review (ECR) working group
2. To enable a decision to be taken regarding a revised operational response model for North Wales.

EXECUTIVE SUMMARY

3. The key objective of the ECR was to consider the current arrangements and to recommend options to provide a fair, sustainable and equitable emergency response across the whole of North Wales, balancing demand and current and future community risks.
4. In order to develop options for the Fire Authority to refine and consult the public on, ORH were engaged and provided independent evidence-based modelling of a number of different operational response scenarios.
5. ORH are a sector leading organisation who help emergency services across the UK and around the world to optimise their resources and respond in the most efficient and effective way. They have a reputation as experts in developing effective emergency response models.
6. Taking account of ORH's advice, three options of how emergency cover services in North Wales could be provided were put forward for public consultation.
7. After receiving feedback in relation to the ECR consultation, the Fire Authority requested that Officers did not undertake any further work on two of the three options that were consulted upon, these being Options 2 and 3, but that they continued to refine Option 1.

8. At the working group on the 27th November 2023, the Service presented the refined option, referred to as Option 1a.
9. At the same working group, the FBU presented an option that they referred to as Option 4, updated from a previous version of this option presented to Members on the 7th November and indicated that this was their preferred option for consideration.
10. Following this working group, the FBU prepared a set of summary documents and shared them with Members.
11. The Service presented a review report based on the discussions held on the 27 November.
12. The Service also presented the Equality Impact Analysis and Equality Impact Assessment of the North Wales Fire and Rescue Authority ECR. These reports describe the impact and mitigation against each of the concerns raised about the three options that were presented during the consultation, assisting Fire Authority Members to satisfy their Public Sector Equality Duty as defined by the Equality Act 2010 (statutory Duties) (Wales) Regulations 2011.
13. The completion of these documents concluded the requirements of the formal quality assurance process that has been overseen by the Consultation Institute. The Authority have been recognised as achieving 'Good Practice' for all elements of the consultation.
14. This confirmed that the consultation process has met the 'Gunning Principles', the recognised legal foundation from which the legitimacy of public consultations is assessed.
15. The four 'Gunning Principles' are that: -
 - Proposals are at a formative stage
 - There is sufficient information to give intelligent consideration
 - There is adequate time for consideration and response
 - Conscientious consideration must be given to the consultation responses before a decision is made.
16. In the event of the 'Gunning Principles' having not been followed, the Authority's decision may be subjected to a judicial review.

17. The Member led Working Group, extended to the Full Fire Authority, met again on 4 December 2023. Initially, the outcomes of the Member led Budget Scrutiny Working Group was presented and debated amongst the group.
18. Confirmation was provided that Option 1, the refined version referred to as Option 1a and the FBU option referred to as Option 4 could all be achieved within the same or very similar cost envelope, albeit with different levels of operational cover and operational resilience aligned to each option.
19. The Chief Fire Officer and Officers reminded Members of the reason that the ECR was originally instigated, in order to address the challenges with 'on call' availability in rural locations, so as to provide a more fair and equitable level of operational response across the region; ensuring that North Wales Fire and Rescue Service has available resources in the right places at the right time, with the right skills.
20. Following assessment of the FBU option 4 against the ECR Evaluation Criteria, using analysis from ORH, Officers relayed that it did not meet the aims of the ECR. Their review concluded that it did not provide resilient emergency cover and did not provide a fair and equitable service to communities across the whole of North Wales.
21. Moreover, Officers relayed that the analysis showed that it offered a worse level of emergency cover than both Option 1 and 2 presented in the public consultation and less flexibility than the current response model already in place. The existing model was rejected by Members in their working group on the 4th April 2023 and this decision was ratified in the Fire Authority meeting on 17th July 2023.
22. Options 1, 1a and 4 were debated and Officers advised Members that if they decided to proceed with the FBU Option 4 further it posed a risk of judicial review to the Authority. The option had not been consulted upon and it was deemed to be significantly different to the options presented during the consultation. Officers also advised that a decision to implement Option 4 would be contrary to the Gunning Principles, as there has been a failure to provide the public with sufficient information about this option to allow for meaningful comment.

23. Officers were asked to seek legal advice as to the position in relation to progressing with the FBU Option 4.

Legal advice highlighted that if Option 4 were to be implemented, the Fire Authority would be taking a decision that was not supported by public opinion and was contrary to professional advice. There would be a significant risk of a claim for judicial review on the following grounds:

- Option 4 in its current design was not raised during the public consultation and the public were unable to consider and comment on it;
- It is deemed by officers to be significantly different to the options consulted upon and therefore fairness would require the Authority to carry out further consultation before adopting Option 4;
- As Officers have indicated that Option 4 does not meet the aims of the ECR and would provide a worse level of emergency cover than other options that have been presented to the public, a decision by the Authority to adopt Option 4 would be a decision that the court might regard as unreasonable, and therefore unlawful;
- A decision to adopt Option 4 may also be contrary to the Authority's duties under part 2 of the Fire and Rescue Services Act 2004 as it may not secure the provision of the personnel, services and equipment necessary to efficiently meet all normal requirements in respect of fire-fighting, road traffic accidents and emergencies; and
- Option 4 has not been subject to an equality impact assessment and therefore the Authority may not be able to demonstrate that it has complied with its equality duties if it decides to adopt Option 4.

24. Legal advice also highlighted that:

- Option 4 would reduce levels of emergency cover compared to the current operating model, and
- There would be a significant risk that a court would find that undertaking consultation on an option that is not considered to be viable based on the evaluation criteria would be unreasonable, and
- adopting Option 4 would therefore undermine the objective of the emergency cover review, and
- Adopting an option that undermines the objective of the emergency cover review would create significant legal risk for the Authority.

25. The Chief Fire and Rescue Advisor for Wales' Broadening the role Thematic Review made a number of recommendations around releasing capacity, not only to support health related activities, but also to increase training, exercising and risk reduction work undertaken by firefighters.

26. Any of the options other than Option 1 or 1a would not address these recommendations. The Deputy Minister for Social Partnership has been very clear that the Welsh Government expects all Thematic Review recommendations to be addressed in full.

RECOMMENDATION

27. That Members,

- i) Note the legal advice that the FBU Option 4 cannot be recommended because to adopt it would result in an operating model that is worse than the current one and worse than Option 1 and 1a. Doing so may expose the Authority to legal challenge;
- ii) Members officially reject Option 2;
- iii) Members officially reject Option 3; and
- iv) Members agree to implement an improved variant of Option 1, this being Option 1a.

BACKGROUND

28. At its meeting on 17 July 2023, the Authority agreed to commence public consultation between 21 July and 22 September 2023, extended to 30th September on three options, having previously discounted options for growth and the option to continue with the existing response model.

29. At the close of the consultation on 30 September 2023, 1500 responses were received via the online questionnaire and 226 paper questionnaires had been received from the public. A total of 17 community engagement events had taken place across the region as well as 17 meetings with equality, diversity and inclusion groups. In addition, engagement with North Wales Councillors, Chief Executives, Members of the Senedd and Members of Parliament also took place.

30. A comprehensive programme of staff engagement visits to fire stations and departments in locations across the whole North Wales were also delivered.

31. The consultation responses, interpreted independently, showed a clear rejection of Option 2 (63% disagreeing) and Option 3 (93% disagreeing). The responses did show a clear public opinion that Option 1 was the preferred option (68% agreeing).

32. Following discussion and based upon the clear rejection from the public, at the Fire Authority meeting on the 16 October 2023, Officers were asked to continue to refine Option 1 and to cease working on Options 2 and 3.
33. At the Member led working group held on the 7 November 2023 a refined and improved variation of Option 1 was presented, referred to as Option 1a.
34. Option 1a, was presented as follows:
- Rhyl and Deeside change to Day Crewing (no change from Option 1)
 - WDS Rural team are relocated (no change from Option 1)
 - Porthmadog and Dolgellau Fire stations have a 12-hour Day Shift Duty System of two watches, 14 staff, covering 7 days per week (no change from Option 1)
 - Wrexham's second wholetime fire engine would continue to provide support to the south Denbighshire area as and when required, in the same way as they currently do. (different Option 1, but the same as existing utilisation). The FBU have also proposed this within their options to FRA.
 - To create an additional day staffing station at Llangefni. (different to Option 1 but utilising all existing staff to provide an enhanced model in the next priority strategic location, underpinned by an ORH evidence base)
35. The Clerk to the Authority has advised that continuing with the current operating model is not appropriate, as the daily challenges to achieve a suitable level of operational cover is known to the Authority and the failure to act to address this problem would be negligent.
36. Officers met with representatives from The Fire Brigades Union on 16 November 2023 to attempt to seek a compromise and recognise areas of common ground.
37. The FBU were furnished with access to all data presented throughout the emergency cover review. This culminated in a Collective Bargaining Agreement being drafted by Officers and shared with the FBU, with the understanding that this compromised position would be put to the FBU membership.
38. The FBU committee rather than the full membership determined that the contents were not acceptable and rejected the compromise, with a request that a revised version of their Option 4 was to be taken forwards as their preferred option for consideration.

39. The Member led working group met again on the 27 November 2023 with Officers presenting information that described the enhancements offered by Option 1a in comparison to Option 1.

40. These enhancements through an additional day staffed fire appliance being located in Llangefni, Ynys Môn included:

- a greater number of households that could be reached within the maximum 20-minute response time. 5265 households compared to 2148
- Increased day time resilience on Ynys Môn when considering current and future risks;
- a greater number of homes that would receive Safe and Well prevention interventions, specifically on Ynys Môn;
- better interaction with local businesses to gather risk information on Ynys Môn and;
- greater opportunities for social value to be added through future employment opportunities in a wider number of locations in North Wales.

41. At the Working Group meeting on the 27 November 2023 the FBU presented two options that they referred to as options 4 and 5, both of which were predicated on there being no changes to the staffing models in Rhyl or Deeside.

42. The Authority asked that the FBU decided upon their preferred option and that Officers consider this against the evaluation criteria that has been utilised throughout the ECR.

43. The FBU requested that Option 4 was presented as their preferred option and this was as follows;

- No Change to Rhyl and Deeside
- WDS Rural team are relocated
- Wrexham's second wholetime fire engine will provide support to south Denbighshire during the hours of the current duty system operating a Wrexham Fire Station, as and when required. If not required it will stay in Wrexham.
- 14 WDS staff split across Dolgellau and Porthmadog on four days on and four days off pattern, one station staffed at any one time.

44. In the working group meeting on the 4 December, Officers provided their professional assessment of the FBU Option 4 in comparison to Option 1 and 1a, underpinned by analysis from ORH.

45. It was articulated that any option that does not make changes to staffing models in Rhyl or Deeside will either be less efficient or require additional funding than Options 1 or 1a.
46. A description was then provided as to the limitations of the model being presented by the FBU, as well as an explanation of the origins of the model from a neighbouring Service with a very different set of circumstances and risk profile to the North Wales context.
47. Officers have highlighted that the implementation of Option 4 would actually put the Service in a worse position than its current service delivery model, as it would not create any additional daytime capacity and would be more restrictive by placing all of the WDS rural firefighters in one location fifty percent of the time and vice versa, without the benefit of two additional stations as would be achieved in Option 1a.

IMPLICATIONS

Well-being Objectives	The consultation must meet the Authority's obligations under the Well-being of Future Generations (Wales) Act 2015
Budget	The consultation budget implications have been publicised in the consultation frequently asked questions and have been presented to the Budget, Monitoring and Procurement Committee.
Legal	<p>Legislation requires that the Authority must consult the public on changes to our emergency cover provision. The ECR consultation and the best practices the Services has followed have received Quality Assurance following scrutiny by Consultation Institute.</p> <p>Decisions by public authorities which appear to be at odds with their stated intentions and/or their legal duties can be designated as "irrational" or "unreasonable" by the courts and may be struck down if challenged in a Judicial Review.</p>
Staffing	The Service has conducted extensive direct consultation with staff and their representative bodies during pre-consultation and full public consultation. However, in deciding on options to be consulted on staff will be impacted by the proposed changes within the options.
Equalities/Human Rights/Welsh Language	Carrying out pre-consultation and full consultation has enabled the Authority to gather feedback from stakeholders and capture views on all three options to inform the Equality Impact Analysis (EIA) and Equality Impact Assessment (EqIA). The EIA and EqIA are a vital part of the decision-making process that gives Members equality assurance against the three options that were presented for public consultation between 17 th July and 30 th September 2023. The Consultation Institute approved both documents and gave Equality Assurance on 28 th November 2023. Equality Assurance has not been obtained in respect of Option 4.
Risks	The ECR and its consultation reduces the risks of not being able to set a balanced budget and respond to emergencies effectively and efficiently in the communities of North Wales