

report

meeting	NOTTINGHAMSHIRE AND CITY OF NOTTINGHAM FIRE & RESCUE AUTHORITY	
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REPORT OF THE CHIEF FIRE OFFICER

FUTURE SERVICE DELIVERY ARRANGEMENTS

1 PURPOSE OF REPORT

To inform Members of the latest situation regarding proposals to deliver key aspects of the Authority's Community Plan and to seek approval to secure its implementation.

2 BACKGROUND

- 2.1 Both the Independent Review of the Fire Service in 2002 and the Government's White Paper: Our Fire and Rescue Service in 2003 highlighted significant opportunities for the service in terms of effectiveness and efficiency. The Office of the Deputy Prime Minister publishes regular performance expectations for the Authority by means of National Framework documents, audited by means of the Comprehensive Performance Assessment process.
- 2.2 On the 26 March 2004 the Authority approved its first Integrated Risk Management Plan (IRMP) following consultation with all stakeholders. That document included the objective of achieving true 24 hour working via a change to the existing shift patterns worked by station-based personnel. During the consultation process in 2003/04 the Chair of the Fire Authority along with other Members, and Officers visited stations and discussed the plan with members of staff.
- 2.3 In August 2004 an agreement was reached between the National Employers and the Fire Brigades Union (FBU) that changed national terms and conditions of employment. Those new terms and conditions known as the 'Grey Book' provided that the existing patterns of working of 2 days, 2 nights followed by 4 days off could be varied and set out a number of criteria that needed to be met in order to do so. The terms and conditions also set out an independent way of verifying that those criteria were complied with, namely; the Technical Advisory Panel (TAP). The August 2004 agreement resulted in a phased 16% increase in pay for all fire fighters, subject to modernisation of the Service.
- 2.4 The FBU were engaged early in 2004 in negotiations on shift change proposals. Negotiations continued until 3 August 2005 when it became evident that an impasse existed and the issue was therefore referred to the TAP. The TAP confirmed that the Authority's proposal complied with the criteria set out in the National Conditions of Service and all other relevant legislation. It also recommended that both parties should consider further negotiations. This was acknowledged and Collective Consultation was entered into.

- 2.5 A transition package was offered by Management in recognition of the concerns raised by employees regarding travelling to work and other issues. The transition package includes:
- An average reduction in the working week from 42 to 39.5 hours.
 - An increase in salary of up to 2.5% per annum based on delivering performance against the Community Plan.
 - A £1,000 disturbance payment.
 - Assistance with additional travelling expenses for 3 years.
 - Child care vouchers.
 - Interest free loans to cover additional expenses identified.
- 2.6 This collective consultation closed on 13 January 2006 with a 'failure to agree' position having been reached (a full schedule of meetings and correspondence is contained in Appendix 1). Thereafter a series of ten briefings took place across the County. Officers are currently conducting individual consultations with all shift-duty personnel. There have also been a series of briefings conducted by the District Managers and regular newsletters issued.

3 REPORT

- 3.1 The Authority has regularly reiterated to the public and its personnel its vision of a Safer Nottinghamshire, and through its IRMP has demonstrated the means by which it seeks to deliver it. It has also invested in and realigned resources to create the basis for a comprehensive community safety programme including, most recently, the appointment of Community Safety Advocates and the Risk Watch schools programme. Additionally, the Authority fully recognises its responsibility to deliver the Government's public sector reform agenda.
- 3.2 Whilst the Authority has been able to secure certain arrangements by which it can engage in new areas of service delivery, it is recognised by the Authority and confirmed by the CPA process that a significant change can occur through the implementation of shift change. The overarching strategy of realigning resources to create capacity to address all forms of community risk, not just those from fire, in partnership with others.
- 3.3 The Authority is actively engaging in the proposed implementation of Local Area Agreements in the County and City. Within those agreements, the Service is recognised as a significant partner in all four LAA Blocks: Healthier Communities, Children and Young People, Safer and Stronger Communities and Economic Development and Enterprise. Subject to final agreement, the Service is to be included in stretch target areas that would ultimately lead to the receipt of performance reward grant. Failure on the part of the Service to meet its objectives within the LAA could jeopardise both the final outcomes and the grant.
- 3.4 The current night shift is 15 hours long during which fire fighters are permitted to sleep between 0000 to 0700hrs. Sleep at night accounts for one third of the working week. Operational activity accounts for less than 9% of the total day at the busiest station in the County and is at its lowest in the early hours of the morning. Utilisation of this time would create in excess of 204,000 hours of additional productive time which the Authority is already paying for. The majority of training and other operational preparedness work could be carried out during the night, freeing up longer periods during the day and evening to engage in community safety activity.
- 3.5 There is an expectation that Firefighters will, as part of their role, engage in community safety activity, including home safety checks. Data collected over the

eleven month period from January to November 2005 shows that 2308 home safety checks (HSCs) were completed against a period target of 5280, less than 50%. For community safety activity excluding HSCs, there were 1544 recorded episodes across the county. The equivalent number of shift days available for the same 11 month period was 8016. On that basis crews only engaged in community safety activity once every 5 shifts.

- 3.6 The organisation has difficulty in maintaining the critical presence on appliances. This has been due to a number of factors including the prevailing high level of sickness and the increase in the number of premature leavers exceeding our expectations.
- 3.7 The Authority is required by ODPM to deliver its share of annual efficiency (Gershon) savings. Delivery of the shift change proposal will meet all future requirements under Gershon. If however efficiencies cannot be achieved by delivery of this proposal, other means to guarantee LAA outcomes and efficiency savings will need to be identified. In the 25 years prior to the intervention of the Government in 2002/03, there had been limited constitutional and organisation change in the fire service.
- 3.8 In consideration of the external pressures and the internal drivers for change, reflected in part in the preceding paragraphs, there are a number of other imperatives to be considered by the Authority when determining the most effective means to deliver the service in the future. The organisation's culture is based on militaristic practices with 'watches' that work together for long periods of time. Whilst it is argued that this can lead to effective team working, it is very insular in its operation and can demand compliance of those who enter into it with group norms. The thematic review "Equality and Fairness in the Fire Service" (1999) highlighted that the watch system needed to be reviewed. In the words of the report "We conclude that the 'closed' watch work regime is the prime contributor to the need to 'fit in' to the [watch] 'family' culture...[such that it ensures] continued acceptance of its characteristics and its implications without question".
- 3.9 There is also evidence within that Review that it is also a potential barrier to the recruitment of women and ethnic minority employees. The ability to move personnel around to meet organisational needs is currently limited and restrictive, in part encouraged by the watch culture. The current shift system is very rigid in its application and does not fit well with the requirements of the 2005/6 National framework, which states that:
- "Fire and Rescue Authorities should ensure that there is as much opportunity as is reasonably possible for people to work flexibly, for example on a part-time basis, using flexi-time or working as part of a job share arrangement."
- 3.10 The Sex Discrimination Act 1975 outlaws discrimination between men and women. In a case of the Chief Constable of Avon & Somerset Constabulary v Chew an employment tribunal ruled that the requirement for female police officers to adhere to the shift patterns required by the constabulary's part time working policy was discriminatory, as fewer women than men could comply with the requirement. The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 makes it unlawful to treat part-time workers less favourably in their terms and conditions of employment. These pieces of legislation when combined make it difficult to apply rigid shift systems in the future to all operational staff and be compliant with the law.
- 3.11 The Disability Discrimination Act 1995 requires employers to make reasonable adjustments to encourage or enable employees who become disabled to continue to work. The possibility of flexible or shorter shift patterns will help to give better

access to the operational environment as required by the legislation, either for potential disabled recruits or for Firefighters who become disabled during the course of their employment.

- 3.12 The new working patterns proposals outlined later in this report will increase the Authority's opportunity to offer equality and diversity opportunities by potentially making the fire service accessible to those who might not previously have considered it a career. The Government has set targets for the employment of women and those from ethnic minorities, which we are not yet in a position to achieve. For example, women only account for 2.9% of uniformed staff (the target is 15%) while ethnic community uniformed staff in the Authority only account for 1.07% in comparison with an equivalent county population of 4% and a target set at 3.46%. Rigid shift patterns with long night shifts are seen as one of the constraining features in the employment of some sections of the community.
- 3.13 The Service has attempted to address issues relating to absence and early retirements for a number of years. The introduction of in-house occupational health services and access through a not for profit organisation (with subscriptions paid for by the Authority) to physiotherapy and counselling services. In spite of that provision, ill-health retirements have continued to rise to 26% of all uniformed retirements. Sickness absence levels are such that it is estimated that it has cost the Authority the equivalent of £2.7m over the last three years. Although these values are high, underlying cultural issues within the organisation accept this as the norm. The new shift proposal will have a major impact on absence levels through the operation of a firefighter 'pool' system and annualised hours working.
- 3.14 The shift system proposed will also ensure the critical presence on appliances is maintained for 100% of shifts by having the processes in place to better manage the impact of sickness and fluctuations within the establishment.
- 3.15 There is no doubt that working shifts is not ideal and that it can have an impact on the health of those employed on that basis. By necessity, the fire and rescue service requires, in large urban areas, twenty four hour response. Shift working is therefore unavoidable and why regulations exist to minimise risk and impact. Occupational health services can monitor individuals during existing routine medicals in order to reduce the likelihood of ill-health.
- 3.16 Where shift work is unavoidable there is a balance to be struck between the needs of the individual and the needs of the organisation. In developing the proposal for the new shift arrangements, the Service has taken the following into account in addition to those issues identified above.
- 3.16.1 The Working Time Directive specifies that night workers should not work more than an average of eight hours on a nightshift. This is limited to a maximum of eight hours in each night if the type of work being undertaken is deemed to be hazardous. Within the working time directive definition the fire service is not deemed to be a hazardous occupation. The WTD definition applies to workers who are generally considered to be exposed to hazards throughout the shift. Whilst not continually exposed, the Authority has to recognise that, within a wakeful shift, firefighters will frequently be exposed to hazards, and have a responsibility to minimise potential impact.
- 3.16.2 Whilst every effort is made to introduce safe working practices, procedures and equipment so as to reduce risks, the occupation of fire fighting does demand on limited occasions, that individuals take risks in order to save

lives. Those situations require individuals to assess risks and take actions within a dynamic environment, and to undertake physically demanding tasks. Evidence shows that the longer the working period, the more likely the case that decision making errors will occur. ASLEF trade union estimate that risk increases by 25% when comparing a 12-hour shift with an 8-hour one (12 hours being the higher risk). The Health and Safety Executive supports this principle of longer shifts equating to greater risk.

3.16.3 The Health and Safety at Work Act 1974, section 2 states that “It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all employees.” The general duty is under paragraph 2, 2, e, specifically includes “the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health and adequate as regards facilities and arrangements for their welfare.” This is a duty which cannot be avoided, evaded or delegated, by agreement or otherwise. The Authority’s Health and Safety Advisor has assessed a number of shift options and has determined that an 8 hour shifts are less risky than others in excess of this and so is more compliant with health and safety legislation.

3.16.4 Research into the effect of shift working on human health is extensive and at times conflicting, however the majority of evidence suggests that if shift working has to be undertaken then it should be done:

- on a quickly rotating pattern to prevent the body from conditioning itself to a pattern, before having that pattern changed.
- with shift lengths as short as possible.
- on a forward rotating cycle.

3.17 In order to satisfy all of the above requirements the Service has proposed the introduction of an annualised hours contract based on 3 shifts over a 24-hour period. The length of shifts, and start and finish times can be customised to enable employees to self-roster their time at work to better meet individual circumstances. In order to best fit with the requirements of WTD and H&S, the Service has determined that any wakeful night shift within the proposal will not exceed 8 hours. Although this is a fundamental change in existing shift patterns, it will enable the Authority to meet the needs of the Service now and in the future, without generating further significant personnel implications.

3.18 In summary, there are a number of drivers for change that underpin this proposal, Including:

- The need to create greater productivity from within the current working practices in order to address risk within the community.
- The government’s requirement to demonstrate continued efficiencies and effectiveness, these need to be demonstrated and reported upon each year in the annual statement of efficiency.
- The need to contribute to the Service’s Gershon savings target.
- The need to create flexible working patterns so that the disability, race and equalities legislation and targets can be better addressed in the future.
- The need to comply with the National Framework document by extending opportunity for alternative ways of working to the current rigid whole time and retained duty systems.
- The need to address cultural issues around the closed watch system that creates pressures to conform, whilst maintaining the benefits derived from close team working.

- The need to address absenteeism, which at this time is excessive.

3.19 The individual consultation referred to in paragraph 2.6 above provides an opportunity for all potentially affected employees to discuss the shift change with a line manager and raise any concerns that they may have about the proposal.

4 NEXT STEPS

4.1 As has already been stated, it has not been possible at this stage to reach an agreement with the Fire Brigades Union (FBU) on the implementation the Service's proposals for change. An alternative proposal put forward by the FBU has been examined, but does not meet the Service's drivers for change. The adoption of the recommendations in this report will give the Service the authority to move forward to implement its proposals.

4.2 It is hoped that negotiations with the FBU can be restarted in order to talk about the detail of implementation of this proposal. If not, the Authority will be required to compulsorily vary the contracts of employment of all staff who could be conditioned to a station based work system. The variance to contract can occur at the end of the individual consultation phase. The process would involve terminating the existing contracts of employment of such staff and re-engaging them on new contracts to commence the day after their notice under the old contract expires. It must be stressed that it is still management's desire to achieve a negotiated implementation to the need to change duty systems.

5 FINANCIAL IMPLICATIONS

5.1 The transition package offered to employees in recognition of the impact of change carries an initial financial burden, contained within budgets. Provision has been made within 2005/6 for the "one off" transitional payments for employees. The costs of the 2.5% uplift in salary for productivity and the costs of administration have been included within the 2006/7 Revenue Budget.

5.2 The financial implications that arise from an imposed solution are much more difficult to assess and will be within very wide ranges depending on the numbers of employees involved and the degree of difficulty experienced. It will also depend to a large extent on the way the transition is managed. It is proposed that a paper is brought to the next Fire Authority meeting which considers both the wider financial and risk management implications in the context of contingency planning.

6 PERSONNEL IMPLICATIONS

6.1 The flexibility of the proposed annualised hours contract will enable the Authority to meet its requirement to offer varying contracts to provide a range of working practices designed to enable employees to achieve a satisfactory work-life balance. This underlying principle will also provide the opportunity to offer equality and diversity opportunities by potentially making the Fire Service accessible to those who might not have considered such a career.

6.2 Every effort will be made to reach agreement to move to the proposed duty system through collective, and individual, discussions and negotiations. If this process is not successful it will be necessary to terminate the existing contracts under notice and offer immediate re-engagement on new terms and conditions. In this instance all continuation of service and pension rights are protected for the employees concerned.

- 6.3 Through the process of transition, it is possible that a number of employees will resign, or seek a transfer to another Authority. If this is the case then the usual recruitment process will be instigated to maintain the appropriate establishment.

7 EQUALITY IMPACT ASSESSMENT

- 7.1 It is recognised that the Fire and Rescue Service operates in a truly 24/7 environment and this restricts the ability to cater explicitly for all needs.
- 7.2 Changing the duty system will remove the longer shifts and address the closed culture of watches, both of which are recognised as a barrier to employment within the service. The introduction of a 3-shift model based on an annualised hours contract is a positive move forward, as it increases the flexibility of the Authority to offer many more variances in the way that employees can access work.

8 RISK MANAGEMENT IMPLICATIONS

- 8.1 Some employees may take the view that they do not wish to work the flexible system proposed by management and chose to leave the Service. The Service does have a number of leavers each year and so has a recruitment process, which would be used. There is also the possibility that an individual or number of individuals may seek redress through an employment tribunal. Advice on this issue is being dealt with by the Service's legal advisors and any such claim will be robustly defended by the Service.
- 8.2 Failure to deliver the change process outlined in the IRMP and meet Government expectation in terms of reform and efficiency may expose the Authority to external scrutiny and the potential for ODPM intervention.

9 RECOMMENDATIONS

- 9.1 That Members endorse the proposal to change to an annualised hours contract, based on a three shift system.
- 9.2 That Members authorise all action necessary in order to make the change to the new shift arrangements. This will include, if necessary, the termination of existing contracts of employment on notice and re-engagement on new terms and conditions.

10 BACKGROUND PAPERS FOR INSPECTION

- IRMP 2004/5
- Fire Authority Reports March 2004, June 2005, Oct 2005
- Nation Framework 2004/5
- Fire Services Act 2004
- Sex Discrimination Act 1975
- Disability Discrimination Act 1995
- Health and Safety at Work Act 1974
- Integrated Risk Management Working Proposals in support of TAP Submission
- Thematic Review – Equality and Fairness in the Fire Service
- Thematic Review – Towards Diversity
- Independent Review of the Fire Service
- White Paper: Our Fire and Rescue Service

Paul Woods
CHIEF FIRE OFFICER

APPENDIX 1 - SCHEDULE OF CONSULTATION CORESPONDENCE

Feb 04	Letter to Brigade Secretary, re: shifts
	Interim correspondence
14/07/04	During a meeting of the Joint Consultative & Negotiating Panel, a formal proposal was put to the FBU on achieving true 24hr working. The FBU response at that time was that they were not willing to discuss this policy change.
02/09/04	Letter to the FBU recognising the conclusion of the National dispute and inviting the FBU to engage in negotiations and consultations with a view to introducing new duty systems
15/09/04	During a meeting of the Joint Consultative & Negotiating Panel, Shift Change was remitted to a separate meeting as this was a negotiated issue.
06/10/04	First formal meeting to specifically negotiate shift change. Rules of engagement were discussed and agreed by both parties. Management made it quite clear that implementation on 1 st April was required.
22/12/04	Informal meeting was held but no records were kept.
16/02/05	At a meeting with the FBU, management registered concern in the amount of time that had elapsed without any real movement forward on the negotiations. Management stated that they would be prepared to give one month to see meaningful progress could be made before referring to the TAP for assistance.
16/05/05	Project plan was presented to the FBU with a view to implementing shift change on 1 st January 2006.
25/05/05	Further meeting to discuss project plan.
12/07/05	Two day meeting took place with Management, FBU and Smart Consultant to discuss viable options and concepts.
19/07/05	Formal Meeting where Management tabled a proposal to the FBU.
28/07/05	Formal Meeting where the FBU responded to Management's proposal and submitted a counter proposal.
01/08/05	Project plan presented by the FBU to Management
03/08/05	Formal Meeting. Management stated that the FBU's proposal was not acceptable. Further discussion lead to a 'Failure to agree' and Management declared that they would approach the TAP.
15/09/05	Informal meeting of Management and FBU. A transition/implementation package was offered as recognition of the impact shift would cause. This was then reiterated in writing.
20/09/05	Informal meeting of Management and FBU. FBU responded to additional elements of the proposal and asked for confirmation around some areas. It was agreed for the FBU to meet with the Consultant from Smart HL.
27/09/05	Meeting with Management, FBU and Smart consultant. Main topic was around annual hour values.
28/09/05	Informal meeting. Management amended proposal to a 39.5hr week. FBU agreed to discuss with Brigade Committee
06/10/05	Informal meeting. FBU reported back from Brigade Committee that they could not accept the proposal from management without a further reduction in the contracted hours and a permanent uplift in salary. This was not accepted by Management and it was agreed to revisit the FBU's proposal.
12/10/05	FBU presented a proposal for discussion at a further meeting

DATE	CORRESPONDENCE AND MEETINGS
13/10/05	Formal process entered into with Representative Bodies which clarifies that a further 90 days will be given as part of the Collective Consultation phase.
21/10/05	Formal Meeting. FBU tabled a proposal and Management asked for further detail and some aspects, and the FBU agreed that they would produce a full and final proposal within 7 days.
16/11/05	Scheduled meeting cancelled due to ill health of FBU representative
23/11/05	Management confirmed that they were unable to continue discussions on the FBU's proposal as it did not fully meet the needs of the organisation. Management asked if the FBU would consider engaging in trying to repackage Management's 3 shift proposal. This was accepted.
28/11/05	Management met with the FBU to discuss alternatives within the current parameters of the 3 shift proposal. The FBU stated that their preferred option was a compressed working week, but would seriously consider a 3 shift model based on a reduced working week.
13/12/05	Informal meeting of Management and FBU. A different format, still based on 6 + 2, was presented to the FBU.
19/12/05	Formal meeting where both Management and FBU recognised that an impasse had been reached and had a failure to agree.
13/01/06	Letter to the Representative Bodies formally recognising that Collective Consultation had ended with a failure to agree.