

Report Title:	Appointments to Berkshire Fire & Rescue Authority
Contains Confidential or Exempt Information?	No - Part I
Member reporting:	Councillor Dudley: Leader of the Council
Meeting and Date:	Full Council 11 December 2018
Responsible Officer(s):	Mary Severin - Monitoring Officer
Wards affected:	All

REPORT SUMMARY

1. In May 2018, the former Managing Director became aware from Berkshire authority officers, that the Council appointments to the Berkshire Fire & Rescue Authority ('Fire Authority') did not reflect the requirements of political balance.
2. In order to meet these requirements, the Council must replace an existing appointment with an appointment from the Not the Administration ('NTA') group. This group wishes to appoint Councillor Werner.
3. This report captures why such a change is required outside of the annual appointments at Annual Council.

1 DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That Full Council approves the appointment of Councillor Werner as the Council's third representative on the Fire Authority.

2 REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

- 2.1 The Council generally makes appointments to panels, forums, joint committees etc at the Annual Council meeting held in May in each year; outside body appointments are made by Cabinet usually in June each year. In relation to the Fire Authority, the Council has ordinarily appointed 3 representatives from the same political group, as an outside body appointment by Cabinet.
- 2.2 During May 2018, Managing Directors/Chief Executives of the Berkshire authorities exchanged correspondence that the respective Councils were not appointing representatives in accordance with the political balance rules. Such duty arises under s15 of the Local Government & Housing Act 1989.
- 2.3 As a result of these exchanges, and on obtaining legal advice, Slough Borough Council, West Berkshire Council and Wokingham Borough Council changed their appointments to reflect political balance. Bracknell Forest and Reading have elected to dis-apply political balance to their appointments.
- 2.5 Mindful of the impact of wholesale change to representation on the Fire Authority, the former Managing Director wrote to the Chief Fire Officer on the 26 June 2018 to enquire whether such change had a detrimental impact on the Fire Authority. In particular, before making any recommendation to Council, officers wanted to ensure

what the likely impact of change was and would have it a detrimental impact on the operational effectiveness, decision making or budget of the Fire Authority. Further, the Fire Authority was asked if there was a detrimental impact, did they have any particular preference to minimise such detriment.

- 2.6 The substantive response from the Fire Authority was received on the 02 August 2018. The response from the Chief Fire Officer was directed by a unanimous resolution of the members of the Fire Authority provided in a meeting on the 31 July 2018. That is, a unanimous response of the 20 councillor representatives from the six unitary authorities in Berkshire who were in attendance when the direction was given.
- 2.7 The response was simply *'It is for each appointing council to determine its appointments in accordance with section 15 of the Local Government and Housing Act 1989'*. The Fire Authority did not offer any views whether further change would have an impact on the operational effectiveness, decision making or budget of the Fire Authority.
- 2.8 Accordingly, officers can only conclude that the Fire Authority considers that the impact is such that it does not merit mention in its response of the 02 August 2018.
- 2.9 The law governing political balance is summarised in part 5 of this report and requires the Council to ensure that political balance is achieved both on Council committees and panels but also on a limited number of outside bodies where the Council has 3 or more representatives. These bodies are typically competent authorities such as joint waste authorities, combined authorities, joint planning authorities and includes the Fire and Rescue Authority. Political balance can only be suspended where every Councillor in attendance does not vote against the proposal to suspend (s17).
- 2.10 The NTA group has indicated that for the Council to achieve political balance it would appoint Councillor Werner to the Fire Authority. This appointment would be notified to the Fire Authority immediately and Cllr Werner would be the Council representative until Council reconsiders all of its appointments at the next Annual Council in May 2019. The NTA appointment requires a current representative to vacate their appointment.

Table 1: Options

Option	Comments
Approve the appointment. The recommended option	The appointment would comply with the Council's Constitution and the law governing political balance.
Do not approve the appointment	This decision would conflict with law and the Constitution and the wishes of a political group of councillors.

3 KEY IMPLICATIONS

Table 2: Key implications

Outcome	Unmet	Met	Exceeded	Significantly Exceeded	Date of delivery
Appoint Cllr Werner as the 3 rd Council representative on the Fire Authority	Do not appoint	Appoint by the date set out.	n/a	n/a	11 December 2018

4 FINANCIAL DETAILS / VALUE FOR MONEY

- 4.1 There are no financial implications. Representatives on the Fire Authority receive an allowance to undertake the position, but this is funded by the Fire Authority and would simply would be transferred to the new appointee.

5 LEGAL IMPLICATIONS

- 5.1 Section 15 ('Duty to allocate seats to political groups') of the Local Government and Housing Act 1989 applies to a '*relevant authority to make appointments to a body to which this section applies.*'

- 5.2 A *relevant authority* is defined a local authority in paragraphs (a) to (c) of 21 (1) of the Act. Section 21(a)(b) are the county/district councils which makes up the functions of the Council as a unitary authority. The Council is a relevant authority.

- 5.3 A '*body to which this section applies*' in Schedule 1 part 1(c) is 'any such body falling in paragraph 2.....at least 3 seatsto be filled by appointments made by the authority...'. In paragraph 2 this includes:

(a) a relevant authority which is a local authority of any of the descriptions specified in [paragraphs (f) or (h) to (jb) of section 21(1)] of this Act;

- 5.4 Section 21 (1) (f) is defined as '*a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies*'.

- 5.5 Section 4 of the Fire and Rescue Services Act 2004 includes combined fire services formed under a scheme under the Fire Services Act 1947. The Berkshire Fire & Rescue Authority is a combined authority constituted under a scheme under Fire Services Act 1947 : <https://www.legislation.gov.uk/ukxi/1997/2695/schedule/made>

- 5.6 Political balance therefore applies as the Council appoints 3 representatives to the Berkshire Fire & Rescue Authority.

6 RISK MANAGEMENT

Table 3: Impact of risk and mitigation

Risks	Uncontrolled Risk	Controls	Controlled Risk
There is a risk of challenge if political balance rules are not applied	Political balance rules are ignored	Political balance is considered for appointments at Annual Council and where the membership of the Council changes	Rules are applied outside of normal appointment timetable when a duty to consider political balance arises.

7 POTENTIAL IMPACTS

- 7.1 The political balance rules were enacted in 1989 to ensure that all Council panels, committees and external appointments receive representatives with different political views.
- 7.2 This change will ensure that the political balance rules applies to the Council's representation on the Fire Authority.

8 CONSULTATION

- 8.1 The other Berkshire authorities and the Fire Authority have been involved or are aware of the reasoning for the changes to comply with political balance.
- 8.2 Group leaders were consulted on the need and impact of a change.

9 TIMETABLE FOR IMPLEMENTATION

Table 4: Implementation timetable

Date	Details
11/12/18	Full Council appoints Cllr Werner as its third representative on the Fire Authority
12/12/18	Council will notify the Fire Authority of the Cllr Werner's appointment.
May 2019	All 3 Council representatives on the Fire Authority will be reconsidered again by Full Council.

10 APPENDICES

- 10.1 The report is supported by two appendices:
- Appendix 1 : Section 15 of the Local Government and Housing Act 1989
 - Appendix 2: Letter from Council Managing Director to Chief Fire Officer and response.

11 BACKGROUND DOCUMENTS

- 11.1 None

Name of consultee	Post held	Date sent	Date returned
Russell O'Keefe	Acting Managing Director	12/11/18	15/11/18
Elaine Browne/ Mary Severin	Interim Head of Law and Governance/ Monitoring Officer	15/11/18	15/11/18
Karen Shepherd	Service Lead Governance	12/11/18	13/11/18
Nikki Craig	Head of HR and Corporate Projects	15/11/18	15/11/18
Louisa Dean	Communications	15/11/18	15/11/18
Andy Jeffs	Executive Director	15/11/18	15/11/18

REPORT HISTORY

Decision type: Non-key decision	Urgency item? No.	To follow item? No
Report Author: Sean O'Connor, Shared Legal Services		

Appendix 1

Section 15 of the Local Government and Housing Act 1989

15 Duty to allocate seats to political groups

- (1) It shall be the duty of a relevant authority having power from time to time to make appointments to a body to which this section applies to review the representation of different political groups on that body--
 - (a) where the members of the authority are divided into different political groups at the time when this section comes into force, as soon as practicable after that time;
 - (b) where the authority hold annual meetings in pursuance of paragraph 1 of Part I of Schedule 12 to the Local Government Act 1972 (annual meeting of principal councils) and the members of the authority are divided into different political groups at the time of any such meeting, at or as soon as practicable after the meeting;
 - (d) as soon as practicable after any such division as is mentioned in paragraphs (a) to (c) above occurs; and
 - (e) at such other times as may be prescribed by regulations made by the Secretary of State.

- (3) Where at any time the representation of different political groups on a body to which this section applies falls to be reviewed under this section by any relevant authority or committee of a relevant authority, it shall be the duty of that authority or committee, as soon as practicable after the review, to determine the allocation to the different political groups into which the members of the authority are divided of all the seats which fall to be filled by appointments made from time to time by that authority or committee.

- (4) Subject to subsection (6) below, it shall be the duty of a relevant authority or committee of a relevant authority--
 - (a) in performing their duty under subsection (3) above; and
 - (b) in exercising their power, at times not mentioned in subsection (3) above, to determine the allocation to different political groups of seats on a body to which this section applies,

to make only such determinations as give effect, so far as reasonably practicable, to the principles specified in subsection (5) below.

- (5) The principles mentioned in subsection (4) above, in relation to the seats on any body which fall to be filled by appointments made by any relevant authority or committee of a relevant authority, are--
 - (a) that not all the seats on the body are allocated to the same political group;
 - (b) that the majority of the seats on the body is allocated to a particular political group if the number of persons belonging to that group is a majority of the authority's membership;
 - (c) subject to paragraphs (a) and (b) above, that the number of seats on the ordinary committees of a relevant authority which are allocated to each political group bears the same proportion to the total of all the seats on the ordinary committees of that authority as is borne by the number of members of that group to the membership of the authority; and
 - (d) subject to paragraphs (a) to (c) above, that the number of the seats on the body which are allocated to each political group bears the same proportion to the number of all the seats on that body as is borne by the number of members of that group to the membership of the authority

Appendix 2

Letter from former Managing Director of Council to Chief Fire Officer

Allison Alexander
Managing Director
Allison.alexander@rbwm.gov.uk
01628 796322



26 June 2018

Mr Trevor Ferguson (Chief Fire Officer)
Email: fergusont@rbfrs.co.uk

Dear Mr Ferguson

Royal Borough of Windsor & Maidenhead Appointments to the Fire Authority

You would have been aware of the discussions between the six authorities in relation to the need for political balance in appointments to the Fire Authority. We understand that some of the other Berkshire authorities have accordingly changed their appointments and there are now a number of new representatives being appointed simultaneously.

The Borough's representatives were appointed in 2015 and generally the Borough tries to maintain continuity in its appointments to enable the relevant member to gain a better understanding of the Fire Authority but also to look to minimise disruption to its operation.

As part of any decision the Borough takes for their current appointments, Borough officers are conscious of possible negative impact of further changes on the Fire Authority.

Officers are keen to understand from the Fire Authority whether making further changes to the membership now would have a detrimental impact on the operational effectiveness, decision making or budget of the Fire Authority? In particular, if impacts are negative, does the Fire Authority prefer any particular timescale for further change. The Borough originally intended to reconsider its membership in May 2019, and should a decision be needed earlier than that date, then it would be informative for full Council to understand the impact of any change.

We appreciate that you may wish to consider this point but if possible, the Borough would appreciate a response at your earliest convenience.

Yours sincerely

Allison Alexander
Managing Director

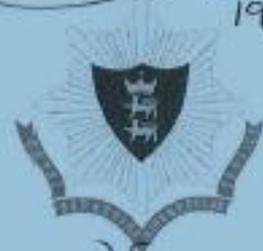
Response from Chief Fire Officer to former Managing Director of Council Officer

Handwritten notes: RBFS. Family with Sean. 19/9

Headquarters, Newsham Court, Pincents Kiln, Caloot, Reading, RG31 7SD

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Handwritten notes: RBFA, 14 Sept.

Alison Alexander
Managing Director
Alison.alexander@rbwm.gov.uk
01628 796322

Your Ref:
Our Ref:
Ask for:
Date: 2 August 2018

Dear Alison Alexander

Royal Borough of Windsor & Maidenhead Appointments to the Fire Authority

I write further to my letter dated 3 July 2018.

As promised, I ensured that your letter was included on the agenda for consideration by the Royal Berkshire Fire Authority at its meeting on 31 July 2018.

Having considered the matter, I was directed on its behalf by a unanimous resolution to write to you in the following terms:

1. It is for each appointing council to determine its appointments in accordance with section 15 of the Local Government and Housing Act 1989; and
2. Section 16(3) of the Local Government and Housing Act 1989 provides that no proceedings of Royal Berkshire Fire Authority are invalidated by a breach by any of its appointing councils of their obligations under section 15 of the Local Government and Housing Act 1989.

This response constitutes Royal Berkshire Fire Authority's position on the matters raised in your letter.

Yours sincerely,

Trevor Ferguson
Chief Fire Officer

Trevor Ferguson • Chief Fire Officer

