



## Buckinghamshire & Milton Keynes Fire Authority

<b>MEETING</b>	Fire Authority
<b>DATE OF MEETING</b>	18 December 2013
<b>OFFICER</b>	Denis O'Driscoll, Head of Service Development
<b>LEAD MEMBER</b>	Councillor Adrian Busby
<b>SUBJECT OF THE REPORT</b>	<b>Industrial Action, costs and considerations</b>
<b>EXECUTIVE SUMMARY</b>	<p>To update the Authority on the costs incurred as a consequence of the Fire Brigades Union strike action on 25 September 2013 between 10 am and 2 pm and to provide guideline costs for subsequent and future strike action.</p> <p>A further ballot of Fire Brigades Union members, including Control staff, on action short of strike closed on 4 December 2013. A verbal update on the outcome of this will be provided at the meeting.</p> <p>The Authority is asked to consider and decide on a range of options to mitigate the costs of the Fire Brigades Union industrial action.</p>
<b>ACTION</b>	Decision.
<b>RECOMMENDATIONS</b>	<p>It is recommended that the Authority:</p> <ol style="list-style-type: none"> <li>1. adopts the position of not accepting partial performance from any member of staff participating in lawful industrial action.</li> <li>2. notes the costs incurred by the 4-hour strike on 25 September 2013</li> <li>3. notes the potential costs of subsequent industrial action.</li> <li>4. approves the position as set out in appendix A due to the on-going cost of the industrial action.</li> </ol>
<b>RISK MANAGEMENT</b>	The Authority is required by the Fire and Rescue Service Act 2004 and the Civil Contingencies Act 2004 to plan and implement arrangements to maintain its business at all times.
<b>FINANCIAL IMPLICATIONS</b>	Costs to the Authority of the Fire Brigades Union industrial action include "one-off" costs incurred in preparation for it and on-going costs that are likely to be

	<p>incurred for each period of industrial action.</p> <p><b>One-off preparation:</b></p> <p>The following costs were incurred in preparing the service for industrial action totalling £69k:</p> <ul style="list-style-type: none"><li>a) CCTV at all whole-time shift stations to protect assets and staff £55k</li><li>b) Body worn CCTV to protect staff and gather decision making at incidents £5k</li><li>c) Equipment to set up Operations Support room £2k</li><li>d) Training and exercising of officers and staff to prepare for industrial action £7k</li></ul> <p><b>On-going costs:</b></p> <p>Costs incurred on the 25 September which provide an indicator as to how much further periods of strike action will cost:</p> <ul style="list-style-type: none"><li>a) Additional payments to staff who provided resilience cover to the service on 25 September £4.4k</li><li>b) Expenditure incurred for both transport and catering, on the 25 September. These costs will be incurred for each period of industrial action:<ul style="list-style-type: none"><li>i) Transport hire and catering £2k</li><li>ii) We may also receive additional charges from the Ministry of Defence for the use of Territorial Army centres.</li></ul></li></ul> <p>The deduction of salaries and allowances from those who took action on 25 September has been calculated at £3k.</p> <p>The Authority is also able to recover costs incurred to provide maintenance of national resilience vehicles. This figure currently stands at just over £5k and an invoice will be issued to the Ministry of Defence.</p> <p>As a rough guide, it is estimated that on average the planning for each period of industrial action costs around £13k, plus £2k per hour for the duration of the strike period.</p> <p>It should be noted that the period of strike action that took place on 25 September occurred in the middle of a normal working day. As such, additional costs were marginally reduced as most of the staff utilised to provide emergency fire cover were already on duty. This will not always be the case and further costs may be incurred to pay staff for out-of-hours cover which cannot be covered from existing revenue budgets.</p>
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<p><b>LEGAL IMPLICATIONS</b></p>	<p>Going on strike, since it involves the unilateral withdrawal of an employee's labour, will amount to a breach of contract by the employee. Industrial action short of strike will usually constitute a breach of contract, for example the disruption to the Authority's business and refusal to co-operate are likely to constitute a breach of the obligation of fidelity or good faith.</p> <p>If employees are on strike (that is, refusing to work at all), the Authority need not pay them for the periods during which they are not working.</p> <p>Where a strike period relates to only part of a shift, or if the industrial action is action short of strike, the Authority can chose not to accept partial performance of an employee's contract.</p> <p>Even if the employer accepts partial performance, the employee will nevertheless be in breach of contract for which the employer may claim damages. The courts allow some form of deduction from the employee's wages. If economic loss cannot be quantified, a deduction may be based on the loss of the employee's services and costs of alternative provision.</p> <p>An employee who has participated in industrial action cannot bring a tribunal claim for unlawful deduction of wages, if the industrial action is the reason for the deduction. In such cases, if the employer has deducted more than it was entitled, the employee would have to bring an action for debt or breach of contract in the civil courts.</p>
<p><b>HEALTH AND SAFETY</b></p>	<p>It is intended that whilst the response to incidents may need to be reduced, actions of staff attending incidents will comply with service Health and Safety policies. An additional risk assessment has been completed for industrial action.</p>
<p><b>EQUALITY AND DIVERSITY</b></p>	<p>A People Impact Assessment has been completed.</p>
<p><b>USE OF RESOURCES</b></p>	<p>BFRS achieved the staffing of 17 appliances, an Aerial appliance, Water Carrier, Incident Response Unit and Urban Search &amp; Rescue appliances throughout the strike on the 25 September by efficiently utilising those staff available.</p>
<p><b>PROVENANCE SECTION &amp; BACKGROUND PAPERS</b></p>	<p>Two previous national strikes have impacted upon the service area in 1977 and 2002. During these periods, fire cover was provided by the military, using "Green Goddess" fire appliances, operating from Army bases. This is no longer possible in 2013, as the military no longer have the resources to provide such a response</p>

	<p>and that ageing fleet of “Green Goddess” appliances has been sold off.</p> <p>Executive Committee</p> <p><b>18 September</b></p> <p><b>Item 12:</b> <u>Employer Pension Contribution options during Strike Action.</u></p> <p><b>Item 13:</b> <u>Trade dispute between Department for Communities and Local Government and the Fire Brigades Union.</u></p> <p><b>17 July</b></p> <p><b>Item 9:</b> <u>Trade dispute between Department for Communities and Local Government and The Fire Brigades Union.</u></p>
<b>APPENDICES</b>	Appendix A - Position in relation to Industrial Action leading to partial performance of duties.
<b>TIME REQUIRED</b>	15 Minutes.
<b>REPORT ORIGINATOR AND CONTACT</b>	<p>Ian Taylor</p> <p><a href="mailto:itaylor@bucksfire.gov.uk">itaylor@bucksfire.gov.uk</a></p> <p>07810656059</p>

Appendix A

**Position in relation to Industrial Action leading to partial performance of duties:**

Employees are not able to select which parts of their contract they are willing to undertake, if they choose to take part in industrial action, be that "a strike" or "action short of strike", i.e. partial performance, they are refusing to undertake their full contractual duties.

Any employees involved in partial performance are deliberately refusing to undertake their full, normal contractual duties and are therefore in breach of their contracts. The employer has discretion to either accept partial performance and pay staff for any duties undertaken during the shift in which industrial action has been undertaken; demand that participating employees comply with their contracts in full or stay away from work or treat participating employees as unpaid volunteers.

Due to the cost implications of making alternative provision of services, Buckinghamshire and Milton Keynes Fire Authority adopt the position that it does not accept partial performance of contract by any member of staff.

The Authority gives discretion to the Chief Fire Officer to accept partial performance on a case by case basis, taking into account the associated cost implications in applying this position.