

DRAFT RESPONSE OF MERSEYSIDE FIRE & RESCUE AUTHORITY
TO CONSULTATION ON FIRE CONTROL GOVERNANCE ARRANGEMENTS

1. General

- 1.1. The Authority confirms its willingness to participate in the establishment of a company to deliver a regional call handling and mobilisation centre.
- 1.2. The Authority comments on the contents of the Consultation Paper 'Fire Control Governance Arrangements', as follows :-

Paragraph 21 – Performance Monitoring

- 1.3. Individual FRAs have already set performance standards for call handling in their IRMPs. If they differ, how will such differences be reconciled and harmonised? Setting call answering standards determines staffing levels and costs and is therefore a crucial decision. Is it intended that the FRA's and RCC will make this decision, or the ODPM?

Paragraph 22 – Best Value Duties

- 1.4. Whilst the contents of the paragraph are noted, the Minister in his letter to Chairs of the RMB's dated 28th September, 2005 stated :-

“Although our work to date suggests this is unlikely, it is in principle possible that the costs for a few authorities might mean that the project does not, in the short term, represent Best Value for them.Where there is a single national network and no alternative method of control provision, there is no scope for authorities to exercise their duties of securing continuous improvement under the Best Value legislation. We will issue guidance on this in the form of a circular to authorities in due course”.

- 1.5. Confirmation is requested therefore as to whether the Minister is proposing to issue a 'Best Value' guidance circular under S.26 of the Local Government Act 1999. If so, will such guidance state that :-
 - (a) Performance of FRA's functions of making arrangements for dealing with calls for help and for summoning personnel (under S.7(2)(c) of the Fire & Rescue Services Act 2004), through a company providing such services on a regional basis in accordance with the Fire Control Project, and the National Framework Document for Fire & Rescue Services will be deemed to constitute arrangements which secure a continuous improvement in the way in which such functions are exercised, having a regard to a combination of economy, efficiency and effectiveness, and thereby fulfil the duties of FRA's under S.3 of the Local Government Act 1999.

- (b) FRA's will accordingly not be required to undertake any consultation under S.3 of the 1999 Act in respect of such functions, nor will they be required to undertake any Best Value reviews of those functions under S.5 of the 1999 Act.

Paragraph 23 – HR Issues

- 1.6. This states that “RCC’s will not be able to understaff on the assumption that other centres will be able to compensate for their shortfall (there will be financial penalties if agreed service levels are not met). However, they will be able to keep the benefits for their authorities of any efficiencies they make in delivering those agreed service levels”.
- 1.7. However, the practical reality is that the RCC’s will be wholly funded by the FRA’s in their region, so that any financial penalties would potentially have to be met by the FRA’s in any event. Similarly FRA’s may wish to have the charges reduced in respect of efficiencies made by the Company, or at least share in such reductions.
- 1.8. The Authority considers that staffing levels should be determined locally subject to a basic level and subject to the RCC being able to meet its performance standards. The Authority also considers that performance and staffing and response arrangements between each RCC needs to be managed and co-ordinated. How is it intended that such monitoring and performance management is effected.
- 1.9. How will performance and staffing between the RCCs be monitored, managed and co-ordinated? The Authority considers that overall performance management between the RCCs needs to be managed.

Paragraph 24 – Security Clearance

- 1.10. Existing control rooms are not security cleared. What level of security clearance is proposed? What will be the position in relation to existing staff who are entitled to transfer, but who don’t meet the security clearance criteria?

Paragraph 27 – Transfer of Undertaking (Protection of Employment) (TUPE) Regulations

- 1.11. Alternative employment should not be at the option of the individual, where it is reasonable for the employee to relocate and the FRA wishes the individual to relocate.

Paragraph 28 – Redundancies

- 1.12. Employment legislation imposes consultation obligations on employers as to proposals. In the interests of consistency, the ODPM is requested to issue detailed guidance as to when consultation should commence, and the process to be followed which FRA’s are able to rely on.

- 1.13. In particular, greater clarity is required as to whether the FRA's are to make any redundancies, or whether the RCC is to make any redundancies. If the FRAs are to make any redundancies, then the Authority considers that prior confirmation from the ODPM is required to the extent that the ODPM will meet all financial implications including the costs of any successful legal claims.

Paragraph 29 – Pensions

- 1.14. The current proposals in relation to pension arrangements do not identify the option for staff to transfer to the new Firefighters Pension Scheme, and should that eventuality occur, then the business case will need to be re-evaluated.

Paragraph 39 – No changes to Articles without agreement of all FRAs

- 1.15. Will ODPM be issuing this proposed separate agreement as a standard proposed agreement. What will be the position if all proposed parties to the proposed agreement do not agree to enter into the proposed agreement? (A draft agreement between the FRAs in a region is attached for consideration).

Paragraph 41 – Review of Articles of Association & Memorandum

- 1.16. It is understood that, whilst initial comments have been made by the Fire Lawyers' Network, and by an independent firm of Solicitors experienced in the issues, it is intended that they are further reviewed in detail, taking into account the responses to consultation.

Q1. Do the governance arrangements described above offer the most effective way of:-

- **Delivering a resilient national control centre network and the effective management of national resilience assets; while at the same time,**
- **Maintaining FRA accountability and an appropriate level of flexibility for elected members in ensuring that the service meets the needs of local people?**

The Authority is not in a position, nor is it appropriate for the Authority to state that the proposed governance arrangements offer the most effective method, but :-

- (a) recognises that the Fire Control Project is a national project, and
- (b) that the proposed governance arrangements are those considered most appropriate by the National Project and the ODPM, and
- (c) subject to the general comments set out previously is willing to rely on their views and proceed accordingly.

Q2. Should the local authority companies be restricted in the scope of their activities as described above, or should they be given the freedom to diversify?

Yes, the Companies should be restricted in the scope of their activities, the Authority supports the contents of paragraphs 42 – 45.

An additional reason for not permitting diversification of services is that, to do so could prejudice the ability of FRA's to rely on the 'in-house exemption to permit contracting by FRA's direct with the RCC for provision of substantive control room services without undertaking an EU compliant procurement process.

Q3 Should authorities be given complete freedom in the composition and selection of board members and the naming of their company?

Yes, complete freedom in the composition and selection of board members – although ODPM guidance as to a recommended model may assist in securing consistency. In this respect ODPM may wish to recommend that Board members are constituted of either elected members of the RMB, or officers who have reporting lines to the RMB to ensure that the RMB has sufficient involvement in the Control Room functions and the Company.

Yes, however a recommended name for each company may assist in securing consistency. A suggested name is "(identity of region) Fire Control Ltd".

Q4 Should there be a relationship between RCC companies and RMBs and if so what form should it take?

Yes – Where the call handling/mobilisation function has been delegated to the RMB.

Yes, but to a lesser extent where the above function remains solely with the local FRA. (e.g. for resolution of disputes between local FRA's).

Notwithstanding delivery of the function of making arrangements for dealing with calls for help and for summoning personnel (under S.7(2)(c) of the 2004 Act), through a Company, the statutory function will remain with the individual FRA. However, where those FRA's have agreed that the function is delegated to the RMB (as a Joint Committee) then the RMB has delegated powers to carry out that function (although this does not prevent the individual FRA from also carrying out the function) (S.101 Local Government Act 1972).

Therefore, where the above function is delegated to the RMB, it is appropriate for a relationship to exist between the RCC Company and the RMB.

The relationship could include :-

- (a) The RMB determining/approving appointment of members and/or directors to the RCC company, and extent of representation (rather than such appointments being determined/approved by the individual FRA's).
- (b) The RMB determining the apportionment of the Company's charges/costs between FRA's.

However, it is recognised that the contractual arrangements for the operation of and delivery of the functions would need to be made between the individual FRAs and the RCC Company.

It is recognised that any elected members appointed as directors to the RCC Company could be in a potential position of a conflict of interest, where they are acting as members of the RMB whilst considering issues in relation to the Company.

(In this respect, the Members Code of Conduct provides that Members 'may' regard themselves as not having a prejudicial interest in a matter if it relates to a body to which they have been appointed or nominated as a representative). However, if on any particular issue the Member concerned considered that they had an interest that amounted to a prejudicial interest then they would have to withdraw from the meeting and not participate or vote on that issue.

However, the potential for such a conflict of interest arising could be avoided by :-

- (a) The RMB approving appointment of directors to the RCC Company, and
- (b) The RMB establishing a sub-committee with the remit of fire control issues, and appointing members to that sub-committee who are not appointed as directors of the RCC Company.

This would mean that members of the sub-committee would not be directors of the Company and no conflict would arise.

Where the control room function is not delegated to the RMB, but remains solely with the local FRA, then it would be appropriate for the local FRA's to separately agree to appoint members/determine proportions of representation etc., to monitor performance of the Company, and agree the level of charges payable by the FRA.

However, in such circumstances there is scope for lack of consensus between the constituent FRA's, and where a dispute occurs, the RMB's could have a role as the arbiter of any disputes. This could be a contractual role as set out in the respective contract between the FRA's and the RCC Company.

The Authority considers that it is appropriate to ensure that the relationship is one which maintains individual FRAs responsibility for local services, and facilitates local services by local FRAs.

In addition, greater clarity is required as to the role of a member as a director, compared with that of an elected member of a RMB and the consequent relationship between remuneration.

Q5 Should RCC companies be subject to the same provisions on conduct and mal-administration as local authorities and other relevant bodies, and to the rules relating to local authority indemnity?

Yes, but they effectively already are or could be so. For :-

- (a) Where elected members are appointed as members/directors of the RCC Company, then their own FRA Code of Conduct (which reflects the mandatory statutory code) provides that they must comply with their own FRA Code of Conduct when acting for that Company, except insofar as it conflicts with any other lawful obligations to which that other body must be subject.
- (b) There is no equivalent mandatory Code of Conduct for officers who are appointed as members/directors of the RCC, but FRA's are able to adopt similar provisions.

- (c) With regard to indemnity rules, the Local Authorities (Indemnities for Members and Officers) Order 2004 already permits FRA's to indemnify its members and officers against a wide range of liabilities, whilst acting on outside bodies to which they are appointed (including RCC Companies), including acts or omissions including any neglect, act, error, breach of trust, duty of care or fiduciary or other duty committed by them.

With regard to mal-administration, it is submitted that no additional steps or measures are required because :-

- (a) It is anticipated that contracts will be in place between the FRA's and the RCC Company as to performance standards which could provide for mal-administration constituting a breach of contract.
- (b) Elected members who are appointed to the RCC Company will be subject to their own FRA's Code of Conduct and arrangements can be made for employees to be subject to the same standards whilst appointed to a RCC Company.
- (c) Employees of the RCC Company will be subject to the disciplinary code and procedures applicable to them (which in the case of transfers to the RCC Company will be the "Grey Book" Code and procedures).

Q6 Are you content with the draft Memorandum and Articles of Association?

Comments on Draft Memorandum

The draft memorandum is attached as an Appendix with suggested amendments. The suggested amendments are made :-

- (a) To provide some additional detail as to the role of the regional control centre.
- (b) To remove some of the wider powers of the Company to reduce the prospect of undermining the 'in-house' exemption from tendering of services by the Company to the FRAs.

Comments on Draft Articles

The draft articles are attached as an appendix with suggested amendments. The suggested amendments are made :-

- (a) To make clear that the only persons eligible for membership of the Company shall be the FRAs in the relevant region or elected members or employees of such FRAs.
- (b) To enable either the corporate FRAs, or elected members (e.g. some of the members of the RMB) to be the members of the Company. Additions have been made to Regulation 4 to provide for circumstances in which individual members would cease to be a member of the Company.
- (c) To protect the balance/constitution of directors. Regulation 28 gives each of the members one vote to remove a director or directors having the effect of altering the balance/make up of the directors. (The make-up of directors is intended to be one from each FRA). To enable that position to be maintained, Regulation 28.1 has been added so that, in any proposal to remove a director by the members, the member FRA, which is the same FRA which the director is from,

will be able to outvote the other members, thereby ensuring that the other members cannot remove the director without their consent.

- (d) To protect the position of members, by the addition of Regulation 34.2.
- (e) To provide that the number of directors is fixed in Regulation 35 (i.e. the same number as the number of FRAs in the region, so that one director can be appointed from each FRA), and thereby prevent the directors from 'swamping the board' with additional 'pocket' directors that they could otherwise appoint who would then also have votes and effectively outvote the other FRA directors.
- (f) To provide in Regulation 36 that only persons who are elected members or employees of the FRAs who are appointed to/accountable to the RMB can be appointed as directors – to ensure that the RMB has a relationship with the Company, and to strengthen the ability to rely on the 'in house' exemption.
- (g) To provide in Regulation 36 that only elected members/employees of FRAs not already represented by the directors can be appointed as directors – to ensure that each FRA will have one director on the Company.
- (h) To provide in Regulation 49 that directors who are not elected members of a County Council can receive remuneration. (Members of a County Council who are appointed to a paid office automatically become disqualified from office, but this does not apply to combined FRAs or Joint Authority FRAs).
- (i) To provide in Regulation 49 that directors who are employees of a FRA may also receive remuneration from the Company if their FRA consents.
- (j) To provide in Regulation 50 so that the Company may pay travelling and subsistence expenses (subject in the case of elected members to the maximum that they can receive under Statutory Provisions, and in the case of Officers to their FRAs consenting to such receipt).

(However, it may in practice, be simpler if the FRAs themselves determine whether they wish to pay a SRA to directors who are elected members, or an ARA to directors who are employees, and any associated travel/subsistence allowances).
- (k) To provide in Regulation 52 and 53 that directors have to comply with the Code of Conduct for elected members/officers whilst acting as directors, but as such are not prohibited from voting on matters relating to their own FRA and payment of remuneration etc.
- (l) To provide in Regulation 70 that members will have the right to inspect documents etc., as will FRAs auditors etc.
- (m) To provide in Regulation 76 that, upon the winding up of the Company, any assets will be divided up in the same proportion as the FRAs contribute to the costs of the FRA.

Q7 Do FRAs have views about the best way to manage the relationship between the RMB and the company in the running of the project?

The Authority considers that the simplest option, which would ensure appropriate integration of FRA's/the RMB/the RCC Company/the Regional Project Director is :-

- (a) RMB's to have delegated powers from the FRA's to make decisions re: the Fire Control Project.
- (b) Regional Project Director to report to the RMB.
- (c) Elected members of the RMB (or the corporate FRA body) to be appointed as shareholders of the RCC Company. (One member per FRA).
- (d) Elected members and/or officers to be appointed as Directors of the RCC Company. (One director per FRA).

With regard to protecting the interests of the Company in the management of the project, if the Board of Directors is not comprised of members of the RMB :-

- (a) The Directors of the Company would be entitled to attend meetings of the RMB, and make representations on behalf of the Company.
- (b) The Directors of the Company could be invited to attend Project Officers meetings and participate and make representations on behalf of the Company.
- (c) An Agreement could be formulated between the Company and the FRAs, which would provide for the above arrangements to take place, and in the case of disputes between the Directors of the Company and Project Officers, for such disputes to be referred to the RMB for resolution.

The Authority considers that the real issue is not how the Company's interests in the management of the project are protected, but how does the RMB/Local FRA's ensure that the decisions of the RCC Company reflect the wishes of the RMB/local FRA's, and in this respect, it is suggested that an agreement is entered into between the constituent FRAs in a region as to how the Company is to be set up and operate. A draft agreement for the establishment and initial operation of the Company is attached for consideration as an Appendix.

The Authority considers that the option set out at the beginning of the response to this question is the most appropriate option to ensure that the interests of all parties are protected.

The proposed model is an untried model and carries a degree of risk.

In particular, where elected members are appointed as a director of the RCC company, they could carry some responsibility for provision of call handling and mobilisation services to any other region by reason of 'fall back' and 'spate' arrangements, and not merely responsibility for their own region.