



NOTTINGHAMSHIRE
Fire & Rescue Service
Creating Safer Communities

Nottinghamshire and City of Nottingham
Fire and Rescue Authority
Policy and Strategy Committee

CREATION OF ARMS LENGTH COMPANY

Report of the Chief Fire Officer

Agenda No:

Date: 30 October 2009

Purpose of Report:

To seek the approval of Members to establish whether there is a full business case for the formation of an arms length company in response to Fire Service Circular 61/2009 from Communities and Local Government (CLG) which will enable the Authority to continue to trade in Fire Extinguisher Maintenance and Commercial Training.

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1. BACKGROUND

- 1.1 Nottinghamshire Fire and Rescue Service has provided Fire Extinguisher Maintenance and Commercial Training primarily although not exclusively to the Public Sector for many years and the contribution to revenue budgets made by the income received by these units has been used to offset wider budget demands.
- 1.2 The Fire and Rescue Services Act 2004 set out proposals for those authorities rated “good” or “excellent” as part of CPA assessments to be able to trade in a range of services provided that they did so under the auspices of an arms length limited company. The Act however recognised that some authorities were already trading and issued a series of exemptions which were due to expire on 30th September 2009.
- 1.3 In the summer of 2009 CLG began to consult on whether these exemptions should be extended indefinitely. In addition to this, work had already begun to consider the viability of setting up an arms length company from 1 October whilst also assuming that the exemptions were likely to be extended.
- 1.4 Fire Service Circular 61/2009 “Trading by Fire and Rescue Services” was issued on 1st October 2009 and had been widely trailed as being the extension that had been sought. However, what this circular actually did was widely extend the range of services which could be traded but reinforce the requirement that an arms length company is used for this purpose.
- 1.5 The following report sets out a recommended response by the Authority.

2. REPORT

- 2.1 The timing of the circular effectively makes any trading by Fire and Rescue Services under the Fire Services Act 2004 unlawful unless it is conducted through an arms length company. However, CLG have confirmed that the Local Government Goods and Services Act 1970 has not yet been repealed and as result of this it is still possible for the Authority to lawfully continue to trade with the bodies set out in that Act. This is a narrow group of “customers” but one which will be sufficient to maintain the turnover of the trading units over a short period.
- 2.2 The Fire Authority now faces three choices:
 - i) Continue to trade under the auspices of the Local Government Goods and Services Act 1970 (LGGSA);
 - ii) Discontinue trading and redeploy staff or make them redundant;
 - iii) Form an arms length company as per Fire Service Circular 61/2009.

- 2.3 Continuing to trade under the LGGSA remains an option but clearly it was not the intention of government to allow this sort of trading to go on within Local Authorities and it is possible that this Act may be repealed if many organisations opt to use it. Additionally, the trading units themselves will struggle to make profits if they can only trade within the very narrow bands set out in LGGSA.
- 2.4 Discontinuing trading is a viable option however this will effectively remove £80,000 of income from the revenue budget. There would also be redundancy costs for the staff involved in delivering the service at present and a loss of service to other areas of the public sector which currently enjoy not only excellent service but also a very competitive charge compared with the other competitors. FEM, for example provides all the Fire Extinguisher Maintenance for Nottingham City Council, Nottingham City Homes, Nottinghamshire County Council and Derbyshire Fire and Rescue Service.
- 2.5 The third option is to comply with Fire Service Circular 61/2009 and establish an arms length company to continue trading in FEM and CTU.
- 2.6 Forming an arms length company can be a complex business and such a company will require company directors and a company secretary. Embarking on such a venture has significant implications for staff and carries some risks to the Authority. The decision therefore should not be taken lightly.
- 2.7 Initial business cases have been produced and show that the profit of the new company could be about £11,000 per annum however this masks the actual contribution to revenue budgets of about £85,000. This is because there are a number of internal recharges for services provided by the Authority to the company which would not reduce in the event that the company ceased to exist.
- 2.8 It is clear therefore that the creation of a company is viable and from a financial point of view desirable however, a considerable amount of work remains to be done to bring this company into existence. Such tasks include:
- i) The legal formation of the company
 - ii) Staffing issues associated with TUPE transfers etc.
 - iii) Nominating Directors
 - iv) Accounting Arrangements
 - v) Financial Regulations
 - vi) Name, livery letterheads etc.
- 2.9 The Head of Finance and Resources who is leading this project has involved both the staff and their representatives at every stage in the process to date. The Trade Union are invited to attend every meeting and the staff have been appropriately briefed. That is not to say of course that the Trade Union will not have their own comments to make when the final proposals are drafted merely to indicate that they have been consulted throughout.

- 2.10 This paper seeks the approval of Members for work to continue to establish the full business case to create this company which would be subject to final agreement by the Fire Authority.

3. FINANCIAL IMPLICATIONS

- 3.1 The financial implications of formation of a new company are to be finalised however early indications are that a contribution to revenue budgets of approximately £85,000 will be made.
- 3.2 The effect of not forming a company and closing the unit will be a loss of revenue income of approximately £85,000 each year, plus the redundancy costs of the staff.

4. HUMAN RESOURCES AND LEARNING AND DEVELOPMENT IMPLICATIONS

There are significant implications for staff arising from this proposal which concern their transfer under TUPE to the new company. The staff and their representatives will be seeking assurances from the Authority relating to their conditions of service, pensions, future employment, redeployment options etc. and these will need to be resolved before they can be transferred to the new company. It may be that in the meantime staff may have to be seconded to the new company until such arrangements can be put in place.

5. EQUALITY IMPACT ASSESSMENT

An initial equality impact assessment does not reveal any specific equalities issues arising from this report.

6. CRIME AND DISORDER IMPLICATIONS

There are no specific crime and disorder implications arising from this report.

7. LEGAL IMPLICATIONS

There are no specific legal implications arising from this report.

8. RISK MANAGEMENT IMPLICATIONS

There will always be risks to success in a venture such as the one proposed. Nevertheless, attentive management and enthusiastic staff will be able to deliver against the modest business plans being drafted.

9. RECOMMENDATIONS

That Members approve that a full business case be developed and presented to the Fire Authority with recommendations at its meeting of 18 December 2009.

10. BACKGROUND PAPERS FOR INSPECTION (OTHER THAN PUBLISHED DOCUMENTS)

- Fire Service Circular 61/2009.

Frank Swann
CHIEF FIRE OFFICER