



**NOTTINGHAMSHIRE**  
**Fire & Rescue Service**  
*Creating Safer Communities*

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

# COMPLAINT FROM FIRE INDUSTRY ASSOCIATION

Report of the Chief Fire Officer

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**Date:** 07 November 2014

**Purpose of Report:**

To inform Members of a complaint from the Fire Industry Association concerning Fire Authority trading companies.

## CONTACT OFFICER

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## 1. BACKGROUND

- 1.1 Members will be aware that since 2004 Fire and Rescue Authorities have been able to trade with both public and private sectors for profit. Such trading has been restricted to wholly owned “Arms Length Companies” and Nottinghamshire Fire and Rescue Service set up Nottinghamshire Fire and Rescue Service (Trading) Ltd for this purpose in 2010.
- 1.2 The Fire Industry Association (FIA) represent 620 businesses operating in the same areas and have long resisted and challenged trading by Fire Authorities which it views as having a detrimental effect on its members.
- 1.3 This report sets out for members an outline of the recent submission to the Director General for Competition at the European Commission.

## 2. REPORT

- 2.1 The FIA complaint is not against any individual Fire Authority but instead against the UK Government. Nevertheless there is an assertion that the UK Government is guilty of providing unlawful state aid to “arms length companies” by allowing them the free use of the Fire and Rescue Service “Brand”.
- 2.2 Nottinghamshire Fire and Rescue Service are specifically cited in the complaint along with Essex Fire and Rescue Service and Royal Berkshire Fire and Rescue Service as the complainant attempts to illustrate key points of their argument and for this reason it is considered appropriate that this issue should be brought to Members for information.
- 2.3 There is no suggestion that Nottinghamshire Fire and Rescue Service have failed to act within the existing legislation and therefore it is clearly the responsibility of Central Government to respond to this complaint. However in order to assist them to do so CFOA and the LGA, with appropriate legal advice, are drafting a joint paper which Government may choose to use in their response to the Commission.
- 2.4 As Nottinghamshire have been cited specifically however it is considered that an individual letter should be written to the CLG setting out Nottinghamshire’s position. This letter is attached as Appendix A to the report.
- 2.5 In brief however the response of NFRS is:
  - i) There is no national brand of the Fire and Rescue Service. This is simply a reputational matter as no brand protection exists and no one attempts to “market” a national FRS Brand. This is a way of describing a public service in the same way as one might describe the NHS or the British Army, both of which are instantly recognisable but clearly not “brands” in a commercial sense

- ii) There is similarly no local “brand” for Nottinghamshire Fire and Rescue Service for the same reason.
- iii) Even if there is a brand it is disputed that NFRS allowing its trading company to align to such a brand could be construed as state aid within the meaning of the legislation.
- iv) In order to succeed the complainant would also need to show that the value of the alleged state aid i.e. the value of the use of the brand would exceed a de minimus level of 200,000 euros over a three year period. Even though the complainants methodology is disputed there is still no way that the value of the use of an individual FRSs “brand” can breach this de minimus level. This is why the complainant needs to try to prove the existence of a national “brand”.

2.6 This issue of a national brand and the de minimus implications are important for two reasons: firstly, because it was on this basis that an earlier complaint was rejected by the Commission, and secondly because of the impact that any ruling may have on wider public sector trading arrangements.

2.7 Other than sending a letter to the CLG setting out Nottinghamshire’s position in relation this complaint there is little that can be done other than to maintain a “watching brief”. As mentioned above this is a complaint against the UK government and it will be up to government to refute this complaint.

2.8 Management will keep a close watch over the development of this case and inform members as appropriate.

### **3. FINANCIAL IMPLICATIONS**

There are no financial implications arising from this report although it is unclear whether any may arise as a result of the case.

### **4. HUMAN RESOURCES AND LEARNING AND DEVELOPMENT IMPLICATIONS**

There are no specific human resources and learning and development implications arising from this report.

### **5. EQUALITIES IMPLICATIONS**

An equality impact assessment has not been carried out as this is a report for information.

### **6. CRIME AND DISORDER IMPLICATIONS**

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

## **7. LEGAL IMPLICATIONS**

There are no direct legal implications for the Authority arising from this report although this complaint is clearly a legal matter.

## **8. RISK MANAGEMENT IMPLICATIONS**

There is a clear but as yet unquantified risk facing the Authority and its trading company from this complaint. This issue will be added to the corporate risk register and kept under regular review.

## **9. RECOMMENDATIONS**

That Members note the contents of this report.

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

None.

John Buckley  
**CHIEF FIRE OFFICER**



# NOTTINGHAMSHIRE

## Fire & Rescue Service

Creating Safer Communities

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Your Ref:  
Our Ref:  
Please Ask For:  
Direct Line/Ext:  
Date: 5 September 2014

Dear Mr Nash

**Re: EC state aid complaint against UK Government by the Fire Industry Association**

I write regarding the above with the intention of outlining the specific position of Nottinghamshire Fire and Rescue Authority (NFRA) in relation to the complaint against UK Government to assist in the formulation of any response.

I have been fully involved with the work of Mr J Beckerleg of CFOA in compiling the information they are providing and wish to emphasise that NFRA fully support a collective response.

NFRA is confident that it complies fully with all relevant legislation, public sector and commercial, in relation to its trading activities through NFRS (Trading) Ltd.

NFRA has diligently established a private limited company with the appropriate articles of association and governance arrangements. NFRA believes that the interpretation of all relevant public sector and commercial legislation has been applied fairly and consistently in relation to NFRS (Trading) Ltd.

NFRA is cited specifically in the complainant's letter to the EC. For the record I would like to provide a statement clarifying our position;

*NFRS presented a business case to the FRA in 2009 for a decision relating to the establishment of a trading company. This was in response to changes in legislation and the issue of guidance; Fire Service Circular 61/2009 and the interpretation of NFRS leadership that to continue to trade under the Local Government Goods and Services Act 1970 would be inconsistent with the intentions of Government following the introduction of the Fire and Rescue Services Act 2004 and the circular already referred to.*

*The NFRS business case contained multiple references to 'brand' and 'branding'. This has been misinterpreted by the complainant. The author of the document does not have marketing, brand management expertise and is not from a marketing background. The use of the word 'brand' is commonplace in business language and often contextually inaccurate, the business case is an example of this. The words 'brand' and 'branding' could easily be substituted for 'reputation' or 'status'.*

Other elements of the complainant's letter refer to state aid and the 'de minimis threshold'. Whilst Mr Beckerleg is providing a more detailed response relating to the calculation methodology of the complainant I would like to state for the record that whichever calculation method is used NFRS (Trading) Ltd falls well below the EU de minimis threshold of EUR 200,000 therefore nullifying any risk of state aid between NFRA and NFRS (Trading) Ltd. Further, the governance arrangements of NFRS (Trading) Ltd contain risk controls and processes for full cost recovery of services exchanged between the company and NFRA or NFRS.

I trust this information will be of use in the compilation of DCLG's response to the EC.

Please do not hesitate to contact me should you require further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Wayne Bowcock', written in a cursive style.

Wayne Bowcock  
**DEPUTY CHIEF FIRE OFFICER**