



DEVON & SOMERSET FIRE & RESCUE AUTHORITY

REPORT REFERENCE NO.	DSFRA/10/6
MEETING	DEVON & SOMERSET FIRE & RESCUE AUTHORITY
DATE OF MEETING	19 FEBRUARY 2010
SUBJECT OF REPORT	FiReCONTROL CONSULTATION: AGREEMENT BETWEEN LOCAL AUTHORITY CONTROLLED COMPANIES (LACCs)/LONDON FIRE AND EMERGENCY PLANNING AUTHORITY (LFEPa) AND COMMUNITIES AND LOCAL GOVERNMENT.
LEAD OFFICER	Director of Service Support
RECOMMENDATIONS	<i>That the Authority considers with a view to endorsing the response of the South West Regional Management Board – as appended to this report - to the Department of Communities and Local Government (CLG) consultation “FiReControl: Agreement Between LACCs/LFEPa and Communities and Local Government”</i>
EXECUTIVE SUMMARY	<p>In December of last year the Department of Communities and Local Government (CLG) issued Fire and Rescue Circular 73/2009 consulting on one of the proposed agreements required to support the future operation of the Regional FiReControl Centre. A copy of the consultation document has previously been circulated to Members of the Authority but further copies are available on request.</p> <p>While the consultation in the main addresses the proposed outcomes, approach and timings for an agreement between local authority controlled companies (LACCs)/the London Fire and Emergency Planning Authority (LFEPa) and CLG, it also refers to a ‘suite of agreements’ for which there is little detail.</p> <p>Attached to this report at Appendix A is a detailed report on the consultation paper prepared for and considered by the South West Regional Management Board at its last meeting. Appendix B details the Board’s agreed response to the consultation.</p> <p>The report outlines areas of concern and makes reference to two other agreements that the Authority may wish to raise with CLG. Over the years, the Authority has raised a number of political, financial and operational concerns formally with CLG. This consultation now provides an opportunity to collate these into a single response in addition to the previous responses.</p>

RESOURCE IMPLICATIONS	Nil.
EQUALITY IMPACT ASSESSMENT	No assessment appropriate at this time.
APPENDICES	<p>A. Report submitted to the meeting of the South West Regional Management Board (SWRMB) held on 28 January 2010.</p> <p>B. Copy of SWRMB approved response to consultation</p>
LIST OF BACKGROUND PAPERS	Fire & Rescue Circular 73/2009 "FiReControl: Agreement Between LACCs/LFEPA and Communities and Local Government"

APPENDIX A TO REPORT DSFRA/10/6



REPORT REFERENCE NO.	RMB/10/1
MEETING	SOUTH WEST REGIONAL MANAGEMENT BOARD
DATE OF MEETING	28 JANUARY 2010
SUBJECT OF REPORT	FIRE CONTROL CONSULTATION: AGREEMENT BETWEEN LOCAL AUTHORITY CONTROLLED COMPANIES (LACCS)/LONDON FIRE AND EMERGENCY PLANNING AUTHORITY (LFEP) AND COMMUNITIES AND LOCAL GOVERNMENT.
LEAD OFFICER	South West FiReControl Project Director (Clive Kemp) South West FiReControl Legal Advisor (Chris Gray)
RECOMMENDATIONS	<p><i>That the Board considers the contents of this report with a view to:</i></p> <ul style="list-style-type: none"> <i>(i) determining whether it would wish to respond to FiRe Control Consultation: Agreement between LACCS/LFEP) and Communities and Local Government, and</i> <i>(ii) should it wish to respond, it does on the basis as set out at Appendix A and subject to any amendments that may be agreed by the Board at the meeting.</i>
EXECUTIVE SUMMARY	<p>The Department for Communities and Local Government (“CLG”) issued Fire and Rescue Circular 73/2009 entitled “Fire Control: Agreement between LACCS/LFEP) and Communities and Local Government”, containing a formal Consultation about one of the proposed Agreements required to underpin the operation of the Fire Control service. The deadline for responses is Friday 5 March 2010.</p> <p>The RMB has not been directly consulted by CLG on this matter although FRAs have. Nevertheless, the RMB has been intimately involved in the project since its inception and has responded to all other consultations. This report examines the proposals set out in the Consultation and suggests a response for consideration by the Regional Management Board if it determines that it wishes make it views known.</p>

APPENDICES	A. Proposed draft response to Circular B. Fire and Rescue Circular 73/2009 entitled "Fire Control: Agreement between LACCs/LFEPA and Communities and Local Government" (enclosed and page numbered separately with the agenda for this meeting)
LIST OF BACKGROUND PAPERS	Nil

1. PURPOSE OF REPORT

- 1.1 On 4 December, the Department for Communities and Local Government (“CLG”) issued Fire and Rescue Circular 73/2009 entitled “Fire Control: Agreement between LACCs/LFEPA and Communities and Local Government”, containing a formal Consultation about one of the proposed Agreements required to underpin the operation of the Fire Control service. The deadline for responses is Friday 5 March 2010. A copy of the Circular is provided as Appendix B (enclosed and page numbered separately with the agenda for this meeting).
- 1.2 This report examines the proposals set out in the Consultation and suggests a response (Appendix A) for consideration by the Regional Management Board if it is minded to make its views known.

2. Background

- 2.1 In accordance with Section 7 of the Fire and Rescue Services Act, 2004, each Fire and Rescue Authority (“FRA”) has the statutory duty to make arrangements for dealing with calls for help and for summoning personnel for the purpose of extinguishing fires and protecting life and property in the event of fire. Similar duties exist in relation to road traffic accidents and other emergencies.
- 2.2 Under current arrangements, each FRA provides this service through its own staff and utilising equipment and services which it has procured directly from the supplier. Each Chief Fire Officer has control over the mobilisation of his/her FRA’s officers and appliances, subject, however, to arrangements for cross-border mobilisation agreed locally or nationally in formal Agreements/Protocols.
- 2.3 This position will change under FiReControl. It is proposed that the Local Authority Controlled Companies (“LACCs”), set up by FRAs in each region outside London, will in future provide call receiving and mobilising services for FRAs on a regional basis from a Regional Control Centre (“RCC”), enabling FRAs to meet their statutory obligations. A number of legal Agreements will be required to underpin these arrangements.
- 2.4 Clearly there will need to be an Agreement in each region between the FRAs and the regional LACC, setting out a specification of the service to be provided and the relative responsibilities of the LACC (as contractor) and the FRAs (as clients). However, this is only part of the picture.
- 2.5 As the Fire Control system is designed to be a national networked solution, the main IT system, radio communications and facilities management contract for the RCCs have each been procured by CLG under one national contract. One result of this is that there is no direct contractual relationship between the LACCs and the relevant service provider, upon whom the LACCs will be reliant to provide an effective and efficient service. A means by which LACCs/FRAs can enforce supplier obligations is therefore needed.

- 2.6 In addition to the services provided under the nationally-procured contracts referred to in 2.5 above, other services will be required by the LACCs. Some of these will be purely local in character (eg back office services) and can be procured locally. Other services, which relate to the functioning and future replacement of the national networks, and which are common to all the LACCs (and LFEPA in London), will need to be covered by national Agreements. Members will recall a previous Consultation undertaken by CLG about these services (described as “in-service management functions”), where the proposal was that these services be undertaken by a Non-Departmental Public Body (“NDPB”), probably a reconstituted FiReBuy. That consultation is now complete and CLG has confirmed that in-service management functions will be undertaken by an NDPB based on and incorporating FiReBuy, although transfer of responsibility from CLG will not be immediate but will take place “when the time is right”. This Agreement will need to spell out how a transfer date is to be ascertained.
- 2.7 The design of the Fire Control solution envisages that, when there are peaks in call demand – for instance in times of several concurrent incidents, a major fire or flooding, the “home” RCC will be backed up by other RCCs in the network, which will answer the calls and, in appropriate circumstances, mobilise resources to the incident. The same will occur if the “home” RCC is unable to answer a call within a specific time. It is anticipated that this will occur to between 2% and 5% of all calls to the RCC. An Agreement will be required between the LACCs/LFEPA to secure the efficient handling of calls diverted from the “home” RCC.
- 2.8 The various Agreements referred to above are described in paragraphs 1.6 to 1.9 of the Consultation. To complete the picture, mention must be made of two additional legal documents, to which no mention is made in the Consultation. The first of these is a National Mutual Aid Agreement and/or Protocol to replace the existing Protocol to which all FRAs are parties. The operation of the Fire Control service is predicated on the principle of mobilising the nearest appropriate resource. This Agreement will seek, not only to put in place arrangements for the provision of FRA appliances and officers to major out-of-area incidents, but more importantly in the context of Fire Control, also to give RCCs permission to mobilise (or not) resources across FRA borders and, where appropriate, nationally.
- 2.9 The other Agreement to which no reference is made in the Consultation is what is commonly described as a “Put Option” ie an option which allows one party (in this case an LACC/LFEPA) to require another party (in this case CLG) to take an assignment of an asset – in this case the lease of an RCC - in certain circumstances and on agreed terms. This is necessary in the case of Fire Control as, in the course of their national procurements, CLG has procured nine RCC buildings on leases which expire at different times. Inevitably, therefore, when the Fire Control service as a whole eventually comes to an end (possibly in 2034 when the first RCC lease is due to expire), some RCC leases will remain extant with the lessee having a continuing obligation to pay rent and comply with other lessee obligations until the end of the lease term. Facilities Management services may also be contracted until the end of the lease term. At that time, the relevant LACCs may no longer have a need to use the premises and, in those circumstances, the member FRAs will no longer wish to bear the financial burden of the lease and the related FM contract. It is also possible that, as a result of changes in government policy over time, other circumstances may arise where the LACC will wish to have the ability to require CLG (or its successor) to take an assignment of the lease and also assume responsibility for the FM contract.

- 2.10 Paragraph 1.6 of the Consultation makes reference to a “suite of agreements”. As Members will appreciate from what has been said above, it is essential to identify all the documents which will make up the “suite” referred to and to develop them all in parallel, so that they fit together as a comprehensive whole and are available for signature at the same time.
- 2.11 Apart, possibly, from the National Mutual Aid arrangements, it is unlikely that CLG will consult formally on any of the other Agreements in the suite. Over the years CLG has been made aware, by a variety of means, of political, financial and operational concerns of FRAs in the South West, but to date these have not been clearly set out in one document. Members may therefore wish to take the opportunity to inform CLG, in their response to the current Consultation, of their expectations so that these may be reflected in the proposed agreements, whether or not FRAs be minded to commit finally to the Fire Control service. This would not, of course, preclude individual FRAs from raising other issues with CLG.
- 2.12 Principles considered to be of fundamental importance to FRAs in the South West include:
- No FRA will bear any additional cost as a consequence of transfer to the Fire Control system.
 - FRAs must, as closely as circumstances permit, be placed in no a worse position than would have existed had they provided the service themselves and entered directly into agreements with third party suppliers.
 - No South West FRA will be committed to contributing to the costs of funding the RCC or any other part of the Fire Control system until binding commitments have been received, either from all other SW FRAs, or from CLG (if not all other SW FRAs agree to participate) for the financing of the balance of the regional costs throughout the lifetime of the Fire Control Service.
 - No FRA will be expected to sign any of the suite of Agreements until the system has passed its User Acceptance Tests to its reasonable satisfaction.
 - Cutover to the RCC should not occur until both the FRA and the LACC are satisfied that each is fully prepared to operate the new service.
 - FRAs will not (directly or indirectly) suffer a financial detriment as a result of any delay in cutting over to the RCC.
 - FRAs (and LACCs) will not, in any contractual arrangements, accept any obligation (to CLG or otherwise), which is not actually and necessarily required for the effective operation of the Fire Control service.
 - FRAs will have no continuing obligation for the provision, financing, use or operation of the RCC building beyond the period for which it is required for the operation of the Fire Control service in the South West, unless the FRAs determine otherwise.
 - The terms of any Agreements will be without prejudice to FRAs’ rights to claim central government funding now and in the future, including New Burdens funding.
 - FRAs (through their Chief Fire Officers) will be able to continue to exercise effective control over the use of their resources on terms acceptable to them.
 - Throughout the lifetime of the Fire Control service, the functioning of the system will allow FRAs to fully implement their IRMP policies.

3. THE PROPOSALS – THE PRINCIPLES

- 3.1 The Consultation concentrates on one of the “suite of agreements” referred to earlier, ie the proposed Agreement between LACCs/LFEPA and CLG (“the CLG Agreement”). The Consultation seeks input into the outcomes, approach and timings for this Agreement. It does not deal with its detailed terms, drafting of which will be informed by the outcome of the current consultation exercise. Members will rightly say that, in relation to any agreement, “the devil is in the detail”. Any response to the Consultation may, therefore, need to be prefaced by the comment that the response is made to the contents of the Circular only and is without prejudice to consideration by FRAs, in due course, of the detailed wording.
- 3.2 Members may also be tempted to say that, since FRAs are not intended to be parties to this Agreement, they will reserve their position until consideration in due course of the proposed Agreement between the FRAs in the region and the LACC, South West Fire Control Limited (“SWFC”). As mentioned earlier, provision of the Fire Control service will be regulated by a suite of Agreements and the service which SWFC will be able to offer FRAs in the region will be dependent on the terms of the other Agreements in the suite. FRAs are therefore vitally interested in the terms of the Agreement, the subject of the Consultation.
- 3.3 Members need to understand clearly that, although officers are working with CLG to put together the necessary suite of documents (and paragraph 2.2 of the Consultation refers to FRAs (and LACCs) and CLG as being “partners”), the objectives of the parties diverge in some significant respects. The aim of the FRAs is to ensure that they obtain an excellent and cost-effective service with proper safeguards in the event of default by a third party (on terms consistent with the first bullet point in 2.11 above), in order to satisfy their statutory obligations and to maintain their reputation. It would not be unfair to suggest that, in addition to their desire to help FRAs achieve their objectives and to enhance the Critical National Infrastructure, CLG has an underlying objective to divest themselves in due course of their current obligations under the national contracts and to ensure that they do not accept or retain any long term legal or financial liability for the Fire Control system (except in relation to RSG or New Burdens funding, which are separate issues outside the terms of any Agreement). That is not to say, however, that, recognising our different objectives and with proper and robust negotiation, a position cannot be reached which is reasonably acceptable to all and which allows a “partnership” relationship to exist going forward. Officers are confident that this should be achievable.
- 3.4 It has also to be recognised that, apart from their powers in relation to financial support for FRAs, and in particular their ability to top-slice RSG in order to finance all or part of the costs of Fire Control, CLG’s statutory powers of compulsion in relation to this Project, although on the face of it somewhat draconian in nature, are in practice a rather blunt instrument due to their specific terms and to the apparent lack of political will to make use of them except as a very last resort. The terms of the suite of Agreements are therefore, largely, not a matter for dictation by CLG, but a matter for negotiation between the various parties. The large number of parties involved does mean, however, that, an element of compromise by everyone will be required if a consensus is to be reached.
- 3.5 The Consultation states that the strategic outcomes which the CLG Agreement will support are:
- Providing an effective service to the public
 - Delivering a resilient and supportive network

If the Fire Control project proceeds as planned and all English FRAs participate, Members would, no doubt, wish to support these objectives.

- 3.6 To underpin these outcomes, the Consultation proposes that the agreements will be :
- Simple: including only those elements which should properly sit in formal contracts; not include elements likely to change regularly and which can be cross referenced; contain only the level of detail needed to understand roles and responsibilities clearly rather than setting out every detail;
 - Transparent: ensuring that all parties have full sight and understanding of what they are signing up to; and
 - Developed in partnership: working together in the spirit of pragmatism to deliver effective arrangements.

Again, these principles appear to be broadly acceptable, but there may be some matters upon which a more robust stance may be necessary. For example, some of the referenced documents may be of such importance that the formal change control mechanism contained in the agreements may have to operate to sanction future changes to them. Also, although all parties will need to work together to finalise the agreements, protecting the interests of FRAs, who will still retain the statutory duty to provide the service after the move to the RCCs, will remain of paramount importance.

4. THE PROPOSALS – THE DETAILS

- 4.1 The Consultation is short on detail. As paragraph 4.3 of the Circular states, the paragraphs which follow it provide a “guide to the key contents” in the agreement. It is therefore a guide only and is concentrating solely on key principles. CLG has made a conscious decision to keep the Consultation at a high level and the results of the consultation will inform the detailed drafting which will follow.

(a) “Home” RCC performance standard

- 4.2 It is proposed to have a call handling performance standard which will apply to each RCC. This standard will require that 95% of all emergency calls presented at the “home” RCC are answered within 5 seconds (measured hourly). This standard was the subject of a previous consultation exercise and appears to command general acceptance. The standard will be applied to all RCCs so as to ensure a consistent minimum level of service throughout the country and to seek to achieve a standard across the network of a minimum of 98% of emergency calls being answered in 20 seconds. The 95% standard is applied only to calls presented at the “home” RCC: calls which are not answered by the “home” RCC within a specified period (possibly 7 seconds) will be presented by the network to an operator in another RCC who is immediately available to handle the call, and therefore no call handling performance standard needs to be applied at the “remote” RCC.

(b) Direct Access to the National Service Contracts

- 4.3 Of the three national service contracts referred to in paragraph 4.7 of the Circular, only that relating to the FM services provided by VT Flagship allows LACCs to enforce directly performance obligations of the supplier. The national FM contract effectively provides for the contract to be operated as 9 individual regional contracts, with the regional costs being billed directly by the supplier to the relevant LACC/LFEPA and with the “regional” contract being managed on a day-to-day basis by the “client” LACC/LFEPA. The national contract is still managed by CLG (and in due course the NDPB taking over the in-service management functions), in whom the more draconian powers (eg to terminate the whole contract) are still vested.
- 4.4 It is now proposed that this approach, referred to as “third party rights” be applied to the national IT Infrastructure contract with EADS and to the national radio contract with Airwave. There will, however, be differences in approach from the FM contract because, whereas the FM contractor provides a generally local service at each RCC, the other suppliers are providing and maintaining national networks. In these cases, the supplier will continue to bill CLG, which will, in turn, bill the LACCs/FRAs on the basis of some cost apportionment model.
- 4.5 The “third party rights” approach is to be welcomed as a means of giving FRAs/LACCs more direct access to the suppliers and simplifying the contractual relationships between FRAs and their LACC and between LACCs and CLG, although it should be noted that CLG (and in due course the NDPB) would normally act as a “clearing house” on behalf of LACCs/LFEPA in pursuing claims arising from poor service delivery from suppliers. It must be said, however, that these will remain nationally managed contracts for a national service and, consequently, an individual LACC will have only limited influence in disputes with the suppliers, in marked contrast with the position which would have applied had there been a local or regional procurement.

(c) Limits on Liability

- 4.6 It is proposed that there should be a limit applied to the financial liability of any public body delivering a service to another as part of the Fire Control service. This will include FRAs, LACCs and CLG. Opinions on this will vary. It is difficult to state clearly the range of circumstances in which a claim for financial loss – as opposed to loss of reputation – could arise, and the potential extent of that loss, nor can anyone be certain as to the extent to which the law relating to liability in the provision of public services, will develop over the lifetime of the Fire Control service. The extent to which insurance cover is available at a reasonable cost may be a factor in considering this proposal, but, even here, care needs to be taken to ensure that the various FRA-related parties are not all insuring against the same risks, with FRAs effectively ending up paying “double” premiums.
- 4.7 Although, for example, it may appear attractive for an FRA to have a claim against the provider of an RCC, to which no financial limit is applied, it has to be remembered that that same FRA will also have a potential indirect financial liability for a claim made against the LACC responsible for its “home” RCC, either by one of the other regional FRAs or by an FRA in some other part of the country, and, to the extent that such risk is uninsured, that FRA will have to bear unbudgeted costs. FRAs will also have to bear the cost of insurance premiums incurred by their regional LACC, and those premiums may be calculated having regard to the level of liability accepted. On balance, a limit on financial liability may be considered acceptable in principle, but the precise application of the limit and the amount of the financial cap need further consideration during the course of drafting the agreements.

(d) Network-wide Performance Standard

- 4.8 Reference has already been made to the network performance standard for 98% of emergency calls to be answered in 20 seconds (measured hourly). This cannot be enforced by a specific contractual obligation since any default cannot be attributed to any one party. Again, this performance standard was the subject of a previous consultation exercise and should be achieved as a consequence of each “home” RCC achieving its own performance standard of answering 95% of emergency calls presented within 5 seconds.

(e) Financial Framework

- 4.9 This section sets out two separate financial principles. First, that, although the networked solution envisages some call handling for other regions, there should be a backstop to prevent an RCC failing to answer enough of its own calls and to meet the “home” performance standard, for example through persistent understaffing. This would place an undue burden on the other RCCs. To underpin the performance standard, the intention is to put in place a simple mechanism to compensate financially those RCCs which answer more than their fair share of calls, the amount to be calculated on the basis of actual cost of calls transferred. This type of arrangement is considered to be an essential safeguard within a networked solution, even if, as a consequence, unexpected additional and unbudgeted costs fall to be borne by FRAs in a particular region.
- 4.10 The other principle is that service credits arising from a service failure by a national supplier would normally be shared by all LACCs/LFEPA in proportion to the regional share of the full service costs. This principle would not, however, apply where serious or persistent failures can be shown to impact on specific LACCs/LFEPA, in which event these bodies would receive the whole of the resulting service credits. Members may regard this as a sensible and workable solution.

(f) Change Control by majority

- 4.11 It is unrealistic to expect that the terms for any agreement can remain unaltered over the lifetime of the Fire Control service (possibly until 2034), nor should the parties wish them to do so, as this will inhibit the development and improvement of the service. However, ignoring any interest which CLG would have, there are 45 FRAs and 8 LACCs which will wish to have a potential say in future changes. A formal change control process will be essential. For the Agreement in question, the proposal is that most changes could be effected by a simple majority of the parties involved, with all parties having an equal say. The Consultation leaves open, at this stage, the possibility that a larger majority (possibly unanimity) might be required for a small number of decisions. Opinions on proposals for change will vary, and, where changes would give rise to “winners” or “losers”, tensions will arise. Again, opinions on the proposed approach may vary, but a consensus on this issue is required, and the proposals put forward are considered to represent a pragmatic solution to a difficult issue. Further consideration is needed, however, as to the decisions which would require other than a simple majority.
- 4.12 The position to be adopted by SWFC in relation to any change proposal under the LACCs/LFEPA and CLG Agreement must represent the views of the FRAs in the South West, insofar as they are relevant to the decision. This means that the mechanism for change control must allow sufficient time to consult with FRAs, whilst not inhibiting urgent change where required. The proposed regional Agreement between FRAs and SWFC will need to make provision for change control both regionally and nationally. The voting mechanism in that Agreement will be different and will be based upon that previously approved by the Board for drafting purposes.

(g) Cross-referencing other documents

- 4.13 The proposal to cross-reference other documents, rather than attempting to replicate them in the Agreement, is considered to be sensible, not only to reduce the size and complexity of the Agreement itself, but, more importantly, to reflect that these other documents often need to be expressed in more operational terms and will the contents will change over time by natural evolution. Having said that, care will need to be taken to identify the documents to be cross-referenced to ensure that they adequately describe the service to be provided and in sufficient detail. Arguably this may not be so important intra-region, where there is some commonality of purpose between the FRAs and their LACC, but will be of greater importance in ensuring that there is no diminution in service, or service quality, when calls are handled by a “remote” RCC.
- 4.14 Whilst it is recognised that these documents will be the subject of regular review, it does not necessarily follow that consent to changes can be given informally and without proper regard to the wishes of FRAs. Once the documents have been finally identified, consideration will need to be given to an acceptable system of change control.

(h) Other content

- 4.15 Section 5 of the Circular gives an idea as to what else the Agreement will cover. Of particular note, in paragraph 5.2, are references to payment obligations and calculations, and the maintenance of re-procurement and supplier exit strategies. In paragraph 5.3, there is reference to a management service to be provided by the NDPB.
- 4.16 These paragraphs give little, if any, detail of what is proposed. The Board has previously advised CLG, in its response to the Consultation on in-service management, of its concerns about the extent of the in-service management functions, the need to ensure that the re-procurement of the national contracts takes place and of the influence which FRAs wish to have over costs. The attention of CLG should again be drawn to these concerns, possibly by reference to the replies to the previous Consultation. Further comment on in-service management will have to await the provision of greater detail of what is proposed.

5. NEXT STEPS

(a) Consultation Period

- 5.1 The Circular envisages that the feedback to the Consultation will be incorporated into a comprehensive version of the Agreement which CLG aim to produce by the end of March, 2010, giving nine months for clarification and sign off by all relevant parties. This is the original timescale envisaged when the Circular was to be issued at the end of October and has not been changed in the final version. There must be considerable doubt whether this timetable is achievable, particularly if proper regard is to be had to the responses to this Consultation.
- 5.2 A long period for discussion with relevant parties is necessary. Whether nine months will suffice cannot be answered at this stage. As recommended earlier in this paper, all documents in the suite of Agreements previously referred to are developed in parallel. Finalising the CLG Agreement in isolation is not acceptable.

(b) Agreement Sign Off

- 5.3 Ideally all parties should sign the various Agreements by a date well before first cutover so as to give comfort to all parties that all the various arrangements underpinning the service provision are in place. Those Agreements would not immediately come into force at that point. There are, however, two major obstacles to be overcome first. To meet the current timescale and the requirements of the National Framework, contract signature is envisaged by December 2010. User Acceptance Testing of the System will not have occurred by then and, if the Board adopts the principles set out in 2.11 above, FRAs will not be prepared to sign Agreements at that stage, even if their other objections to this Project have then been overcome.

5.4 The other main obstacle is the reluctance of all FRAs in the region to commit to the Project. If at least one FRA is not prepared to sign-up, either as a matter of principle or as a result of concerns about the detailed terms of any commitment, then, unless CLG is prepared to meet the financial commitments of the non participating FRA(s) others too will be unable to commit because the whole of the region's funding obligations will not have been secured – see the principles set out in 2.11 above.

(c) Agreement comes into force

5.5 Paragraph 6.4 of the Circular outlines two options as to when the CLG Agreement might come into force. It is not clear, from the information provided in the Circular, whether either of the options is entirely satisfactory. As the statutory duty to provide the call answering and mobilising service will remain with the FRAs, the FRAs will require to be assured that, from the moment of cutover, sufficient contractual rights exist to secure the provision of all the services required to provide an effective Fire Control Service, even if, during the early transition phases, full service performance standards are not always met, or default remedies applied.

(d) Transition to the RCC Network

5.6 As alluded to above, some flexibility will be required in the various contractual relationships which will exist to underpin the delivery of the Fire Control service during transition to the RCC network. Whether this takes the form of a temporary Memorandum of Understanding or a phased introduction of the Agreement provisions is a matter for further discussion once the terms for steady state operation are finalised. In order to protect the interests of FRAs, Members may feel that the terms of the Agreements which will apply during steady state operation should be relaxed, during transition, but only to the extent that is reasonably necessary to deliver workable solutions to problems affecting delivery of service which arise during transition, or to reduce costs arising from the transition which would otherwise fall on FRAs. The parties might also be expected to take reasonable steps to avoid problems arising, so far as they are reasonably foreseeable.

6. CONSULTATION QUESTIONS

6.1 CLG is seeking views on any of the content of the Circular. Feedback is particularly requested on the five questions set out in Section 7 of the Circular. These questions and a suggested response from the Board are set out in Appendix A attached.

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Dear Lucy

FIRE AND RESCUE SERVICE CIRCULAR 73/2009 – FiReCONTROL: AGREEMENT
BETWEEN LACCs/LFEPA AND COMMUNITIES AND LOCAL GOVERNMENT

Thank you for the opportunity to comment on this issue. This matter was considered at some length by the South West Regional Management Board at its meeting yesterday when the attached response was approved.

I look forward to receiving your response to this in due course.

Yours sincerely

BERNARD HUGHES OBE
Chairman, South West Regional Management Board

Q1 **Do you agree with the range of agreements being developed, and are you clear on why these are being put in place?**

Yes, subject to the addition of a National Mutual Aid Agreement/Protocol covering the mobilising of assets by the RCC within and outside FRA boundaries and a Put Option allowing the LACCs to require CLG to take an assignment of the lease of the RCC if it is no longer required for that use, and, at that time, an assumption by CLG of responsibility for the FM contract. However, the Circular provides little detail of the precise terms proposed for the Agreement and we therefore reserve our position until those terms are available for consideration.

Q2 **Do you agree with the two outcomes set out in this Circular, and the particular approaches set out under each outcome?**

Outcome One: Providing an effective service to the public

'Home' Regional Control Centre performance standard

Yes, agreed.

Direct access to the national service contracts

We accept that allowing LACCs/FRAs direct access to the suppliers is the best way forward, making enforcement of supplier obligations more straightforward and simplifying the contractual relationships between FRAs and their LACC and between LACCs and CLG. We also accept that the role of CLG in acting as a "clearing house" in pursuing claims against suppliers for poor service delivery is probably a necessity given that the current Agreements with suppliers anticipate them having to deal with a single client only.

There is, however, one matter on which the Circular is silent and, in relation to which we wish to clearly state our views. As we understand the position, apart from the FM contract, where the supplier will bill the LACC direct for the regional charge, the intention is that the other national suppliers will invoice CLG, which will, in turn, recharge the regions based on some cost apportionment model. In our view, in relation to the Airwave contract, the recharge must be made at FRA level and invoices should not be sent to the LACC, leaving the Company to further apportion costs and recover them from FRAs. There is no justification for such an approach and the LACC in the SW have already stated that they would not be prepared to carry out this function. Additionally, we are not yet convinced that cost apportionment based on the number of radios supplied is necessarily fair, and we wish to see further work undertaken to validate this as an equitable basis for apportionment.

Limits on Liability of partners

We wish to understand better the range of circumstances in which a claim for financial loss – as opposed to loss of reputation – could arise, and the potential extent of that loss before we agree to this proposal.

Outcome Two: Delivering a resilient and supportive network

Network-wide Performance Standard

Yes, but we cannot see how this can be enforced otherwise than by enforcement of the "home" RCC performance standard, as it will be impossible to determine where the "fault" has arisen.

Financial framework for the management of network calls

The framework proposed is acceptable in principle, and is considered to be an essential safeguard to prevent an RCC failing to answer enough of its own calls. The proposal for the application of service credits is also considered to be a pragmatic approach and acceptable in principle.

Change control by majority

We consider that there may be some changes which are of such importance that they require unanimity rather than a majority decision. An exercise to itemise potential decisions is required, following which a list of those requiring unanimity needs to be agreed by stakeholders and provided for in the Agreement. In many cases, change control will need to have regard to the wishes of FRAs and the relevant procedure must allow sufficient time to consult with FRAs.

Cross-referencing of documents

This is a sensible proposal, but an agreement will be needed as to the documents which are to be cross-referenced. It is important to ensure that together they give the correct level of detail as to the service which FRAs can expect to be provided. The cross-referencing of documents is not to be implied as making it acceptable for future change in those documents to be approved informally and without proper regard to the wishes of FRAs. Some cross-referenced documents may need to be subject to a formal change control process involving FRAs.

Q3 **Are you content with the proposed approach to signature?**

No, FRAs in the South West are unlikely to “sign up” until after User Acceptance Tests have been passed to their reasonable satisfaction. In addition no FRA will be prepared to sign up until binding commitments have been received for the financing of the balance of the regional costs throughout the lifetime of the Fire Control Service.

Q4 **What are your views about when the provisions of the agreement should come into force?**

It is not clear, from the information provided, whether either of the two options given is entirely satisfactory. As the statutory duty to provide the call answering and mobilising service will remain with the FRAs after cutover to the RCC, FRAs will require to be assured that, from the moment of cutover, sufficient contractual rights exist, under each of the Agreements in the suite, to secure the provision of an effective Fire Control service and the various Agreements should come into force, on a phased basis if appropriate, at such time as is necessary to achieve this objective.

Q5 **Do you agree with the proposed approach during the transition to the RCC network?**

Some flexibility will be required in the various contractual relationships during transition to the RCC network. As an example, we accept that on some occasions, the “home” RCC performance standard may not be met. However, because of the duties on FRAs mentioned in the response to question 4 above, we consider that the terms of the Agreements which will apply in steady state operation should only be relaxed to the extent that this is absolutely necessary to deliver workable solutions to problems affecting service delivery during transition, or to reduce costs arising from transition which would otherwise fall on FRAs. We would, however, expect service providers to take the steps necessary to avoid problems arising, so far as they are reasonably foreseeable. We have no firm view as to the means by which this flexibility is achieved.

Other points we would wish to make in response to this consultation are as follows:

1. The response is made to the contents of the Circular only and is without prejudice to consideration by FRAs, in due course, of the detailed wording of this and the other documents in the suite of Agreements proposed. All documents in the suite must be developed in parallel to provide stakeholders with a complete picture; finalising this Agreement in isolation is not acceptable.
2. In drawing up the various Agreements, FRAs will expect the following principles to be followed:
 - a) No FRA will bear any additional cost as a consequence of transfer to the Fire Control system during the life of the project.
 - b) FRAs must, as closely as circumstances permit, be placed in no a worse position than would have existed had they provided the service themselves and entered directly into agreements with third party suppliers.
 - c) No South West FRA will be committed to contributing to the costs of funding the RCC or any other part of the Fire Control system until binding commitments have been received, either from all other SW FRAs, or from CLG (if not all other SW FRAs agree to participate) for the financing of the balance of the regional costs throughout the lifetime of the Fire Control Service
 - d) No FRA will be expected to sign any of the suite of Agreements until the system has passed its User Acceptance Tests to its reasonable satisfaction.
 - e) Cutover to the RCC should not occur until both the FRA and the LACC are satisfied that each is fully prepared to operate the new service.
 - f) FRAs will not (directly or indirectly) suffer a financial detriment as a result of any delay in cutting over to the RCC.
 - g) FRAs (and LACCs) will not, in any contractual arrangements, accept any obligation (to CLG or otherwise), which is not actually and necessarily required for the effective operation of the Fire Control service.
 - h) FRAs will have no continuing obligation for the provision, financing, use or operation of the RCC building beyond the period for which it is required for the operation of the Fire Control service in the South West, unless the FRAs determine otherwise.
 - i) The terms of any Agreements will be without prejudice to FRAs’ rights to claim central government funding now and in the future, including New Burdens funding.
 - j) FRAs (through their Chief Fire Officers) will be able to continue to exercise effective control over the use of their resources on terms acceptable to them.

- k) Throughout the lifetime of the Fire Control service, the functioning of the system will allow FRAs to fully implement their IRMP policies.
3. The Circular gives little detail of the proposals for in-service management, which are intended to be covered in this Agreement. The position of the South West Regional Management Board (and individual FRAs in the South West) in relation to the provision of these services remains as set out in the Board's response to the CLG consultation on the matter forwarded to Anna Wadsworth at CLG under cover of its letter dated 30 September 2009. CLG is asked to make reference to those responses.