

DEVON & SOMERSET FIRE & RESCUE AUTHORITY



REPORT REFERENCE NO.	DSFRA/11/18
MEETING	DEVON & SOMERSET FIRE & RESCUE AUTHORITY
DATE OF MEETING	29 JULY 2011
SUBJECT OF REPORT	COMMERCIAL SERVICES GOVERNANCE AND MANAGEMENT
LEAD OFFICER	Chief Fire Officer
RECOMMENDATIONS	<p>(a) <i>That the contents of this report be considered and the Authority be invited to:</i></p> <p>(i) <i>establish a Commercial Services Committee and determine the number of Members to sit on this Committee;</i></p> <p>(ii) <i>confirm (subject to any amendments as may be proposed at the meeting) the draft Terms of Reference for the Committee;</i></p> <p>(iii) <i>notes at this stage that amendments may be required to the Terms of Reference in light of the work to be completed in relation to the Business Plan, the agreement between the Authority and the Company and revisions to the Articles of the Company;</i></p> <p>(iv) <i>appoint Members to serve on the Committee until the Annual Meeting of the Authority in 2012, when re-appointments may be made in line with normal arrangements for other Authority Committees;</i></p> <p>(v) <i>determine whether, and if so what, arrangements should be made for payment of a Special Responsibility Allowance for Members sitting on this Committee;</i></p> <p>(vi) <i>approve that any additional budgetary requirement for Members Allowances in 2011/12 be met from the income generated from commercial trading and not from the taxpayer;</i></p>

	<p>(vii) authorise the Clerk, in accordance with the relevant Regulations, to advertise in local newspapers any revision to the approved Scheme of Members Allowances necessitated by the decision at (iv) above;</p> <p>(b) that further reports on:</p> <p>(i) the business case for trading in the current (2011/12) financial year;</p> <p>(ii) the contract to exist between the Authority and Red One; and</p> <p>(iii) revised Articles of Association for Red One be submitted to a future meeting of the Authority;</p> <p>(c) that it be noted that, for the 2011/12 financial year, staffing costs associated with the operation of Red One Ltd and other operating costs will initially be met from the approved budgets for Service staffing and the ring-fenced budget for change and improvement initiatives but with the objective that these costs be recovered in due course from trading activities.</p>
EXECUTIVE SUMMARY	<p>Members have received a previous report and briefings on a number of occasions on the exploration by the Service of becoming engaged in commercial trading activities.</p> <p>This report builds upon previous information and sets out proposals for progressing this initiative.</p>
RESOURCE IMPLICATIONS	<p>In accordance with the requirements of the relevant regulations, all costs associated with the operation of Red One Ltd. will be recovered as part of its trading activities. As staff involved are already Service employees, staffing costs will at start-up be met from the existing revenue budget for such costs. It is proposed that other costs associated with start-up operating capital will be met from the ring-fenced budget approved for change and improvement initiatives. The objective, however, is that all costs associated with the Company should be fully met from its trading activities in any financial year.</p>
EQUALITY IMPACT ASSESSMENT	<p>An initial assessment has not revealed any issues so significant as to warrant a full Equality Impact Assessment.</p>
APPENDICES	<p>A. Draft Terms of Reference – Commercial Services Committee</p> <p>B. Pictorial Representation of new Authority Committee Structure</p>
LIST OF BACKGROUND PAPERS	<p>The Local Government (Best Value Authorities)(Power to Trade)(England) Order 2009</p> <p>The Local Authorities (Members' Allowances)(England) Regulations 2003</p> <p>The Local Government Acts 1972 and 2003</p> <p>The Local Government and Housing Act 1989</p>

1. GENERAL BACKGROUND

- 1.1 The *Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009* bestowed powers on the Authority to undertake, for a commercial purpose anything which it is authorised to do in relation to its ordinary functions i.e., to trade, and make a profit from, such activities. The Local Government Act 2003 requires this power must be exercised through a separate company of a type as defined by Part 5 of the Local Government and Housing Act 1989 (companies in which local authorities have interests). The Regulations also require the Authority to recover the costs of any accommodation, goods, services, staff or any other thing supplied to such a company.
- 1.2 This ability under the Regulations coupled with the impact on the Service of reductions in government grant announced as part of the most recent Comprehensive Spending Review prompted the Devon & Somerset Fire & Rescue Service (DSFRS) to instigate a project exploring the scope for commercial activity, the rationale being to seek to generate income to off-set grant reductions and thereby safeguard front-line service delivery.
- 1.3 At its meeting on 16 September 2010, the Authority received an interim report (DSFRA/10/22) on the progress of this project. The Authority approved an outline plan as set out in that report as the method for implementing, developing and maximising charging and trading opportunities for the Authority (Minute DSFRA/32 refers). Associated with this, the Chief Fire Officer – in accordance with paragraph 2.2 of the Authority's existing approved Scheme of Delegations (to exercise the powers of the Authority under the Local Government Act 2003 and any Regulations/Orders made thereunder (powers to trade)) – has registered a company limited by shares (Red One Ltd) to serve as the delivery mechanism for the Authority's commercial trading activities. Red One Ltd has been established with generic Articles of Association and to date has been dormant.
- 1.4 It is now considered timely and appropriate, given the level of services now being traded, that these activities are now undertaken through Red One Ltd. Linked with this, therefore, it is necessary to consider in greater detail both the mechanism for governance and oversight of Red One Ltd activities by the Authority and modifications that may be required to the generic Articles of Association. The latter will form the subject of a more detailed report to a future meeting of the Authority but this report now addresses the issue of the relationship between the Authority and the company.

2. OPERATING AND GOVERNANCE ARRANGEMENTS

(a) Red One – Shareholding and Operation

- 2.1 It is proposed that the day-to-day trading activities of Red One should be overseen by and be the responsibility of the Chief Fire Officer and other designated officers in much the same way as day-to-day Service activities are undertaken. This will be achieved through such officers being appointed as the directors of Red One and so responsible for the management of the company and its activities.
- 2.2 The Authority will be able to exercise control over Red One through two routes – (1) through being the sole shareholder and (2) through a contract to be established between the Authority and the company.
- 2.3 As the sole shareholder of Red One, the Authority will have the power under the company Articles to appoint and remove directors and to require the directors to take specified actions.

- 2.4 A contract will be drafted between the Authority and Red One under which the Authority will approve a business plan and budget for the subsequent year setting out what activities the company is authorised to undertake and what decisions or actions the company will need to revert to the Authority and gain specific consent for. The contract will also set out what resources the Authority will provide to the company for it to trade (including staff, licence of premises, licence of brand and equipment). The Authority will need to charge for the cost of providing such resources and, before providing the resources, will need to have approved a business case setting out the objectives of the business, the investment required by the Authority to achieve the objectives, any expected risks and the expected financial results of the business together with any other relevant outcomes.
- 2.5 Additionally, a report setting out the business case in relation to trading in the current financial year will also be submitted to a future meeting; and, for trading in subsequent financial years, to the budget meeting of the Authority prior to the commencement of the financial year in question.

(b) Commercial Services Committee

(i) Establishment – General Considerations

- 2.6 As outlined above, it is intended that the Authority will have an on-going role in relation to the trading activities through the management of the contract with Red One, in particular approving the activities to be undertaken by Red One and the Authority's resources that will be required (together with the business case for investing such resources).
- 2.7 For the company to be as effective and successful as possible it will need to be able to respond to issues and new opportunities as soon as they arise. This will mean that, whilst the Authority may approve certain broad activities and budgets on an annual basis, there is likely to be a need for approvals throughout each year. It is suggested that exercise of the Authority functions by the full Authority will not facilitate the type of flexibility needed because of the number of Members concerned and the restrictions imposed by its current meeting cycle. Consequently, it is proposed that a Commercial Services Committee be established for this purpose.
- 2.8 While the overall size of the Committee is for Members to determine, it is proposed that – to maximise its effectiveness and flexibility – the Committee be restricted to a maximum of seven. Draft Terms of Reference for this Committee are set out at Appendix A to this report, with Appendix B providing a pictorial representation of the revised Committee structure. The draft Terms of Reference are, at present, considered fit for purpose although, should the Authority be minded to approve them, it is also asked to note that amendments may be required pending the outcome of further work on the agreement between the Authority and Red One, the revised Articles in relation to the responsibilities of the Directors and the Business Case for trading.
- 2.9 As with the overall size, it will be for the Authority to determine actual appointments to this Committee from amongst its membership, in accordance with existing Standing Orders as derived from the Local Government Act 1972. In making this decision, however, the Authority may wish to ensure that those Members so appointed are best placed, in terms of outside skills and experience, to deliver success for the Company and thereby Authority.

2.10 Given the requirement for flexible, speedy working arrangements it is proposed that this Committee should meet, as a minimum, once per month, with additional ad-hoc meetings being called as and when required. This is recognised as being a significant commitment by Members but is considered to be necessary in the early stages of the company's growth.

2.11 It should be noted, however, that, as a formal Committee established with delegated powers, the Access to Information provisions of the Local Government Act 1972 will apply, although – in accordance with these provisions – the facility exists to exclude press and public in certain circumstances and it is likely that, given the nature of the business to be transacted by the Commercial Services Committee, the a significant part of its meetings may well be held in closed session i.e. with the press and public excluded.

(ii) Considerations as to Special Responsibility Allowance

2.12 In accordance with the Local Authorities (Members Allowances)(England) Regulations 2003, the Authority is required to pay all Members a basic allowance, reflecting their standard commitment to the Authority, and may also pay special responsibility allowances (SRAs) in certain circumstances as defined in the Regulations. Guidance issued by the [then] Office of the Deputy Prime Minister provides that:

“One way of calculating the special responsibility allowances may be to take the agreed level of basic allowance and recommend a multiple of this allowance as a special responsibility allowance”

2.13 The current, approved Authority Scheme provides for the payment of a basic allowance of £2,000 and the following SRAs, in addition to the basic allowance:

- Chairman of the Authority - 5 x basic (£10,000);
- Vice-Chairman of the Authority - 3 x basic (£6,000);
- Committee Chairmen - 2 x basic (£4,000);
- Authority appointed Director on South West Fire Control Ltd. - 1 x basic (£2,000)

The Scheme also limits the number of SRAs payable to one (the highest available), irrespective to how many an individual Member might otherwise be eligible to claim by virtue of appointments etc.

2.14 The Regulations provide that one of the circumstances in which an SRA could be payable is for acting as a Member of a Committee of the Authority which meets with exceptional frequency or for exceptionally long periods.

2.15 Given this and the intention (as set out in paragraph 2.10 above) for the Commercial Services Committee to meet at least once per month, with additional meetings being held as and when required, the Authority may wish to consider the introduction of a further SRA payable to Members appointed to this Committee. To recognise the scale of the commitment required by Members serving on the Commercial Services Committee, a multiple of 1.5 of the basic allowance (equating to £3,000 per committee member) might be considered. This, however - as with the other issues - is entirely a matter for Members to determine.

- 2.16 The Authority is also invited to consider whether it would wish to modify its current approved Allowances Scheme to allow – as an exception – for individual Members of this Committee to receive more than one SRA. If so, the Authority is asked to determine the precise parameters for this e.g. should it be only the SRA linked to Committee Membership or all or some of the other, potential, SRAs that an individual might otherwise be entitled to by virtue of appointments (e.g. Committee Chair etc.).
- 2.17 If Members are minded to introduce a new SRA, then any additional budgetary implications for the current financial year will be met from income generated by the company and not at the expense of the taxpayer of Devon & Somerset. For future years, this additional cost will be reflected in the overall annual operating costs for the Company to be approved by the Authority at its annual budget meetings.

3. CONCLUSION

- 3.1 Entering into the field of commercial trading activities is a new and exciting venture for the Authority and one which may become increasingly important in future years if the Authority is to be successful in its aspiration of excellence – both internally and in terms of the services provided to our communities – against a backdrop of potentially decreasing central funding. We are leading the field in creating innovative approaches on a number of fronts and the establishment of the company allows us to generate additional income and in doing so, protect front line services.
- 3.2 Equally, it is essential that from the outset the operating and governance arrangements for commercial trading activities are clear and transparent and that the correct balance is drawn between Authority control and oversight of the activity and the ability to respond quickly to developing markets. This paper sets out what is considered to be an appropriate mechanism for securing this and the Authority is invited, therefore, to consider its contents with a view to approving the recommendations as set out.

LEE HOWELL
Chief Fire Officer

COMMERCIAL SERVICES COMMITTEE

Suggested total Membership – (max of 7)

Advisory Only

1. To consider and recommend to the Authority the Annual Business Plan and associated annual operating budget for Red One for each financial year;
2. To recommend to the Authority any revisions to the approved Annual Business Plan and/or annual operating budget as may arise during the course of operations during the financial year in question;
3. To make recommendations to the Authority on the utilisation of any year-end profit generated by commercial activities.

Matters with Delegated Power to Act

4. To consider and approve any trading activities of Red One within overall parameters to be set out in the approved Annual Business Plan and associated annual operating budget;
5. To monitor the financial status and performance of Red One in terms of expenditure on operating costs, costs recovered and profit generated and to take corrective action and report to the Authority on these issues as necessary.

