

REPORT REFERENCE NO.	DSFRA/15/17
MEETING	DEVON & SOMERSET FIRE & RESCUE AUTHORITY
DATE OF MEETING	29 JULY 2015
SUBJECT OF REPORT	COMMERCIAL ACTIVITIES – GOVERNANCE OPTIONS
LEAD OFFICER	JOINT REPORT OF THE CHIEF FIRE OFFICER AND CLERK TO THE AUTHORITY
RECOMMENDATIONS	<p>(a) <i>that the Authority considers the content of this report on potential commercial services governance options and in particular the model preferred by the Members of the Commercial Services Committee and Authority and Committee Chairs, as identified at paragraph 7. 2 of this report;</i></p> <p>(b) <i>that, should the Authority be minded to adopt this preferred governance model, the following be approved to give effect to it:</i></p> <ol style="list-style-type: none"> <li>1. <i>that, as the single shareholder in Red One Ltd and in accordance with Article 19 of the Articles of Association of the company, the Authority resolves in principle to appoint an independent non-executive director to the Board of Red One Ltd and indicates (in accordance with Article 20) the level of remuneration it would wish applied to the post of independent non-executive director;</i></li> <li>2. <i>the Chief Fire Officer and Director of People and Commercial Services, in consultation with the Authority Chair, be delegated authority to determine an appropriate job description and advertise for the appointment of an independent non-executive director on the Board of Red One Ltd.;</i></li> <li>3. <i>that a small group of Members be appointed to undertake interviews for the role of Independent non-executive director on the Board of Red One Ltd. and make a recommendation for appointment to a future meeting of the Authority;</i></li> <li>4. <i>that, in accordance with the provisions of Article 4(1) of the Articles of Association of Red One Ltd., the Authority resolves to direct the existing Board of Red One Ltd. that the independent non-executive director so appointed shall serve as Chair of the Board of Red One Ltd.;</i></li> <li>5. <i>that, similarly and also in accordance with the provisions of Article 4(1) of the Articles of Association of Red One Ltd., the Authority resolves to direct the Board that the Managing Director of Red One Ltd. shall be, ex officio, the Director of People and Commercial Services;</i></li> </ol>

	<p><b>6. that the Clerk to the Authority be authorised to notify, in due course, the Board of Directors of Red One Ltd. of the following:</b></p> <ul style="list-style-type: none"> <li><b>a. the appointment of the independent non-executive director (once made) (NOTE: Article 19 of the Articles of Association of Red One Ltd. requires this notification to be in writing); and</b></li> <li><b>b. that the Authority has resolved, in accordance with Article 4(1) of the Articles of Association of Red One Ltd., that:</b> <ul style="list-style-type: none"> <li><b>i. the independent non-executive director shall serve as Chairman of the Board;</b></li> <li><b>ii. that the Managing Director of Red One Ltd. shall be, ex officio, the Director of People and Commercial Services;</b></li> </ul> </li> </ul> <p><b>7. that a report be submitted to a future meeting of the Authority (prior to the Annual Meeting in 2016 and to be informed by the views of the independent non-executive director, once appointed) further clarifying the revised governance arrangements (e.g. final number of non-executive directors; remuneration and appointment process; exercise of “residual” Commercial Services Committee functions by the Resources Committee) to operate for commercial services activities in future.</b></p> <p><b>8. that, pending the new governance arrangements being effected, the Commercial Services Committee be retained both to provide oversight of commercial activities and to assist as required in the transition and that, in respect of the latter, the Terms of Reference for the Committee be amended to include the following:</b></p> <p><b>“To assist as required in establishing governance arrangements to operate for commercial activities, including the composition of the Board Directors of Red One Ltd.”</b></p>
<b>EXECUTIVE SUMMARY</b>	<p>This report identifies the current position in relation to commercial trading and governance of this by the Authority, the background to the issue, relevant legislative and other considerations.</p> <p>It identifies alternative governance arrangements that could operate moving forwards, including a model for which the Members of the Commercial Services Committee and the Authority and Committee Chairs have expressed a preference and which forms the basis of the recommendations as set out in this report.</p>
<b>RESOURCE IMPLICATIONS</b>	<p>Dependent upon which option is preferred. Expenses relating to remuneration of non-executive directors on the Board of Red One Ltd. would, however, fall directly on the company and not on the Authority.</p>

<b>EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)</b>	The contents of this report are considered compatible with existing human rights and equalities legislation.
<b>APPENDICES</b>	<ul style="list-style-type: none"> <li>A. Extract from the Articles of Association for Red One Ltd.</li> <li>B. Commercial Services Committee Terms of Reference.</li> <li>C. Extract from the Members Code of Conduct – The Nolan Principles of Public Life.</li> <li>D. List of legislation relevant to local authority commercial activities</li> </ul>
<b>LIST OF BACKGROUND PAPERS</b>	<p>The Articles of Association of Red One Ltd.</p> <p>The Devon &amp; Somerset Fire &amp; Rescue Authority Code of Members' Conduct</p> <p>The Cadbury Report</p> <p>The Higgs Report</p> <p>The UK Corporate Governance Code</p> <p>The Chartered Institute of Personnel and Development guidance on the role of the non-executive director.</p>

## 1. BACKGROUND AND INTRODUCTION

1.1 In 2010 the Authority embarked on an initiative to use powers under the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (the Order) to raise additional funds to seek to safeguard frontline services in light of the announcement by the government to cut public sector spending by up to 25%. This Authority is classified as a “best value” authority by virtue of the Local Government Act 1999.

1.2 The Order imposes the following conditions on the power to trade:

- the local authority must prepare and approve a business case on the proposed exercise of the power; and
- the authority **MUST** recover the costs of any accommodation, goods, services, staff or other thing supplied to a company to facilitate exercising the power to trade.

1.3 Sections 95 and 96 of the Local Government Act 2003 (under which the Order was made) specified that the power to trade must be exercised through a separate company. This has subsequently been confirmed in the Fire & Rescue Services Act 2004, as amended by the Localism Act 2011.

1.4 To comply with this, a separate company limited by shares – Red One Limited – with generic Articles of Association has been established by the Authority. Although wholly owned by the Authority, Red One Ltd. is a legal entity and body corporate in its own right. The Authority is the sole share-holder and the Articles confer on the Authority:

- a power (under Article 19) to appoint or remove directors (**NOTE:** Directors of Red One are currently all serving officers of the Devon & Somerset Fire & Rescue Service (the Service). Historically, any vacancies on the Board of Red One Ltd. are filled by the remaining directors in accordance with Article 17); and
- a reserve power, under Article 4, to direct Board Directors to take or refrain from taking any specified action.

Attached at Appendix A is an extract from the Articles of Association for Red One Ltd. dealing with appointment of Directors and Chairing

1.5 At its meeting on 29 July 2011, the Authority considered report DSFRA/11/18 (Commercial Services Governance and Management). This report noted, amongst other things, that:

“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....”

1.6 In light of this report, the Authority resolved to establish a Commercial Services Committee, comprising seven Members, as another vehicle to provide governance and oversight of commercial activities being undertaken via Red One Ltd. The Authority also resolved that, to recognise the additional time commitment associated with this Committee, those appointed to it should each receive a Special Responsibility Allowance (currently 1.5 x the basic allowance amounting to £3, 871 per annum), subject to the costs of this allowance to be funded from profits realised from commercial activities (Minute DSFRA/21 refers). The Terms of Reference for this Committee have evolved over time – the current version is attached at Appendix A to this report.

1.7 In addition to the Commercial Services Committee and powers available to the Authority by virtue of being sole share-holder in Red One Ltd. (see paragraph 1.4 above), commercial activities are also subject to a formal Trading Contract (“the Trading Contract”) between the Authority and Red One Ltd. (governing, amongst other things, the terms under which Authority resources may be used by Red One Ltd. to facilitate trading). The Trading Contract was approved initially by the Authority at its meeting on 17 February 2012 (Minute DSFRA/74(b) refers) and subsequently, following revision and in accordance with the terms of the Agreement, by the Authority at its meeting on 20 February 2015 (Minute DSFRA/52 refers).

1.8 Commercial activities undertaken by Red One Ltd. on behalf of the Authority have now reached a sufficient level of maturity that it would seem appropriate to revisit the existing governance arrangements. The remainder of this report addresses relevant legislative and other considerations (conflict of interest) in exploring other governance options.

## 2. **RELEVANT LEGISLATIVE AND OTHER CONSIDERATIONS**

### ***Local Government Act 1972 – Section 116***

2.1 As applied to this Authority by virtue of the Combination Scheme Order, this section prohibits a Member, while in office and for a period of twelve months after leaving office, from being a paid employee of the Devon & Somerset Fire and Rescue Authority and, by extension, of Red One Ltd. (being a company wholly owned by the Authority).

### ***The Local Authorities (Members’ Allowances) (England) Regulations 2003***

2.2 Govern the payment of allowances to Members and provide that every Authority Member must receive a Basic Allowance. The Regulations also allow for the payment of Special Responsibility Allowances in specific, defined circumstances (e.g. for holding office of Chairman) and includes “...acting as a member of a committee or sub-committee of the authority which meets with exceptional frequency or for exceptionally long periods”.

### ***The Local Authorities (Companies) Order 1995***

2.3 Amongst other things, restricts the remuneration a councillor (Member) may receive by virtue of being appointed as a director to a local authority controlled company to “...the greatest amount which would for the time being be payable by the relevant authority in respect of a comparable duty performed on behalf of the Authority, less any amount payable by that authority in respect of the relevant duty to the...director in question” (i.e. a Special Responsibility Allowance). Similarly, this Order restricts reimbursement of travel and subsistence associated with performing the director role to that which would otherwise be payable by the relevant authority for approved duties as a Member of the authority.

### ***Localism Act 2011 – Members’ Code of Conduct***

2.4 As required, this Authority has adopted Code of Conduct compliant with the requirements of the Act and relevant Regulations made under it. The Code applies to all Authority Members (when acting in that capacity), enshrines the Nolan Principles of Public Life (reproduced at Appendix B) and lists those disclosable pecuniary interests which must be declared by virtue of the relevant Regulations. Members with such disclosable pecuniary interests in any business of the Authority must, if the business is to be discussed at an Authority meeting:

- (a). disclose to that meeting the existence and nature of that interest;
- (b). disclose any interest in accordance with the Authority’s reasonable requirements, no later than the commencement of the consideration of the business in which the interest exists, or (if later) the time at which the interest becomes apparent;

- (c). withdraw from the meeting at the commencement of the consideration of that business in which the interest exists, or (if later) the time at which the interest becomes apparent; and
- (d). not seek to influence improperly any decision about that business.

2.5 One such disclosable pecuniary interest, as defined in the relevant Regulations, is holding “any employment, **office**, trade, profession or vocation carried on for profit **or gain** by you or a relevant person”.

### ***Conflicts of Interest***

2.6 In addition to the Nolan Principles of Public Life (enshrined in the Members’ Code of Conduct) which, amongst other things, establish a fairly broad duty to avoid conflicts of interest, Section 175 of the Companies Act 2006 places a duty on a company director to avoid conflicts of interest:

- “(1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.
- (2) This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).

## **3. GOVERNANCE OPTIONS**

3.1 As indicated in Section 1 of this report, Authority commercial activities via Red One Ltd. are currently governed by the following three mechanisms:

- (1). the powers as contained the Articles of Association for Red One Ltd. (see para. 1.4);
- (2). the formal Trading Contract between the Authority and Red One Ltd. (see para. 1.7); and
- (3). the Commercial Services Committee (in essence, the Authority’s overview and scrutiny arrangements).

3.2 This report proposes no changes in relation to (1) and (2) above, but suggests and explores the following three options in relation to the Authority’s overview and scrutiny arrangements. Options 3 and 4 as set out below also contain a number of variations.

## **4. OPTION ONE – STATUS QUO**

4.1 The Commercial Services Committee, comprising seven Members, would be retained. It would continue to meet monthly (alternating every other month between formal and informal, workshop-type meetings), with a Special Responsibility Allowance (SRA) attracting to Committee membership.

## **5. OPTION TWO – ALTER THE SIZE/FREQUENCY OF THE COMMERCIAL SERVICES COMMITTEE**

5.1 This option has a number of variations as explored in paragraphs 5.2 to 5.11 inclusive below.

**(a) Same-size Commercial Services Committee but meeting less frequently**

- 5.2 The Terms of Reference for the Committee provide, amongst other things, for it to:
- approve an overarching business case;
  - approve an Annual Commercial Services Business Plan;
  - consider and approve any business case required to facilitate commercial trading in accordance with current legislation;
  - monitor the financial status and performance of Red One Ltd 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; and
  - make recommendations to the Authority on the use of any year-end trading surplus generated by commercial activities.
- 5.3 The Trading Contract provides for the Chief Fire Officer (or any officer so delegated by him) to enter into actual contracts to deliver commercial activities (subject to these being within the remit of a business case already approved by the Committee), albeit the Chief Fire Officer may refer any contract for Committee approval should this be felt appropriate.
- 5.4 Historically there has not been a monthly need to approve new business cases and should a priority need arise to do so, this could be resolved by calling an urgent Committee meeting. Other aspects of the work of the Committee, as indicated above, are annual with the exception of the performance monitoring. It may be felt, however, that experience of commercial activities has now matured sufficiently for such monitoring to be undertaken on a quarterly basis, in much the same way as the Resources Committee receives quarterly monitoring reports on financial performance against the approved revenue and capital budgets.
- 5.5 Should the number of meetings per year be reduced, consideration should be given as to whether any Special Responsibility Allowance would be attached to membership of the Committee. Such consideration would need to take account of the criteria by which Special Responsibility Allowances are permissible under the existing Regulations.

**(b) Smaller Commercial Services Committee**

- 5.6 Assuming a reduced-size Committee continued to operate in the same manner as existing (i.e. alternating between a formal, monthly meeting and informal, workshop meeting), this option would, by virtue of reduced membership, reduce the number of SRAs payable.

**(c) Smaller Commercial Services Committee meeting less frequently**

- 5.7 The main issues here are as per (a) above – see paragraphs 6.2 to 6.5 inclusive. The Authority might also wish to consider whether a smaller committee would be sufficiently representative in light of the subject matter concerned.

**(d) Dissolve the Committee and report commercial matters either to the full Authority or other established Committee (e.g. Resources)**

- 5.8 This would facilitate the requirement for transparency for the whole Authority on commercial services matters and reduce SRA costs, but it has the potential to reduce the level of Member focus on commercial activities.

5.9 If the preference was to report commercial matters to another Committee, then it would be necessary to amend the Terms of Reference of the Committee to reflect responsibilities previously exercised by the Commercial Services Committee (e.g. six-monthly financial monitoring reports; approval of business plans to commence commercial trading in new areas).

***(e) Dissolve the Committee and establish ad-hoc working party, meeting as and when required and reporting to either full Authority or designated Committee Committee (e.g. Resources)***

5.10 This would be, in effect, the same mechanism as is in place for the Capital Programme Working Party. This option would provide for a “fleetness of foot” approach in addressing emerging issues.

5.11 Were this option to be adopted, the same considerations regarding SRAs as identified at Option (a) would also need to be taken account of (see paragraph 6.5 above).

## **6. OPTION THREE – APPOINTMENT OF NON-EXECUTIVE DIRECTORS**

6.1 As with the previous option, there are a number of variations with this option. These are explored below in paragraphs 6.11 to 6.18 inclusive.

6.2 In May 1991 the Financial Reporting Council, the London Stock Exchange and the accountancy profession established a Committee under the Chairmanship of Sir Adrian Cadbury to investigate the British Corporate Governance system and suggest improvements to restore investor confidence in the system in light of a number of high-profile governance failures.

6.3 The final report of the Committee, published in 1992 and known as the Cadbury Report, resulted in establishment of a Corporate Governance Code which continues to be administered by the Financial Reporting Council and which forms part of a framework of legislation, regulation and best practice standards which aims to deliver high quality corporate governance with in-built flexibility for companies to adapt their practices to take into account their particular circumstances.

6.4 The Cadbury Report highlighted the importance of non-executive directors on company boards to ensure probity and effective governance. In 2002, the Department for Trade and Industry commissioned Derek Higgs to review and report on the role and effectiveness of non-executive directors. The resultant report contained the following definition of the role and responsibilities of non-executive directors which has subsequently been incorporated into the most recent version of the UK Corporate Governance Code:

“Non-executive directors have responsibilities in the following areas:

- **Strategy:** Non-executive directors should constructively challenge and contribute to the development of strategy.
- **Performance:** Non-executive directors should scrutinise the performance of management in meeting-agreed goals and objectives and monitoring and, where necessary, removing senior management, and in succession planning.
- **Risk:** Non-executive directors should satisfy themselves that financial information is accurate and that financial controls and systems of risk management are robust and defensible.
- **People:** Non-executive directors are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in



appointing and where necessary removing senior management, and in succession planning.

Non-executive directors should also provide independent views on:

- Resources
- Appointments
- Standards of conduct”

- 6.5 There is no legal distinction between executive and non-executive directors, with the same duties and liabilities applying to each. As indicated above, the distinction lies in the role, with non-executive directors usually standing back from the day-to-day running of the business, drawing alongside the executive team as required to facilitate the strategic decision-making process.
- 6.6 The Chartered Institute of Personnel and Development (CIPD) has produced guidance on the role of the non-executive director. This guidance provides, amongst other things, that, in seeking to “recruit” a non-executive director, a company should...”ensure it recruits non-executive directors that complement the balance of skills and experience of the existing board...[and] that individuals are chosen on the basis of what they can contribute to the company, i.e. their business experience, perspective and acumen”.
- 6.7 The guidance also comments that it is best practice for non-executive directors to be provided with a framework and ground rules on the relationship between the company and the non-executive director, clearly defining the boundaries in relation to control of the company and specifying, for example, hours to be worked, expectations, key performance indicators (if appropriate) and the notice period.
- 6.8 Non-executive directors may be remunerated for time spent fulfilling their duties. However, the CIPD advises that the contribution such remuneration makes to a non-executive director’s overall income should not be significant, otherwise their ability to be an independent voice on a company’s board may be jeopardised.
- 6.9 Research carried out recently by the Institute of Directors found that an average remuneration for a non-executive director is £17,320 but this can vary, according to the size of the company, between £15,000 and £26,061. Some public and voluntary sector companies do not pay remuneration at all albeit that travel and some subsistence allowances are usually reimbursed. As set out in paragraph 2.3, however, the Local Authorities (Companies) Order 1995 restricts the remuneration a councillor (Member) may receive by virtue of being appointed as a director to a local authority controlled company. In essence, any such remuneration must accord with the level of Special Responsibility Allowances payable by the Authority in respect of a comparable duty performed on behalf of the authority. Similar restrictions apply to the reimbursement of travel and subsistence expenses.
- 6.10 The Authority may, therefore, wish to consider the appointment of non-executive directors to the Board of Red One Ltd. The non-executive directors could be totally independent of the Authority or could be existing Authority Members but if the Authority was minded to explore this, due consideration would need to be given to the following:
- the number of non-executive directors to sit on the Board of Red One Ltd.;
  - that Member non-executive directors would, by their nature, be ex-officio, only serving on the Board for as long as they remain Members of the Authority;

- ensuring an appropriate “fit” between the skills and attributes of the non-executive director(s) and the executive directors on the Board of Red One Ltd., to ensure the non-executive directors perform effectively in role and add value to the process;
- the drafting of an appropriate “job description” setting out clear expectations of the role of independent non-executive director(s) on the Board of Red One Ltd.;
- in relation to remuneration (in this respect, it should be noted that Article 20 of the Articles of Association for Red One Ltd. provide for the shareholder [i.e. the Authority] to determine matters of remuneration for the Board directors):
  - for an external, independent non-executive director, setting the remuneration at a level that balances affordability with ensuring appointment of a person with appropriate knowledge, skills, business acumen and gravitas;
  - for Members to be appointed as non-executive directors:
    - the restrictions imposed by Local Authorities (Companies Order) 1995 in respect of the maximum amounts payable;
    - the real prospect, should remuneration be payable directly by Red One Ltd., of creating for the Member non-executive director a disclosable pecuniary interest requiring the Member to withdraw and not participate in any Authority business addressing issues relating to Red One Ltd. Conversely, should there be no remuneration attracting to the post, then no disclosable pecuniary interest would arise enabling the Member(s) concerned to participate in any discussions and decision making on Red One Ltd. matters at Authority meetings ;
- Generally, for Members appointed as non-executive directors, the need to avoid conflicts of interest between the duties and activities of the Authority and those of Red One Ltd.

***(a) - Dissolve Commercial Services Committee, appoint Non-Executive Directors to the Board of Red One Ltd and report on commercial services matters either to the full Authority or an existing Committee to oversee commercial activities (e.g. Resources Committee)***

- 6.11 Should the Authority be minded to pursue the option of appointment of non-executive directors to the Board of Red One Ltd. and dissolution of the Commercial Services Committee, it would be necessary to determine where the functions currently exercised by the Commercial Services Committee, as identified in paragraph 5.2 above, would be exercised. Approval of the overarching plan and annual business plan could rest with the full Authority with, for example, the Resources Committee being empowered to exercise the monitoring role and authorise any business cases as required.
- 6.12 Depending on the nature and number of the non-executive director(s) appointed and the associated level of remuneration, this option would impact on costs falling in Red One Ltd and thereby the level of potential dividend available for allocation to the Authority.
- (b) - appoint non-executive directors to the Board of Red One Ltd. and retain a Commercial Services Committee meeting as is***
- 6.13 This would create an additional governance overhead for the operation of Red One Ltd. It would also be likely to increase costs falling on Red One Ltd. and thereby reduce the level of potential dividend available for allocation by the Authority.

6.14 If, however, this option is preferred then it is suggested that, to avoid duplication of effort, the Terms of Reference for the Committee should nonetheless be modified to remove the monitoring function (as this is, effectively, part of the role of the non-executive director).

***(c) - appoint non-executive directors to the Board of Red One Ltd. and retain the Commercial Services Committee, meeting less frequently***

6.15 Depending on the nature and number of the non-executive director(s) appointed and the associated level of remuneration, this could increase costs falling in Red One Ltd but again consideration would need to be given as to SRAs attaching to membership of the Committee. Again, though, this would create an additional governance overhead and that, as with sub-option (b) (see paragraph 6.14 above), removal from the Committee of the monitoring role apply should apply.

***(d) - appoint non-executive directors to the Board of Red One Ltd. and have a smaller Commercial Services Committee meeting as is***

6.16 Comments as per option 3(b) – paragraph 6.13 - above.

***(e) appoint Non-Executive Directors to the Board of Red One Ltd and retain a smaller Commercial Services Committee, meeting less frequently***

6.17 As indicated in sub-option 2(a) (paragraph 5.5 above), under this option consideration would have to be given to whether membership of the (reduced) Commercial Services Committee would, of itself, attract a Special Responsibility Allowance. In addition, the issues identified in paragraph 6.15 (additional governance overhead; removal of monitoring roll from Committee) would require due consideration.

***(f) - formally dissolve the Commercial Services Committee, appoint Non-Executive Directors to the Board of Red One Ltd. and establish a small ad-hoc working party meeting as and when required and reporting either to the full Authority or Committee (e.g. Resources Committee)***

6.18 This would have the similar advantages and issues as per Option 2(e) – see paragraphs 5.10 and 5.11 above.

## **7. VIEWS OF COMMERCIAL SERVICES COMMITTEE AND AUTHORITY AND COMMITTEE CHAIRS**

7.1 The options identified in this paper were shared with Members of the Commercial Services Committee at a workshop on 13 July 2015. The Chief Fire Officer has also taken the opportunity to apprise the Authority and Committee Chairs of the options. The following paragraphs set out the views of the Commercial Services Committee and the Authority and Committee Chairs.

7.2 The Authority and Committee Chairs suggested that an appropriate governance model for commercial service activities going forwards might feature dissolving, in due course, the Commercial Services Committee with governance being exercised by a Red One Ltd. Board comprising both executive directors, independent non-executive directors and Member non-executive directors and further that:

- one of the independent non-executive directors should serve as Chair of the Board of Red One Ltd. Articles 19 and 4(1) of the Articles of Association of Red One Ltd. (see Appendix A) would facilitate such a course of action, subject to the Authority passing the requisite resolutions;
- that the independent Chair, once appointed, should assist in informing the remaining composition of the Board in terms of Member and other independent non-executive directors;

- the Managing Director should be, ex officio, the Director of People and Commercial Services who should work to clearly defined and agreed expectations;
- that, once the new arrangements are effected, any residual Commercial Services Committee functions (e.g. approval of Annual Commercial Services Business Plan; receipt of annual report on financial issues; approval of business cases required to facilitate commercial trading in accordance with the provisions of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (“the Order”) or any subsequent amending legislation) be delegated to the Resources Committee;
- that, in the interim, the Commercial Services Committee should be retained to provide oversight of commercial activities pending the new arrangements being effected and to assist as required in the transition.

7.3 The Members concerned also indicated that it might be helpful to have any new governance arrangements fully determined and ready to be effected by the next Annual Meeting of the Authority in 2016.

7.4 If the Authority is minded to put in place the governance arrangements indicated in paragraph 7.2 above, then – taking account of those issues identified in paragraphs 6.1 to 6.10 above - it may wish at this stage:

1. as the single shareholder in Red One Ltd and in accordance with Article 19 of the Articles of Association of the company, to resolve in principle to appoint an independent non-executive director to the Board of Red One Ltd and to indicate (in accordance with Article 20) the level of remuneration it would wish applied to the post of independent non-executive director;
2. to delegate to the Chief Fire Officer and Director of People and Commercial Services, in consultation with the Authority Chair, authority to determine an appropriate job description and advertise for the appointment of an independent non-executive director on the Board of Red One Ltd.;
3. to appoint a small group of Members to undertake interviews for the role of Independent non-executive director on the Board of Red One Ltd. and make a recommendation for appointment to a future meeting of the Authority;
4. to resolve, in accordance with the provisions of Article 4(1) of the Articles of Association of Red One Ltd., to direct the existing Board of Red One Ltd. that the independent non-executive director so appointed shall serve as Chair of the Board of Red One Ltd.;
5. that, similarly and also in accordance with the provisions of Article 4(1) of the Articles of Association of Red One Ltd., to resolve to direct the Board that the Managing Director of Red One Ltd. shall be, ex officio, the Director of People and Commercial Services
6. to authorise the Clerk to the Authority to notify, in due course, the Board of Directors of Red One Ltd. of the following:
  - i. the appointment of the independent non-executive director (once made) (NOTE: Article 19 of the Articles of Association of Red One Ltd. requires this notification to be in writing); and
  - ii. that the Authority has resolved, in accordance with Article 4(1) of the Articles of Association of Red One Ltd., that:

- (a) the independent non-executive director shall serve as Chairman of the Board; and
  - (b) that the Managing Director of Red One Ltd. shall be, ex officio, the Director of People and Commercial Services;
7. to request submission of a report to a future meeting of the Authority (prior to the Annual Meeting in 2016 and to be informed by the views of the independent non-executive director, once appointed) further clarifying the revised governance arrangements (e.g. final number of non-executive directors; remuneration and appointment process; exercise of “residual” Commercial Services Committee functions by the Resources Committee) to operate for commercial services activities in future.
8. to retain, pending the new governance arrangements being effected, the Commercial Services Committee both to provide oversight of commercial activities and to assist as required in the transition and that, in respect of the latter, the Terms of Reference for the Committee be amended to include the following:
- “To assist as required in establishing governance arrangements to operate for commercial activities, including the composition of the Board Directors of Red One Ltd.”

**8. CONCLUSION**

- 8.1 This report identifies the current position in relation to commercial trading and governance of this by the Authority, the background to the issue, relevant legislative and other considerations.
- 8.2 Additionally, it identifies a range of other governance options for commercial services activities together with a “preferred option” as indicated by the Members of the Commercial Services Committee and the Authority and Committee Chairs and which forms the basis of the recommendations as set out in this report.
- 8.3 The Authority is invited to consider the contents and indicate how it would wish to proceed.

**LEE HOWELL**  
Chief Fire Officer

**MIKE PEARSON**  
Clerk to the Authority

**EXTRACT FROM THE ARTICLES OF ASSOCIATION FOR RED ONE LTD.**

**Shareholders' reserve power**

4.—(1) The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

**Chairing of directors' meetings**

12.—(1) The directors may appoint a director to chair their meetings.

(2) The person so appointed for the time being is known as the chairman.

(3) The directors may terminate the chairman's appointment at any time.

(4) If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

**APPOINTMENT OF DIRECTORS**

**Methods of appointing directors**

17.—(1) Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—

(a) by ordinary resolution,

(b) by a decision of the directors; or

(c) by a notice of his appointment given in accordance with article 19.

(2) In any case where, as a result of death, the company has no shareholders and no directors, the personal representatives of the last shareholder to have died have the right, by notice in writing, to appoint a person to be a director.

(3) For the purposes of paragraph (2), where 2 or more shareholders die in circumstances rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder.

**Appointment and removal of a director by majority of ordinary shareholders**

19. Any member or members holding a majority in nominal amount of the issued ordinary share capital that confers the right to attend and vote at general meetings may at any time appoint any person who is willing to act, and is permitted by law to do so, to be a director (whether as an additional director or to fill a vacancy) and may remove from office any director (no matter how he was appointed) and any alternate director. Any such appointment or removal shall be effected by notice in writing to the company by the relevant member or members. Any such appointment or removal shall take effect immediately on deposit of the notice or one such later date (if any) specified in the notice. Any removal pursuant to this article shall be without prejudice to any claim that a director may have under any contract between him and the company.

## **Directors' remuneration and expenses**

**20.**—(1) Directors may undertake any services for the company that the shareholders approve in advance in writing.

(2) Directors are only entitled to such remuneration as approved by the shareholders in advance in writing—

(a) for their services to the company as directors, and

(b) for any other service which they undertake for the company.

(3) Subject to the articles, a director's remuneration may—

(a) take any form, and

(b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

(4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.

(5) Unless the shareholders decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

(6) The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at—

(a) meetings of directors or committees of directors,

(b) general meetings, or

(c) separate meetings of the holders of any class of shares or of debentures of the company,

or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

**COMMERCIAL SERVICES COMMITTEE – TERMS OF REFERENCE**

*Advisory ONLY*

1. To recommend to the Authority in the first instance appropriate levels of delegation for variations on the commercial services budget (including approval to additional resources, subject to these being matched by additional income) and thereafter any revisions to levels of delegation, as may arise during the course of operations during the financial year in question in order to maximise commercial opportunities.
2. To make recommendations to the Authority on the use of any year-end trading surplus generated by commercial activities.

*Matters with Delegated Power to Act*

3. To approve both the overarching Business Case for commercial trading and, in line with the financial planning calendar, the Annual Commercial Services Business Plan.
4. In relation to the Annual Commercial Services Business Plan, to consider and approve any business case required to facilitate commercial trading in accordance with the provisions of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (“the Order”) or any subsequent amending legislation.
5. To consider and approve any trading activities of Red One Ltd within overall parameters to be set out in the approved Annual Commercial Services Business Plan and specifically to authorise investments as required up to the limits as agreed by the Authority.
6. To authorise the entering into of contracts as may be referred by the Chief Fire Officer from time to time.
7. In each case subject to legal advice and guidance that it is appropriate to do so, to establish additional trading entities (as appropriate) (NOTE: in the event of legal advice indicating otherwise, such matters will be referred to the full Authority for determination).
8. To authorise any permanent staffing increases in the authorised establishment required to deliver the Commercial Services, subject to the costs being met from income generated and in compliance with the agreed delegated levels of additional resource.
9. To monitor the financial status and performance of Red One Ltd 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.



**EXTRACT FROM THE DEVON & SOMERSET FIRE & RESCUE AUTHORITY CODE OF MEMBERS' CONDUCT**

**THE NOLAN PRINCIPLES OF PUBLIC LIFE**

When acting in your capacity as a Member or Co-opted Member of the Authority, you should have regard to the Principles of Public Life namely, Selflessness, Honesty/Integrity, Objectivity, Accountability, Openness, Personal Judgment, Respect for others, Duty to Uphold the Law, Stewardship and Leadership.

When acting in your capacity as a Member or Co-opted Member of the Authority:

- (a). you must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, a member of your family, close associate or relevant person;
- (b). you must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties;
- (c). when carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit;
- (d). you are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office;
- (e). you must be as open as possible about your decisions and actions and the decisions and actions of the Authority and should be prepared to give reasons for those decisions and actions in accordance with any statutory requirements and any reasonable additional requirements imposed by the Authority or contained in its constitutional governance documents;
- (f). you must declare any private interests, whether disclosable or personal, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out at Section B of this Code;
- (g). you must, when using or authorising the use by others of the resources of the Authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and that any use is in accordance with the Authority's reasonable requirements;
- (h). you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986 or any similar Communications Protocol or Code produced by the Authority;
- (i). you must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

**LIST OF LEGISLATION RELEVANT TO LOCAL AUTHORITY COMMERCIAL ACTIVITIES**

The Local Government Act 1972

The Local Authorities (Companies) Order 1995

The Local Government Act 1999

The Local Government Act 2003

The Local Authorities (Members' Allowances) (England) Regulations 2003

The Fire & Rescue Services Act 2004 (as amended)

The Companies Act 2006

The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009

The Localism Act 2011

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012