

Humberside Fire Authority
26th March 2007

Report by the
Chief Fire Officer & Chief Executive,
the Treasurer and the Secretary

REGIONAL CONTROL CENTRE COMPANY FORMATION

BACKGROUND

- 1 The Authority has received 4 reports since 2004 on the FiRecontrol and Firelink projects, which are the government's preferred option for the future delivery of the control function in the Fire and Rescue Service nationally. These projects and the concerns and uncertainties associated with them have also been covered in other reports, most recently the report on Revenue and Capital Plans 2007/08 to 2009/10. Neither of these projects is yet fully documented or defined; and there are crucial operational, legal and financial issues which remain to be resolved.
- 2 The FiRecontrol project is supported by a national business case produced by first the Office of the Deputy Prime Minister (ODPM) and now Communities and Local Government (CLG) and their advisers. Whilst this case has been used to secure HM Treasury approval to the project, using the Gateway process, it does not identify separately the resource implications for individual Fire and Rescue Authorities (FRAs) and even regional disaggregations do not define financial responsibilities of the various participants. Many of the assumptions underlying the business case (particularly HR assumptions) appear to be of questionable validity. A revised version of the business case incorporating ITC contract data is to be released shortly but is still subject to further review. The Treasurer is the region's representative on the national Finance Working Group considering these projects.
- 3 There is very little information available on the Firelink project. Implementation planning is proceeding, but the contract between O2 Airwave and CLG contains a secrecy clause which means that relevant operational, legal and financial information has not been disclosed to Fire and Rescue Service representatives. This is clearly unsatisfactory and is being pursued.
- 4 Whatever the benefits or drawbacks arising from these projects, they are both effectively committed. Construction of the first tranche of centres is largely complete and contracts have been let for the others except London (which is currently going through the tendering process). The Firelink contract was let on 10 March 2006. The key issue for FRAs is therefore to ensure as far as possible that these projects deliver their individual operational requirements without incurring additional financial burdens.

REGIONAL CONTROL CENTRE COMPANIES

- 5 As members know, the government's preference for governance of regional control centres is a company model. Whilst this is not the view of the FRAs in this region, some FRAs nationally supported this model and it is embodied in the National Framework. As previously reported, the model used is not crucial to success provided it is set up correctly and managed effectively and efficiently. In this region, the FRAs are expected to have formed a regional control centre company by 1st May 2007.

- 6 The legal advisers to the Yorkshire and Humberside FRAs have considered company formation and engaged Messrs. Hammonds, a major corporate law practice in Leeds, to advise upon and draft company documentation. This process is still in progress, but Hammonds require decisions and further instructions upon the precise nature and structure of the company. They have, however, advised that limitation by shares is the preferable route.
- 7 Limitation by shares is already this Authority's policy (Minute No. 1631 refers), but the Authority has not yet determined its stance upon the other issues on which Hammonds need guidance. This report explores these issues further.

STANCE OF OTHER FRAS IN THE YORKSHIRE & HUMBERSIDE REGION

- 8 The other three FRAs within this region have already considered these issues and their respective stances are:-

North Yorkshire Fire Authority The North Yorkshire Fire Authority considered a paper on the formation of the Regional Control Centre at their meeting which took place during week commencing 19th February 2007. Their Authority members discussed the matter but decided not to take a decision on the issue and arranged a special Fire Authority meeting as close to the RMB meeting date as possible with a view to trying to gain more information on the full business case and specific details about the regional implications of the RCC in terms of costs and savings.

West Yorkshire Fire and Rescue Authority On 30th January 2007 West Yorkshire Fire and Rescue Authority Executive Committee approved participation in the formation of a company on the following preference basis:-

- That the company be based on the Share Capital model, limited to 4 corporate (FRA) members with no expansion without unanimous consent. Share distribution to be weighted in proportion: West Yorkshire 40 shares, South Yorkshire 24 shares, North Yorkshire and Humberside 18 shares each.
- The board would comprise 11 Directors each with one vote comprising of West Yorkshire 4 votes, South Yorkshire 3 votes, North Yorkshire and Humberside 2 votes each. The Chair appointed by a simple majority, to have a casting vote but no automatic rotation.
- The West Yorkshire Fire and Rescue Authority require more information on how an operational board would work and its relationship with the Board and Directors. The West Yorkshire Fire and Rescue Authority require more information regarding funding, stating that contributions should reflect both the service population size/share allocation with an element based on actual % call service usage.
- Lastly, West Yorkshire Fire and Rescue Authority recognise the need for a degree of entrenchment in the Memorandum and Articles of Association with a member veto right on expanded activities and a need for an arbitration process, plus a suitable formula for dealing with the impact of any major population change on the share distribution pattern and cost of contributions.

South Yorkshire Fire and Rescue Authority It is understood that South Yorkshire Fire and Rescue Authority have adopted a similar position to West Yorkshire Fire and Rescue Authority in the formation of the Regional Control Centre local company.

ROLE AND COMPOSITION OF COMPANY BOARD

- 9 The company's Board exists to govern the company and when directors sit as a Board, their allegiance has to be to the company, not to their nominating FRA or to any other interest. The key question is therefore what the Board has to do, rather than its composition. The company will be responsible for operating the regional control centre and delivering the control services required by the FRAs. It will also (it is understood) be the vehicle for O2 Airwave charging FRAs for communications services; and for recharging other costs such as the lease of the centre building. There is currently very little clarity of what these roles will entail. It is obvious, however, that the development and implementation of contractual arrangements between the company and its suppliers (particularly O2 Airwave and the freeholder/head lessee of the centre) and the company and its clients (the four FRAs) is absolutely vital. Information necessary to consider the format and scope of such contracts is not currently available. Similarly, the staffing of the centre is crucial to service delivery. The company will face many challenges in all of these areas. It is perhaps beneficial that others will have encountered these situations earlier.
- 10 As the relative sizes of the FRAs can be recognised in their respective shareholdings, there seems (given the foregoing) little point in replicating this within the Board. Utilising four corporate directorships would simplify administration and potentially negate issues of individual liabilities and insurance of directors. If, however, members would prefer a proportionate Board as suggested by South and West Yorkshire, then that is an entirely valid view. Perhaps of greater concern to individual members is a potential conflict between their roles as councillors and as directors, given the remit of the company.

SHAREHOLDERS' AGREEMENT

- 11 This is a crucial document, as it defines the relationship between the FRAs as subscribing shareholders in the company. The recommended stance for this Authority is set out below, but there are some underlying issues to consider. First, Humberside Fire Authority will inevitably be a minority shareholder. On relative size, its holding will be around 18%; and if shares are divided equally, its holding will still be only 25%. There does not appear to be any rationale for the Authority to hold any greater percentage. Secondly, the stance taken by West Yorkshire reflects its concerns that as at least part of the costs of FiRecontrol and Firelink will be distributed pro rata to a measure of size rather than activity, it expects to be left with some 40% of the costs and hence expects a similar percentage shareholding and directorships. If the other FRAs wish to have parity of shareholding and representation, the obvious corollary from West Yorkshire's perspective is that costs also are shared equally: the Treasurer would not recommend this course in the absence of reliable information on the costs of these projects to be met by the FRAs.

The Shareholders' Agreement has not yet been drafted and has yet to be discussed between the FRAs' legal and financial advisers; and by Hammonds. It will provide a key safeguard for all participants and it is accordingly recommended that the Authority does not subscribe to the company until it is in place.

HR ISSUES

- 12 The key HR issue is that CLG wish the FRAs to borrow the economic reason for the company to shed staff and effect severances at FRA level, rather than transferring all the staff to the company (as is usual under TUPE) and the company then reducing staffing to the level it requires. If FRAs follow this course, CLG will meet the costs of redundancies (subject to some conditions) and any ensuing legal challenges. This is particularly significant for Humberside and North Yorkshire, given the distances from the new centre. Once the company has been incorporated, it may be expected that the Trade Unions will seek to open discussions about the number of staff the company requires and the expected severance level. Given the FRAs follow CLG's preference (and not to do so is financially hazardous), union representatives will undoubtedly be contacting each FRA. As the next meeting of the Authority may be after incorporation, it is recommended that the Chief Fire Officer and Chief Executive is authorised to open discussions with the Trade Unions as soon as that becomes necessary.

FINANCIAL IMPLICATIONS

- 13 The financial implications of this report cannot be defined at present, because of the lack of financial information available upon the FiRecontrol and Firelink projects. Officials of (then) ODPM warranted to the Parliamentary Select Committee that there would be no additional costs arising: it remains to be seen whether this is indeed the case. The costs of establishing the company itself are small and can be met from the contingency established for service modernisation.

RISK IMPLICATIONS

- 14 There are obviously many operational, legal and financial risks associated with these projects. The crucial risk is a failure in the control service. All of these will need to be considered and resolved or limited as the projects proceed. There is no significant risk in establishing the company.

RECOMMENDATIONS

- 15 The Authority is recommended:-
- (i) to approve participation in a regional fire control company limited by shares, subject to:-
 - (a) the subscribers to and shareholders in the company being limited to the four Fire Authorities in the Yorkshire and Humberside Region;
 - (b) the initial shareholding being in the proportions Humberside 18%, North Yorkshire 18%, South Yorkshire 24% and West Yorkshire 40%;

- (c) the Board of the company being composed of four corporate directors with equal voting rights, the Chair rotating annually and there being no casting vote;
 - (d) the completion and approval by all four Authorities of a suitable Shareholders' Agreement prior to incorporation of the company.
- (ii) to authorise the Chief Fire Officer & Chief Executive, the Treasurer and the Secretary to take any action necessary to implement this resolution, including negotiations with government ministries, other Authorities, Trade Unions and suppliers.

K L MARSHALL

M PRICE

P WHELDALE

Officer Contact: Michael Price ☎ 01964 622646

Background Papers: Nil

Humberside Fire and Rescue Service Headquarters
Summergroves Way
Kingston upon Hull

MP/EML (Rep671MP.doc)
6th March 2007

