



Buckinghamshire & Milton Keynes Fire Authority

MEETING	Executive Committee
DATE OF MEETING	10 February 2021
OFFICER	Graham Britten, Director of Legal and Governance
LEAD MEMBER	Councillor Lesley Clarke OBE, Chairman
SUBJECT OF THE REPORT	Principal Officers COVID-19 – arrangements between the Thames Valley fire and rescue authorities
EXECUTIVE SUMMARY	The purpose of this report is to seek approval for entering into mutual arrangements between the Authority, Royal Berkshire Fire Authority, and Oxfordshire County Council (the Thames Valley FRAs) in the form set out at Annex A in order that a Chief Fire Officer (CFO), in the event that a Principal Officer (PO) including the CFO is, or is likely to be, incapacitated by illness or self-isolation due to Covid-19 can utilise a PO of another Thames Valley fire and rescue authority for incident command roles. Annex A is in the form of an agreement under section 16 of the Fire and Rescue Services Act 2004 (see Legal Implications).
ACTION	Decision
RECOMMENDATIONS	It is recommended that the agreement at Annex A, subject to any minor amendments required for completion by the three participating Thames Valley fire and rescue authorities, be approved for sealing.
RISK MANAGEMENT	<p>The Thames Valley FRAs have statutory responsibilities to secure the provision of personnel to respond to fires, road traffic incidents, and other emergencies; have powers under section 11 of the Fire and Rescue Services Act 2004 to respond to other emergencies; and have duties placed on them as Category 1 responders under the Civil Contingencies Act 2004 and regulations made pursuant to it.</p> <p>Due to the impacts of the Covid 19 Pandemic, the Thames Valley FRAs' POs may become incapacitated through illness or the requirements of Covid 19 self-isolation which could compromise the ability of one of the Thames Valley FRAs to discharge its statutory duties.</p> <p>The Thames Valley FRAs' CFOs continually keep mutual assistance arrangements under review and</p>

	<p>enter into agreements to ensure resilience without the need to refer matters up to the respective governance bodies.</p> <p>For this agreement, it is prudent for the Thames Valley FRAs to endorse the proposed arrangement. Similar reports have, or will, be presented to the relevant governance body within the other Thames Valley FRAs in order for the agreement to be sealed by all parties.</p>
<p>FINANCIAL IMPLICATIONS</p>	<p>As each of the parties shall each bear their own costs and expenses incurred in complying with the arrangements, it is not anticipated there will be any significant additional costs or income arising from this arrangement.</p>
<p>LEGAL IMPLICATIONS</p>	<p>The role of Principal Officer in the capacity of incident commander requires a high degree of operational discretion incrementally through the levels of command from Area Commander up through to Chief Fire Officer.</p> <p>The field of any operational activity that a Principal Officer may undertake on behalf of a neighbouring fire and rescue authority brings potential ramifications in the event of a claim being made for damage, personal injury, or other loss caused to individuals affected by the conduct of the firefighters under the Principal Officers command.</p> <p>A point of concern is that the statutory protection from personal civil liability that officers employed by local authorities usually enjoy may be absent unless certain formalities are first concluded.</p> <p>The full extent of the immunity from a CFO's personal civil liability derives from a remnant of a Victorian Statute - section 265 Public Health Act 1875.</p> <p>It is generally considered that it would exempt an officer from a claim in negligence against the officer in the event of a claim for death, personal injury or damage provided that the officer acts bona fide for his employer.</p> <p>Section 265 itself was expressly applied to combined fire authorities by the Combined Fire Authority (Protection from Personal Liability) (England) Regulations 1997 [1997/2819].</p> <p>Case law has, however, established that any immunity is vitiated when a local authority enters into an arrangement for which, it may subsequently transpire, it had no legal power. This then leaves the officer personally liable to be sued in damages.</p> <p>Given the level of discretion afforded to the Principal Officer in incident command, rather than the provision of services under section 13 of the Fire and Rescue</p>

	<p>Services Act 2004, or under section 1 Local Authorities (Goods and Services) Act 1970, the surer enabling legislative basis for an arrangement between fire and rescue authorities for Principal Officers in operational roles would be section 16 Fire and Rescue Services Act 2004 (FRSA). Section 16, where relevant, allows fire and rescue authorities to enter into an arrangement, in such terms as agreed, for its core duties and powers (to any extent) to be discharged by the other fire and rescue authority.</p> <p>The protocols under this agreement will cover issues of security and privacy which will be discussed with the Data Protection Officers within the Thames Valley FRAs.</p>
CONSISTENCY WITH THE PRINCIPLES OF THE DUTY TO COLLABORATE	The Policing and Crime Act 2017 requires the Authority to keep opportunities for collaboration with the police and ambulance services under review. There is no scope to accommodate operational cover using police officers or ambulance service employees.
HEALTH AND SAFETY	During the period of release, the receiving fire and rescue authority will be responsible for compliance with all duties relating to health, safety and welfare at work imposed upon an employer by any relevant statutory provision as if it were the employer of the Principal Officer.
EQUALITY AND DIVERSITY	No adverse impact. The arrangement is being proposed in response to the Covid-19 Pandemic among the pool of existing Principal Officers.
USE OF RESOURCES	<p>Communication</p> <p>The Thames Valley FRAs' CFOs will consult with the affected Principal Officers in advance of agreeing the protocols to be established under clause 3.1 of the Agreement</p>
PROVENANCE SECTION & BACKGROUND PAPERS	
APPENDICES	Annex A – draft agreement
TIME REQUIRED	15 minutes
REPORT ORIGINATOR AND CONTACT	<p>Graham Britten</p> <p>gbritten@bucksfire.gov.uk</p> <p>01296 744441</p>

Annex A

THIS AGREEMENT (this “Agreement”) is dated the _____ of _____ 2021

BETWEEN:

- (1) Buckinghamshire and Milton Keynes Fire Authority of Stocklake, Aylesbury, Buckinghamshire, HP20 1BD; and
- (2) Oxfordshire County Council of County Hall, New Road, Oxford OX1 1ND; and
- (3) Royal Berkshire Fire Authority of Newsham Court, Pincents Kiln, Calcot, Reading, Berkshire, RG31 7SD;

the “FRAs”, each an “FRA”.

BACKGROUND:

- (A) The FRAs collaborate successfully in the operation of a single joint emergency call handling, mobilising and resource management function from a single location at Calcot in Berkshire and a fall back provision to a joint secondary control room in Kidlington in Oxfordshire (together the “TVFCS”).
- (B) The FRAs have statutory responsibilities under sections 7(2)(a); 8(2)(a) and 9(3)(a) of the Fire and Rescue Services Act 2004 to secure the provision of personnel to respond to fires, road traffic incidents, and other emergencies; have powers under section 11 of the Fire and Rescue Services Act 2004 to respond to other emergencies; and have duties placed on them as Category 1 responders under the Civil Contingencies Act 2004 and regulations made pursuant to it (the “Statutory Functions”).
- (C) The FRAs recognise the Covid 19 Pandemic is a national crisis that continues to test the capacity of the FRAs to protect the public from the impacts of the Covid 19 Pandemic, and acknowledge the risk that its Principal Officers may themselves become incapacitated through illness or the requirements of Covid 19 self-isolation such that such scenarios could compromise the ability of an FRA to discharge its Statutory Functions.
- (D) The FRAs therefore wish to enter arrangements under section 16 of the Fire and Rescue Services Act 2004 for the discharge of the Statutory Functions of one FRA by another FRA through their respective cadres of Principal Officers acting as Level 4 Incident Commanders on the terms set out in this Agreement.

IT IS AGREED AS FOLLOWS

2. Definitions and Interpretations

2.1 Where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa

2.2 “Area Managers” means firefighters contracted to the role of Area Manager as defined in the ‘National Joint Council for Local Authorities’ Fire and Rescue Services, Scheme of conditions of service (Sixth edition)’.

“Assistor” means the party to the Agreement which under the provisions of this Agreement discharges any of the Statutory Functions of another party to this Agreement.

“Brigade Managers” means firefighters contracted to the role of Brigade Manager as defined in the ‘National Joint Council for Brigade Managers of Fire and Rescue Services, Constitution and scheme of conditions of service (5th edition)’.

“Employment Contract” means the terms of employment between an FRA and a Principal Officer at the date of this Agreement,

“FRA” means either a fire and rescue authority or a combined fire and rescue within the meaning of the Fire and Rescue Services Act 2004.

“Level 4 Incident Commander” means a Principal Officer able to assume command in accordance with the principles set out in the National Operational Guidance, Incident Command: knowledge, skills and competence.

“Principal Officers” means Area Managers and Brigade Managers.

“Recipient” means the party to this Agreement which under the provisions of this Agreement has its Statutory Functions discharged by another party to this Agreement.

“Secretary of State” means the Minister of State jointly at the Ministry of Housing, Communities and Local Government and the Home Office.

3. Release of a Principal Officer from the Assistor to the Recipient

3.1 The release of a Principal Officer to a Recipient will be at the discretion of a Chief Fire Officer of an FRA at the request of a Chief Fire Officer of another FRA in the event that a Principal Officer of a prospective Recipient is, or is likely to be, incapacitated by illness or self-isolation. In the event that a Chief Fire Officer of a prospective Recipient is, or anticipates that he is likely to be, incapacitated by illness or self-isolation the Principal Officer released to a Recipient shall be either a Chief Fire Officer or Deputy Chief Fire Officer of the Assistor. The arrangements of the release will be notified by both the Assistor and the Recipient to the TVFCS under protocols to be agreed by the three Chief Fire Officers.

3.2 The Assistor will release a Principal Officer to the Recipient in order to undertake Level 4 Incident Commander responsibilities aligned to the Recipient’s local level 4 rota requirements and mobilisation and notification protocols whilst retaining their extant call sign as if an employee of the Recipient.

3.3 Each party shall keep accurate and complete written records of all emergency calls or incidents to which its Principal Officer has responded under the provisions of this Agreement and submit copies of such records to the other party on request.

4. Health and Safety

4.1 During the period of release, the Recipient will be responsible for compliance with all duties relating to health, safety and welfare at work imposed upon an employer by any relevant statutory provision as if the Recipient were the employer of the Principal Officer.

4.2 The Recipient shall provide the Assistor with such information and assistance as it may reasonably require to carry out its obligations as the Principal Officer's employer.

5. Indemnity

5.1 The Assistor shall indemnify the Recipient against all costs, liabilities and damages whatsoever in respect of death or personal injury or loss or damage to any property caused by the negligence of the Assistor or its Principal Officers while acting under the provisions of this Agreement.

6. Principal Officer's Employment

6.1 The Employment Contract shall remain in force during any period of release under clause 3.

6.2 The Assistor shall make the necessary changes to the terms of the Employment Contract so that it can release a Principal Officer in accordance with the terms of this Agreement.

6.3 The Assistor shall comply with the terms of the Employment Contract during any period of release

6.4 The Recipient shall not, and shall not require the Principal Officer to do anything that shall, breach the Employment Contract and shall have no authority to vary the terms of the Employment Contract or make any representations to the Principal Officer in relation to the terms of the Employment Contract.

7. Dispute Resolution and Complaints

7.1 If any party has any issues, concerns or complaints about the operation of the arrangements, or any matter in this Agreement, that party shall notify the other party and the parties shall then seek to resolve the issue by a process of consultation between the Chief Fire Officers. If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to a nominee of the respective Chief Fire Officer, who shall decide on the appropriate course of action to take. If the matter cannot be resolved by a nominee of the respective Chief Fire Officer within 30 days, the matter may be escalated to the respective FRA chairman, or FRA portfolio holder, for resolution.

8. Data Protection

8.1 A Principal Officer released under this Agreement will comply with the Recipient's privacy standards and/or data protection policies when handling personal data relating to any individual including, but not limited to, the Recipient's employees and members of the public.

9. Audit

9.1 Except where an audit is imposed on a party by a regulatory body, a party may, in any year and for a period of 12 months following termination of the Agreement conduct an audit on a party ("the other party") in the event that a party requires the information for an Annual Statement of Assurance, or for any reasonable purpose:

(a) to verify the accuracy of charges, if any;

(b) to review the integrity, confidentiality and security of any relevant data;

(c) to review compliance with the Data Protection Act 2018, the General Data Protection Regulation and any other legislation applicable to the arrangements;

(d) to carry out an examination of the economy, efficiency and effectiveness with which the other party has used the Recipient's resources; or

(e) to verify the accuracy and completeness of any management information delivered or required by this Agreement.

10. Period, Termination, Variation

10.1 This Agreement shall commence on the date above, and shall expire in accordance with clause 10.2.

10.2 Any party may terminate this Agreement at any time by a Chief Fire Officer giving at least 21 days' notice in writing to the other parties' Chief Fire Officers' email addresses.

10.3 This Agreement may be varied by written agreement of the Chief Fire Officers on behalf of the parties.

11. Notification to the Secretary of State

11.1 The parties agree that the Chief Fire Officer of Oxfordshire County Council shall notify the Secretary of State of the existence of this Agreement (once executed by all of the parties) on behalf of the FRAs.

12. Charging

12.1 Except as otherwise provided, the parties shall each bear their own costs and expenses incurred in complying with the arrangements.

IN WITNESS WHEREOF the FRAs have executed this Agreement as a Deed the day and year first above written

The Common Seal of)
Buckinghamshire and Milton Keynes)
Fire Authority was affixed to this)
Agreement in the presence of:)
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).....
Authorized Signatory

The Common Seal of)
Oxfordshire County Council was)
affixed to this Agreement in the presence)
of:)

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County Solicitor/Designated Officer

The Common Seal of

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Royal Berkshire Fire Authority was

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affixed to this Agreement in the presence
of:

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Authorised Signatory