

**BUCKINGHAMSHIRE AND MILTON KEYNES FIRE AUTHORITY  
BUCKINGHAMSHIRE FIRE AND RESCUE SERVICE**

Director of Legal & Governance, Graham Britten  
Buckinghamshire Fire & Rescue Service  
Brigade HQ, Stocklake, Aylesbury, Bucks HP20 1BD  
Tel: 01296 744441



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Chief Fire Officer and Chief Executive  
Jason Thelwell

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To: The Members of the Executive Committee

**MEMBERS OF THE PRESS  
AND PUBLIC**

Please note the content of  
Page 2 of this Agenda Pack

8 November 2021

Dear Councillor

Your attendance is requested at a meeting of the **EXECUTIVE COMMITTEE** of the **BUCKINGHAMSHIRE AND MILTON KEYNES FIRE AUTHORITY** to be held in **MEETING ROOM 1, BUCKINGHAMSHIRE FIRE AND RESCUE SERVICE HEADQUARTERS, STOCKLAKE, AYLESBURY, BUCKS, HP20 1BD** on **WEDNESDAY 17 NOVEMBER 2021 at 10.00 AM** when the business set out overleaf will be transacted.

Yours faithfully

Graham Britten  
Director of Legal and Governance

**Health and Safety: Covid-19**

There will be limited facilities for members of the public to observe the meeting in person. A recording of the meeting will be available after the meeting, at the web address provided overleaf.

Chairman: Councillor Lesley Clarke OBE

Councillors: Christensen, Hall, Hopkins, Lambert, Marland, McLean and Walsh



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## **Recording of the meeting**

The Authority supports the principles of openness and transparency. To enable members of the press and public to see or hear the meeting, this meeting will be recorded. Please visit: <https://www.youtube.com/channel/UCWmIXPWAscxpL3vIiv7bh1Q>

The Authority also allows the use of social networking websites and blogging to communicate with people about what is happening, as it happens.

## **Adjournment and Rights to Speak – Public**

The Authority may adjourn a Meeting to hear a member of the public on a particular agenda item. The proposal to adjourn must be moved by a Member, seconded and agreed by a majority of the Members present and voting.

A request to speak on a specified agenda item should be submitted by email to [gbritten@bucksfire.gov.uk](mailto:gbritten@bucksfire.gov.uk) by 4pm on the Monday prior to the meeting. Please state if you would like the Director of Legal and Governance to read out the statement on your behalf, or if you would like to be sent a 'teams' meeting invitation to join the meeting at the specified agenda item.

If the meeting is then adjourned, prior to inviting a member of the public to speak, the Chairman should advise that they:

- (a) speak for no more than four minutes,
- (b) should only speak once unless the Chairman agrees otherwise.

The Chairman should resume the Meeting as soon as possible, with the agreement of the other Members present. Adjournments do not form part of the Meeting.

## **Rights to Speak - Members**

A Member of the constituent Councils who is not a Member of the Authority may attend Meetings of the Authority or its Committees to make a statement on behalf of the Member's constituents in the case of any item under discussion which directly affects the Member's division, with the prior consent of the Chairman of the Meeting which will not be unreasonably withheld. The Member's statement will not last longer than four minutes. Such attendance will be facilitated if requests are made to [enquiries@bucksfire.gov.uk](mailto:enquiries@bucksfire.gov.uk) at least two clear working days before the meeting. Statements can be read out on behalf of the Member by the Director of Legal and Governance, or the Member may request a 'teams' meeting invitation to join the meeting at the specified agenda item.

Where the Chairman of a Committee has agreed to extend an invitation to all Members of the Authority to attend when major matters of policy are being considered, a Member who is not a member of the Committee may attend and speak at such Meetings at the invitation of the Chairman of that Committee.

## **Questions**

Members of the Authority, or its constituent councils, District, or Parish Councils may submit written questions prior to the Meeting to allow their full and proper consideration. Such questions shall be received by the Monitoring Officer to the Authority, *in writing*, at least two clear working days before the day of the Meeting of the Authority or the Committee.

## **EXECUTIVE COMMITTEE**

### **TERMS OF REFERENCE**

1. To make all decisions on behalf of the Authority, except in so far as reserved to the full Authority by law or by these Terms of Reference.
2. To assess performance of the Authority against agreed organisational targets.
3. To determine matters relating to pay and remuneration where required by collective agreements or legislation.
4. To select on behalf of the Authority—the Chief Fire Officer and Chief Executive, and deputy to the Chief Fire Officer and Chief Executive, or equivalent, taking advice from suitable advisers and to make recommendations to the Authority as to the terms of appointment or dismissal.
5. To consider and make decisions on behalf of the Authority in respect of the appointment of a statutory finance officer; a statutory monitoring officer; and any post to be contracted to “Gold Book” terms and conditions in whole or in part taking advice from the Chief Fire Officer and suitable advisers.
6. To act as the Employers’ Side of a negotiating and consultation forum for all matters relating to the employment contracts of the Chief Fire Officer and Chief Executive, deputy to the Chief Fire Officer and Chief Executive, or equivalent; and where relevant, employees contracted to “Gold Book” terms and conditions in whole or in part.
7. To hear appeals if required to do so in accordance with the Authority’s Policies.
8. To determine any human resources issues arising from the Authority’s budget process and improvement programme.
9. To determine policies, codes or guidance:
  - (a) after considering recommendations from the Overview and Audit Committee in respect of:
    - (i) regulating working relationships between members and co-opted members of the Authority and the employees of the Authority; and
    - (ii) governing the conduct of employees of the Authority
  - (b) relating to grievance, disciplinary, conduct, capability, dismissals and appeals relating to employees contracted to “Gold Book” terms and conditions in whole or in part.
10. To form a Human Resources Sub-Committee as it deems appropriate.

## **AGENDA**

### **Item No:**

**1. Apologies**

**2. Minutes**

To approve, and sign as a correct record the Minutes of the meeting of the Executive Committee held on 15 September 2021 (Item 2) **(Pages 7 - 12)**

**3. Disclosure of Interests**

Members to declare any disclosable pecuniary interests they may have in any matter being considered which are not entered onto the Authority's Register, and officers to disclose any interests they may have in any contract to be considered.

**4. Matters Arising from the Previous Meeting**

The Chairman to invite officers to provide verbal updates on any actions noted in the Minutes from the previous meeting.

**5. Questions**

To receive questions in accordance with Standing Order SOA7.

**6. Immediate Detriment Framework**

To consider Item 6 **(Pages 13 - 52)**

**7. TVFCS - Transfer of the Secure Solutions and Services ("SSS") business to Capita (SSS) Limited ("Capita SSS") and subsequent sale of Capita SSS**

To consider Item 7 **(Pages 53 - 80)**

**8. Exemption from Standing Orders Relating to Contracts: Resource Management System, Premises Risk Management System and Asset Management System**

To consider Item 8 **(Pages 81 - 86)**

**9. Exemption from Standing Orders Relating to Contracts: Wide Area and Local area network (WAN/LAN) provision**

To consider Item 9 **(Pages 87 - 90)**

**10. Budget Monitoring Report April - September 2021**

To consider Item 10 (Pages 91 - 102)

**11. Emergency Service Mobile Communications Programme**

To consider Item 11 (Pages 103 - 120)

**12. Exclusion of Public and Press**

To consider excluding the public and press representatives from the meeting by virtue of Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972, as the report contains information relating to any individual; and Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as the report contain information relating to the financial or business affairs of a person (including the Authority); and on these grounds it is considered the need to keep information exempt outweighs the public interest in disclosing the information.

**13. Exempt Minutes**

To approve, and sign as a correct record the Exempt Minutes of the meeting of the Executive Committee held on 15 September 2021 (Item 13)

**14. Senior Management Team Remuneration and Performance Review, and Annual Report on Employee Bonus Scheme**

To consider Item 14

**15. Date of next meeting**

To note that the next meeting of the Executive Committee will be held on Wednesday 9 February 2022 at 10 am.

If you have any enquiries about this agenda please contact: Katie Nellist (Democratic Services Officer) – Tel: (01296) 744633 email: [knellist@bucksfire.gov.uk](mailto:knellist@bucksfire.gov.uk)

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# Buckinghamshire & Milton Keynes Fire Authority

Minutes of the Meeting of the EXECUTIVE COMMITTEE of the BUCKINGHAMSHIRE AND MILTON KEYNES FIRE AUTHORITY held on WEDNESDAY 15 SEPTEMBER 2021 at 10.00 AM.

**Present:** Councillors Clarke OBE, Hall, Hopkins, Lambert, Marland, McLean, and Walsh

**Officers:** J Thelwell (Chief Fire Officer), G Britten (Director of Legal and Governance), M Osborne (Deputy Chief Fire Officer), E Hilling (Communications, Marketing and Engagement Manager) and C Jordan (Team PA)

**Remotely:** M Hemming (Director of Finance and Assets) A Hussain (Deputy Director of Finance and Assets) S Tuffley (Head of Covid-19 Preparedness and Response), K Nellist (Democratic Services Officer), C Bell (Head of Protection, Assurance & Development), A Collett (Organisational Development Manager) and A McCallum (Executive Assistant to CFO)

**Apologies:** Councillor Christensen

The Chairman advised the Committee that the meeting was being recorded and would be uploaded on to the Authority's YouTube channel after the meeting.

<https://www.youtube.com/channel/UCWmIXPWAscxpL3vIiv7bh1Q>

## EX09 MINUTES

RESOLVED –

That the Minutes of the meeting of the Executive Committee held on Wednesday 14 July 2021, be approved, and signed by the Chairman as a correct record.

## EX10 BUDGET MONITORING REPORT APRIL – JUNE 2021

The Deputy Director of Finance and Assets advised Members that the budget monitoring report being presented today was up to the end of June 2021. Appendix A provided an overview of each directorate's budget and forecast outturn. The current expenditure forecast of £31.6m against a budget of £32.277m resulted in an underspend of £677k. However, due to additional funding of £384k in relation to

protection grants and local tax income guarantee, there was a net overall underspend of just over £1m. Due to the underspend, the Authority no longer needed to fully utilise £1.1m planned use of reserves and instead was intending to transfer £52k from reserves to balance the funding requirement. Any fluctuations in the figure throughout the financial year would be captured and monitored to ensure the use of reserves was minimised and offset against any underspend identified within the expenditure.

The Deputy Director of Finance and Assets highlighted underspend seen within the Finance and Assets, Service Delivery, Corporate Development & Planning directorates. Within Finance and Assets, the £256k underspend related to a rebate received following a business rates review. The review was carried out by external specialists who identified reductions in the rateable value of several stations and was backdated to 2017. The other area with high levels of underspend was predominantly employee costs.

The Deputy Director of Finance and Assets updated Members on how the Authority had utilised £801k of Covid funding since March 2020. Funding had been used to cover additional employee costs, protective equipment, and IT upgrades. Based on current projections, the Covid funding would be fully utilised by September 2021.

The Capital programme budget for 2021/22 was £2.402m. Property capital funds were utilised to carry out planned capital projects as per the condition surveys. Most of the fire appliance and equipment budget would be utilised to purchase red fleet appliances and the related operational equipment. A slippage of £369k had been forecast due to delays in the delivery of the 2021/22 fire appliances.

A Member asked if the delivery delay of new appliances had a negative impact on operations. The Deputy Director of Finance and Assets assured Members that the delay in delivery had not affected operations as Workshops had a robust servicing plan.

Members discussed the increased National Insurance contributions. The Director of Finance and Assets assured Members that there should be no additional costs to the Authority as the Government had announced that national Insurance increases would be met by central government for all local government organisations. The logistics of the national insurance increase and payments were still being investigated.

A Member enquired about the consolidation of staff and if this was carried out regularly. The Deputy Director of Finance and Assets



informed Members that new software had enabled Finance and Human Resources to introduce more efficient ways of working and this had enabled the reduction of staff. In future, any new positions had to be agreed by the Senior Management Team and signed off by the Director of Finance and Assets.

Members asked about the long-term use of Reserves and if rising costs and inflation were considered when setting next year's budget. The Deputy Director of Finance and Assets informed Members that the use of reserves would be needed to cover the 2022/23 budget if no additional funding was given. When setting budgets, inflation was considered and was reflected in the final figure. It would also be hoped that when the government issued final settlements, inflation would be taken into account.

RESOLVED –

That the provisional outturn forecast for the Authority as of 30 June be noted.

**EX11**

#### **THAMES VALLEY FIRE CONTROL SERVICE (TVFCS) MOBILISING SYSTEM REQUIREMENTS**

The Deputy Chief Fire Officer advised Members that the Thames Valley Fire Control Service (TVFCS) went live in April 2015 and the agreement was for a 15-year period, expiring in April 2030. TVFCS utilised the 'Vision 4' mobilising system, which was provided by Capita Secure Solutions and Services (SSS) Ltd. Within the current mobilising system contract, the initial service period was set for seven years, expiring in April 2022, with options to extend service support provision for up to eight years (a maximum total of 15 years).

The contract review point aligned to the requirement of the agreement that "as soon as reasonably practicable following the fifth anniversary of the commencement date Fire Authorities shall discuss whether the contract should be extended together with any upgrade, modification or refresh to the system".

Principally, due to each Services' response to Covid-19 and timelines specified within the contract, presentation of these recommendations to the TVCFS Joint Committee was not practicable prior to a meeting held on the 12 July 2021. As detailed within the agreement, the Joint Committee, created by the three fire and rescue services, provides overall strategic direction and oversight for the TVFCS. The interests of the Authority were currently represented by Councillor Lesley Clarke OBE and Councillor Steven Lambert.

The recommended one-year extension to the contract from April 2022 to April 2023 enables the Authority to monitor and react to the outcome of the sale of Capita Secure Solutions and Services (SSS) Ltd, which was expected to take place imminently. The one-year extension also allowed the Authority the opportunity to consider the associated activity towards implementation of the Emergency Services Network (ESN), the replacement for the current Airwave communications system, which had on several occasions, seen extensions to project timelines. The costs associated with extending the service contract by a further year was detailed within the report. Any periods of extension to the service contract, require Capita Secure Solutions and Services (SSS) Ltd to provide a 'system report'.

The system report sets out expected performance levels and recommended hardware upgrades and refresh options that would be necessary for TVFCS to maintain an appropriate, robust, and resilient level of technological capability.

Detailed within the report was the projected expenditure from the TVFCS Renewals Account commensurate with the requirements detailed within the Capita 'system report'. Whilst this expenditure was significant, the reserve, which includes the accumulated annual contributions of £50,000 from each Service, plus a one-off contribution at implementation, now stands at circa £1.8 million.

Members discussed the risks involved with this contract going forward. The Deputy Director of Finance and Assets informed Members that the one-year extension would enable TVFCS to establish if the new owners of Capita Secure Solutions and Services (SSS) Ltd would be able to provide the same level of service. The Director of Legal and Governance advised Members that the contract and budget would be discussed and reviewed at a meeting scheduled for February 2022.

The Chief Fire Officer highlighted to Members that this was a national risk as 60% of fire control services used the same software. This risk was being monitored by the Home Office and the National Fire Chiefs Council. The Chief Fire Officer would enquire from the Chief Fire Officer of Oxfordshire (who was leading on this piece of work) to ascertain the latest position.

The Deputy Chief Fire Officer extended an invitation to all Members to visit the TVFCS control room. The dates, times and numbers were limited but if Members wished to visit, they should contact the Democratic Services Officer.

RESOLVED -

That the TVFCS Mobilising system contract be extended for one year, from April 2022 to March 2023.

That the project expenditure from the TVFCS Renewals Account commensurate with the requirements detailed within the Capital 'system report' which are summarised within the paper be noted.

**EX12                    EXCLUSION OF PUBLIC AND PRESS**

RESOLVED –

It was moved and resolved that the Press and Public be excluded from the meeting by virtue of Paragraph 3 of Part 1 of Schedule 12a of the Local Government Act 1972 as the report contains information relating to the financial or business affairs of a person (including the Authority); and on these grounds, it is considered, at this moment in time, that the need to keep information exempt outweighs the public interest in disclosing the information.

**EX13                    WORKFORCE DEVELOPMENT UPDATE – SUCCESSION PLANNING**

The Committee considered the report and appendices, details of which were noted in the confidential/exempt minutes.

RESOLVED –

That the report and appendices are noted.

**EX14                    DATE OF NEXT MEETING**

The Committee noted that the date of the next Executive Committee meeting would be held on Wednesday 17 November 2021 at 10.00am.

THE CHAIRMAN CLOSED THE MEETING AT 11.15 AM.

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# Buckinghamshire & Milton Keynes Fire Authority

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**Meeting and date:** Executive Committee, 17 November 2021

**Report title:** Immediate Detriment Framework

**Lead Member:** Councillor David Hopkins

**Report sponsor:** Mark Hemming, Director of Finance and Assets

**Author and contact:** Mark Hemming, [mhemming@bucksfire.gov.uk](mailto:mhemming@bucksfire.gov.uk)

**Action:** Decision

**Recommendations:**

1. That the Immediate Detriment Framework be adopted on behalf of the Authority (the Scheme Manager of the Authority's firefighter pension schemes).
2. That the Director of Finance and Assets be the authorised signatory for any 'Record of Agreed Compensation and Remedy' ('Compensation Record') on behalf of the Authority.

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**Executive summary:**

This report outlines the latest position in relation to immediate detriment cases under the McCloud/Sargeant ruling.

In advance of any changes to legislation, the Home Office had previously issued informal guidance in relation to immediate detriment cases. Legal advice was then sought on whether it was lawful and appropriate for the Authority to apply this guidance in the circumstances indicated. At its meeting on 24 March 2021, the Committee resolved that all firefighters who were members of the Firefighters' Pension Scheme 1992 or New Firefighters' Pension Scheme 2006 ("their old schemes"), subject to the criteria detailed in that report, were to be treated as if in their old scheme. That resolution applied to those due to retire and those due to taper from the date of the resolution, where the calculation of benefits under legacy scheme for the remedy period is possible. It did not apply to members who had already retired.

Since then, legal cases were brought in the High Court against the London Fire Commissioner and Nottinghamshire and City of Nottingham Fire and Rescue Authority. The cases concerned Immediate Detriment issues in relation to the McCloud/Sargeant judgment and the claimants were supported by the Fire Brigades Union (FBU). The FBU was clear that matters for affected individuals needed to be

resolved sooner rather than later and it would, if necessary, support further legal cases. Many Fire and Rescue Authorities (**FRAs**) across the UK on an individual basis had indicated that they wished to be able to deal with Immediate Detriment issues as soon as possible. The problem was not an unwillingness to do so but rather the need to identify and develop a suitable mechanism to be able to do so in a way which minimised the risks while the Government is putting in place the McCloud/Sargeant remedying legislation.

With that in mind, the Local Government Association (**LGA**) and the FBU have been in discussions to identify a mutually acceptable Framework, setting out a mechanism for handling Immediate Detriment cases, to assist all parties prior to completion and implementation of the McCloud/Sargeant remedying legislation. This will help in resolving the genuine difficulties that had arisen for FRAs in making payments to those affected and in removing the potential for further court claims.

On 8 October 2021, the LGA and FBU announced that they had reached agreement on the Memorandum of Understanding (**MoU**) and Framework (see Appendices 1 and 2). Each FRA is asked to consider adoption of the Framework. The FBU are of course party to the MoU which contains the Framework agreement, and in that MoU they agree that where a member receives a remedy/compensation under the Framework they will not provide any financial or other support to the member to bring legal action relating to such remedy/compensation.

The MoU (para. 4.1) makes a distinction between Category 1 and Category 2 cases:

- Category 1 - members who have not yet had benefits brought into payment
- Category 2 - members who have had benefits brought into payment.

The exception to the above is members who did not qualify for ill-health retirement under the FPS 2015 and are not currently in receipt of benefits and are applying for FPS 1992 ill-health benefits, who are treated as Category 2.

The key elements of the process outlined within Annex 2 of the MoU are that:

- Any Member who believes they fall within either Category 1 or 2 may give notice to the FRA which last employed the Member concerned requiring the FRA to investigate their case
- Within **14 days** of receipt, the FRA shall acknowledge receipt of any such notice in writing
- If the FRA accepts that the Member is entitled to a remedy under the Framework, as soon as reasonably practicable and in any event within **62 days** after receiving an application, the FRA shall send to the Member all the information they require to decide whether to receive benefits under their legacy scheme or the 2015 Scheme.

The LGA has produced guidance for FRAs on the Framework in their role as scheme managers (see Appendix 3) (the Authority is the 'scheme manager' of the firefighter

pension schemes). This sets out (pp. 2-3) the following steps FRAs should undertake when considering adoption of the Framework:

1. Obtain the necessary agreement to adopt the Framework
2. Notify their administrator of their intention to make use of the Framework and the timescales contained.
3. Discuss with the administrator the necessary resourcing and/or re-prioritising of work.
4. If the decision is that the Framework will not be adopted, it will be for the FRA to make their own arrangements with regard to any claims and payments made by/to members in this area. In this case, the Service would continue to treat Category 1 cases in accordance with the decision taken at the meeting of the Executive Committee on 24 March 2021. A further paper would need to be brought to the Committee on how to treat Category 2 cases.
5. If the Framework is adopted, scheme members should be made aware of their right to apply under the Framework and the local process for doing so.
6. This step provides further detail on what to include in the communication noted in step 5.

The LGA guidance also covers the detailed steps to be taken when undertaking remedy calculations if the Framework is adopted.

As noted earlier, the Authority has already made the decision to treat members who have not yet had benefits brought into payment as if they were in their old scheme. The MoU and Framework will help to ensure consistency of treatment of members in Category 1 across all FRAs that adopt the Framework. If the Authority adopts the Framework, it will need to revisit the benefits of those subject to immediate detriment who have already retired (Category 2). It is estimated that this could be up to 30 cases.

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### **Financial implications:**

It is not possible at this stage to identify the specific costs associated with the recommendations of this report as these will be identified on a case-by-case basis. Using the immediate detriment framework now will not increase any direct amounts payable, it will simply bring some of those costs forward.

In not applying the framework, further legal action could be taken by the Fire Brigades' Union and result in further litigation costs.

### **Risk management:**

The impact of changes to firefighter pension schemes is noted as a red risk on the Corporate Risk Register. While the MoU and Framework don't directly address any of the budgetary or resourcing impacts, it does reduce the risk of a potential failure to comply with legal requirements.

## Legal implications:

The MoU contains a 'Compensation Record' (Annex 3 of the MoU) which the member signs and which is signed on behalf of the FRA, recording the benefits provided to the member under the Framework process. In addition, the Compensation Record also states that the benefits provided are in full and final settlement of the relevant issues noted in the Compensation Record, and the member agrees not to issue proceedings in respect of them against the FRA either as employer or as scheme manager, other than if there is a failure to abide by the agreement.

The MoU covers compensation as set out in the Framework. It does not cover any additional remedies as that is currently under consideration in the Employment Tribunal, such as injury to feelings. Therefore, the Compensation Record does not seek to settle those claims.

Although the Compensation Record states it is in full and final settlement of the Framework issues, it is not a formal settlement agreement or ACAS (Advisory Conciliation and Arbitration Service) COT3 agreement which would prevent an employee bringing a tribunal claim in respect of the issues.

The LGA has advised FRAs that:

1. The terms of the MoU give comfort in that the FBU agrees that it will not provide any financial or other support to members who have received compensation or are otherwise remedied under the Framework. Whilst this does not mean that claims will not or cannot be brought on an individual or collective basis supported by 'no win no fees' type solicitors, one would expect that fewer firefighters would want to embark on claims themselves, and no win no fee solicitors would be aware of the risk of no awards being made for such claims, due to 'just and equitable' considerations<sup>1</sup>;
2. If FRAs were to try to enter into mass settlement agreements or COT3s it would be difficult to organise (as it is likely to be on an individual basis) and if it is by way of a settlement agreement there would be a cost per agreement for the independent legal advice which the FRA would usually be expected to cover. A standard cost would be around £300 plus VAT for an agreement where the terms are agreed in principle; and
3. Moreover, COT3s and settlement agreements usually exclude the right to claim accrued pension rights from any waiver as a matter of public policy as

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<sup>1</sup> The general principle for compensation for age discrimination is that it is "just and equitable" and so there should be strong arguments that a tribunal hearing such a claim should take into account, and so set off, any compensation already paid in respect of the same loss. That concept is effectively supported by the provisions in the Public Service Pensions and Judicial Offices Bill (the primary remedy legislation) designed to prevent double recovery.



set out in s.91 of the Pensions Act 1995, which prevents such a waiver subject to some very limited exceptions.

**Privacy and security implications:** No direct impact.

**Duty to collaborate:** The Memorandum of Understanding and Framework are available for all fire and rescue services to adopt.

**Health and safety implications:** No direct impact.

**Environmental implications:** No direct impact.

**Equality, diversity, and inclusion implications:**

To reduce the risk of discrimination, this report proposes that in applying the immediate detriment framework, individuals who meet the eligibility criteria are provided a choice of which scheme they would like to be in for the remedy period regardless of whether they are a claimant or non-claimant.

The public sector equality duty requires public bodies to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010. The resolution in this report aims to meet this duty.

**Consultation and communication:**

The Service has already received a number of enquiries from members and retired members in relation to the MoU and Framework. They have been advised that the Executive Committee will be considering whether to adopt the Framework at its meeting on 17 November 2021, and that further correspondence will be provided after that decision has been made.

If the Framework is adopted scheme members will be made aware of their right to apply under the Framework and the local process for doing so.

**Background papers:** Executive Committee. 24 March 2021. Firefighters' Pension Scheme – Age Discrimination Remedy and Employment Appeal Tribunal Judgment. Available at: <https://bucksfire.gov.uk/documents/2021/03/ec-240321-item-8.pdf/>

Appendix	Title	Protective Marking
1	LGA/FBU. 8 October 2021. Framework for Managing Immediate Detriment Issues (Joint Statement)	
2	LGA/FBU. 8 October 2021. Memorandum of Understanding between the LGA and FBU.	
3	LGA. 8 October 2021. Immediate Detriment Framework (IDF) - Guidance for Fire and	

	Rescue Authorities in their role as scheme managers.	
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**To: Fire and Rescue Authorities and Services  
Fire Brigades Union members**

## **FRAMEWORK FOR MANAGING IMMEDIATE DETRIMENT ISSUES**

You will be aware of legal cases brought in the High Court against the London Fire Commissioner (LFC) and Nottinghamshire and City of Nottingham Fire and Rescue Authority (NFRA). The cases concerned Immediate Detriment issues in relation to the McCloud/Sargeant judgment and the claimants were supported by the Fire Brigades Union (FBU).

It was apparent similar issues would arise more widely across the sector. The FBU was clear that matters for affected individuals needed to be resolved sooner rather than later and it would, if necessary, support further legal cases. Many Fire and Rescue Authorities (FRAs) across the UK on an individual basis had indicated that they wished to be able to deal with Immediate Detriment issues as soon as possible. The problem was not an unwillingness to do so but rather the need to identify and develop a suitable mechanism to be able to do so in a way which minimised the risks while the Government is putting in place the McCloud/Sargeant remedying legislation.

With that in mind, the Local Government Association (LGA) and the FBU have been in discussions to identify a mutually acceptable Framework, setting out a mechanism for handling Immediate Detriment cases, to assist all parties prior to completion and implementation of the McCloud/Sargeant remedying legislation. This would help in resolving the genuine difficulties that had arisen for FRAs in making payments to those affected (including for example issues around unauthorised payment charges and contribution holidays) and in removing the potential for further court claims (not just against NFRA and LFC).

During the course of the discussions, the Government laid primary legislation before Parliament in the Public Service Pensions and Judicial Offices Bill and will make secondary legislation pursuant to the Bill (together, the Remedying Legislation) to provide the affected pension scheme members with a remedy for the discrimination found in the McCloud/Sargeant claims.

Following a series of complex discussions including respective legal representatives, which were also able to utilise the longstanding national relationship between the LGA and FBU, we are pleased to advise you that agreement has today been reached on the attached Memorandum of Understanding and Framework.

We believe the Memorandum of Understanding and Framework are consistent with the principles currently set out in the Bill and will mean that appropriate action can be taken. As and when parts of the Remedying Legislation covering the relevant part of the Framework come into effect the MoU and Framework indicate that the relevant Remedying Legislation will then be used instead.

Each FRA is asked to consider adoption of the Framework and we would encourage such adoption in order to provide a consistent approach to Immediate Detriment cases across the fire and rescue service.

You may also wish to be aware that, separately, we and respective legal representatives have worked with NFRA and LFC in respect of the High Court cases and can also advise that settlement has been reached. Settlement took into account the principles in the Framework, however, as is the norm in such settlements, details will remain confidential. The Summary Judgment hearing due to be heard in the High Court later this month is therefore no longer required.



**Jeff Houston**  
**Local Government Association**



**Matt Wrack**  
**Fire Brigades Union**

8 October 2021

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**Dated 8 October 2021**

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**MEMORANDUM OF UNDERSTANDING**

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## PARTIES

- (1) Local Government Association of 18 Smith Square, Westminster, London, SW1P 3HZ (the **LGA**); and
- (2) Fire Brigades Union of Bradley House, 68 Coombe Rd, Kingston-upon-Thames, Surrey, KT2 7AE (the **FBU**).

## 1 BACKGROUND

- 1.1 The LGA represents Fire & Rescue Authorities (**FRAs**) in England, Scotland, Wales and Northern Ireland in connection with the matters covered by this memorandum of understanding (**MoU**).
- 1.2 The FBU is a trade union that represents firefighters and other employees employed by the FRAs (together the '**Members**') who are affected by the matters covered by this MoU.
- 1.3 The LGA (on behalf of the FRAs) and the FBU (on behalf of the Members) wish to record the basis on which they will collaborate with each other to ensure that Members who have (or will) suffer an "**Immediate Detriment**" (as described in para. 4.1 below) by reason of their retirement (or impending retirement), following the decision made by the Court of Appeal on 20 December 2018 and the Employment Appeal Tribunal on 12 February 2021 in the *Sargeant* claims, are provided with a remedy as swiftly as possible.
- 1.4 A framework (the **Framework**) and a timetable for providing a remedy for each affected Member is set out in Annex 1 and Annex 2 to this MoU, which the parties expect the FRAs and Members to adhere to. Nothing in the MoU shall be interpreted to mean that the FBU will not initiate or support legal proceedings on behalf of any Member whose case is not dealt with in accordance with the Framework or that timetable.
- 1.5 The MoU only covers compensation relating to any shortfall in the pension commencement lump sum, pensions benefits and contributions payable to or payable by a Member (including issues relating to tax relief, interest and charges connected to those amounts) as set out in Annex 1. This MoU does not cover any additional remedies currently under consideration in the Employment Tribunal.
- 1.6 In this MoU:
  - 1.6.1 references to a Member's **Legacy Scheme** are references to the pension scheme in which the Member was an active member on 31 March 2012; and
  - 1.6.2 references to the **2015 Scheme** are references to the firefighters' pension schemes in England, Wales and Scotland created under the Public Service Pensions Act 2013.

## 2 OBJECTIVES

- 2.1 The parties acknowledge the importance of ensuring that Members who have suffered (or will suffer) an Immediate Detriment (as described in para. 4.1 below) receive compensation or are otherwise remedied now. They recognise that the Government has laid primary legislation before Parliament in the Public Service Pensions and Judicial Offices Bill (the **Bill**), and will make secondary legislation pursuant to the Bill (together, the **Remedying Legislation**) to provide the affected Members with a remedy for the discrimination found in the *Sargeant* claims.

The parties believe that the Framework is consistent with the principles currently set out in the Bill. In particular, any compensation or remedy provided to Members under this MoU:

2.1.1 amounts to “compensation” of the type anticipated by clause 21<sup>1</sup> of the Bill; and/or

2.1.2 is to be taken into account when assessing whether the Member has:

(a) “benefited from an immediate detriment remedy” for the purposes of clause 29 of the Bill; and/or

(b) been provided with a remedy under any scheme regulations of the type anticipated by clause 28 of the Bill

(to avoid a situation where the Member receives additional recoveries under the Bill which have already been compensated for under this MoU).

2.2 This MOU is separate from, and is not subject to or dependent on, any guidance issued in relation to “Immediate Detriment” before the Remedying Legislation comes into force.

### **3 PRINCIPLES OF COLLABORATION**

3.1 The LGA will request that the FRAs, and the FBU will request that its Members, adopt the following principles:

3.1.1 Collaborate and co-operate. To adhere to the Framework so that activities are delivered and actions taken as required;

3.1.2 Act in a timely manner. Recognise the importance of moving things forward swiftly and responding accordingly to reasonable requests for support; and

3.1.3 Act in good faith to support achievement of the objectives and adherence to these principles.

### **4 IMMEDIATE DETRIMENT CASES IN SCOPE**

4.1 The Framework will apply to Immediate Detriment cases that have already arisen, or arise before the Remedying Legislation comes into force, namely cases for:

4.1.1 Members who, at the date of this MoU, are employed by an FRA and:

(a) become eligible to retire (for any reason, including ill-health) and draw any pension and/or lump sum benefit and want to have all their benefits paid from their Legacy Scheme (not the 2015 Scheme); or

(b) do not qualify for a lower-tier (and therefore higher-tier) ill-health pension under the single pot ill-health retirement arrangement provided for in the 2015 Scheme and are therefore left without an immediately payable pension, but would be entitled to such a pension under their Legacy Scheme

**(Category 1 cases);**

4.1.2 Members who, at the date of this MoU:

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<sup>1</sup> In this MoU, references to clause numbers in the Bill refer to the clauses as numbered on the date when the MoU is signed.

- (a) have already retired (for any reason, including ill-health) and who are receiving a pension under the 2015 Scheme, and who wish to be treated as having retired as a member of their Legacy Scheme; or
- (b) have left the fire and rescue service and did not qualify for a lower-tier (and therefore higher-tier) ill-health pension under the single pot ill-health retirement arrangement provided for in the 2015 Scheme, and are therefore left without a pension in payment but would be entitled to such a pension under their Legacy Scheme

**(Category 2 cases).**

- 4.2 The Category 2 cases include the claims set out in High Court claim number QB-2021-000636, although the parties acknowledge that the claimants and the defendants in that claim will (subject to agreeing the position on legal costs) need to file a consent order recording any settlement achieved in accordance with the Framework set out in this MoU.

## **5 FRAMEWORK**

- 5.1 The parties intend that the various issues that arise in relation to Category 1 and Category 2 cases will be resolved in accordance with the Framework set out at Annex 1 to this MoU.
- 5.2 The parties anticipate that the Remedying Legislation will provide a mechanism that will allow some matters to be dealt with more conveniently once it comes into force. These matters are:
  - 5.2.1 compensation for any tax relief foregone on the arrears of contributions payable by the Member (except for Category 1 cases where the contribution arrears can be processed through PAYE);
  - 5.2.2 interest payable by the Member on the arrears of contributions;
  - 5.2.3 interest payable to the Member on adjusted employee contributions under the 2006 Scheme; and
  - 5.2.4 CETVs and added pension (for Category 1 cases).
- 5.3 These matters (and only these matters) will be calculated and processed once the Remedying Legislation is in force. Where applicable, the way they will be dealt with until that point is reached is set out in Annex 1. The parties agree that the mechanism provided by the Remedying Legislation will be used to make the calculation and the amounts will be processed in accordance with the Remedying Legislation.
- 5.4 The LGA and the FBU will encourage the relevant FRA and Member to document the agreed compensation or remedy in line with the template set out at Annex 3 to this MoU (the **Compensation Record**). This does not apply to the High Court claim referred to in para. 4.2 above where the terms of any settlement will be recorded in a confidential settlement agreement attached to a consent order.
- 5.5 The FBU agrees that it will not provide any financial or other support to Members who have received compensation or are otherwise remedied under the Framework to bring any court or tribunal proceedings relating to matters which have been (or are being) addressed under the Framework (or, in the case of those matters listed at para. 5.2 above, will be addressed under the Remedying Legislation). The FBU's agreement does not apply, however, to any question or dispute as to whether the Framework has been applied correctly in accordance with this MoU, or to any question or dispute regarding a matter that is not covered by the Framework.



## **6 CONCERNS OR COMPLAINTS**

- 6.1 If either party has any issues, concerns or complaints about any matter in this MoU that party shall notify the other party and the parties shall then seek to resolve the issue through discussion (consistent with the objectives and principles set out at paras. 2 and 3 above). Those discussions may involve the relevant FRA and Member where appropriate.
- 6.2 Either party may terminate such discussions at any time. Where it has been agreed that the Framework is being used, the fact that such discussions could be commenced or have been commenced will not act as an impediment to any Member who alleges that the FRA concerned is not dealing with their case in accordance with the Framework and seeks relief from the Court. Nor will it act as an impediment to the FBU providing legal or other support to such a Member.

## **7 REVIEW, TERM AND TERMINATION**

- 7.1 This MoU shall commence on the date of signature by both parties.
- 7.2 The parties will meet periodically on dates to be agreed between them (the first such meeting to take place within five weeks of the date of this MoU) to:
- 7.2.1 review the application of the Framework and the process set out in Annex 2, paying attention, in particular, to the timetable for processing cases in the light of the number of cases being dealt with by FRAs; and
  - 7.2.2 discuss whether any changes to the Framework are needed if the passage of the Bill (and the secondary legislation made pursuant to the Bill) adversely affects the ability of an FRA or a Member to implement the Framework and/or the process set out in Annex 2 and work in a spirit of cooperation to agree those changes.
- 7.3 If, on the date Remedying Legislation applicable to an issue set out in Annex 1 comes into force, a case that includes that issue is still being processed under the Framework, that issue will instead be processed under the Remedying Legislation and that fact will be noted in the Compensation Record (Annex 3). For the avoidance of doubt the rest of the issues in the case will be dealt with in accordance with Annex 1.
- 7.4 If all of the issues relevant to a case are covered by Remedying Legislation which has come into force before a Compensation Record is signed by the Member and the FRA that case will instead be processed under the Remedying Legislation.
- 7.5 This MoU will automatically expire on the last date on which Remedying Legislation applicable to all of the issues set out in Annex 1 comes in to force and will in any event expire on 1 October 2023. However, the parties agree that the timeframes set out in Annex 2 will continue to apply to the issues set out in Annex 1 where those issues are being processed under the Remedying Legislation provided that the timeframes do not put an FRA in breach of its obligations under the Remedying Legislation.
- 7.6 This MoU may be terminated (in whole or in part) by agreement in writing between the parties.
- 7.7 This MoU may be terminated by either party if the other party is in serious or repeated breach of its terms, and does not remedy the breach within 21 days of notice being given requiring it to do so.

## **8 VARIATION**

- 8.1 This MoU, including Annexes 1, 2 and 3, may only be varied by written agreement of the parties.

## **9 CHARGES AND LIABILITIES**

- 9.1 Liability for the legal costs incurred in High Court claim number QB-2021-000636 will be payable in accordance with any agreement reached between the parties to that claim or any order made by the Court in those proceedings.
- 9.2 Subject to para 9.1, and except as otherwise provided, the parties, FRAs and Members shall each bear their own costs and expenses incurred in agreeing to and implementing this MoU and the Framework.
- 9.3 Each party shall remain liable for any losses or liabilities incurred due to their own actions and neither party intends that the other party shall be liable for any loss it suffers as a result of this MoU.

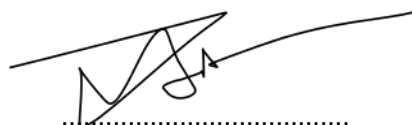
## **10 STATUS**

- 10.1 This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the parties from this MoU. The parties enter into the MoU intending to honour all their obligations.
- 10.2 Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party as the agent of the other party, or authorise either of the parties to make or enter into any commitments for or on behalf of the other party.

## **11 GOVERNING LAW AND JURISDICTION**

- 11.1 This MoU shall be governed by and construed in accordance with the laws of England and Wales and, without affecting the procedure set out in para. 6, each party agrees to submit to the non-exclusive jurisdiction of the courts of England and Wales.

Signed by **JEFF HOUSTON**  
for and on behalf of **the LGA**

  
.....

**HEAD OF PENSIONS**

8th October 2021  
.....

**[Date]**

Signed by **MATT WRACK**  
for and on behalf of **the FBU**

  
.....

**GENERAL SECRETARY**

8 October 2021

#### CONTACT POINTS

##### **LGA**

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3HZ  
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##### **FBU**

Name: Mark Rowe  
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E-mail Address: [Mark.Rowe@fbu.org.uk](mailto:Mark.Rowe@fbu.org.uk)

## ANNEX 1 – FRAMEWORK

Issue	Category 1 cases	Category 2 cases
Shortfall in retirement lump sum and past pension payments	Retirement lump sum and benefits paid on retirement through Legacy scheme (so that no shortfall arises).	Pay as lump sums (comprising pension lump sum and arrears lump sum likely made in two payments) through the 1992 scheme (as arrears). Pension arrears will be subject to PAYE, but if any additional income tax is payable by the member that would not have been payable if the member had never been treated as a member of the 2015 Scheme, the FRA will compensate the member for that tax liability.
Interest on shortfall in retirement lump sum and past pension payments	No interest due because correct lump sum and pension benefits will be paid on retirement.	Interest paid at 3% p.a. simple, from the date lump sum / benefits should have been paid.
Employee contributions: 1992 Scheme	Member pays shortfall (since 2015) through payor as a deduction from retirement lump sum.	Member pays any shortfall (since 2015) as a deduction from retirement lump sum. If no lump sum is payable, the member will need to pay any contributions owed from their own resources and to be given a reasonable time to pay based on their individual circumstances.
Employee contributions: 2006 Scheme	Compensation for excess contributions to be paid on retirement. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	FRA to pay compensation for excess contributions. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.
Tax relief on employee contributions	<p>Process through PAYE to the extent possible if time/amount allows. If time does not allow, then any tax relief not collected through PAYE will be calculated and paid when the remedying legislation is in force.</p> <p>FBU and FRAs will encourage members to give as much notice of retirement as possible to facilitate payment through PAYE.</p>	Compensation for any tax relief foregone will be paid to the individual when the remedying legislation is in force. So, for now, individuals will pay the gross amount of contributions due.

Interest payable on adjusted employee contributions (1992 Scheme)	Interest to be paid by the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation). If tax relief was not processed through PAYE (because time/amount did not allow), where the individual is due to receive a future payment to compensate him or her for the tax relief foregone, the interest amounts will be deducted from that payment.	Interest to be paid by the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation). Where the individual is due to receive a future payment to compensate him or her for the tax relief foregone, the interest amount will be deducted from that payment.
Interest payable on adjusted employee contributions – compensatory amount (2006 Scheme)	Interest to be paid to the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation).	Interest to be paid to the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation).
Contribution holidays: excess employee contributions	Compensation for excess contributions to be paid on retirement. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	FRA to pay compensation for excess contributions. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.
CETVs and added pension	If an issue arises, then look at it at that point. Individual and FRA will work together to agree a holding compromise that the CETV/added pension will stay in the 2015 scheme until the legislative solution arrives.	Deal with as and when arises.
Annual Allowance charges	<p>Recalculate pension input amount for each year of remedy.</p> <p>If an annual allowance charge would have arisen if the individual had not been transferred to the 2015 Scheme, the charge remains payable by the member (through scheme pays or otherwise).</p> <p>If an annual allowance charge would not have arisen (or a lesser charge applied) if the member had not transferred to the 2015 Scheme, the member will pay that charge and the FRA will compensate the member for the annual allowance</p>	<p>Recalculate pension input amount for each year of remedy.</p> <p>If an annual allowance charge would have arisen if the individual had not been transferred to the 2015 Scheme, the charge remains payable by the member (through scheme pays or otherwise).</p> <p>If an annual allowance charge would not have arisen (or a lesser charge applied) if the member had not transferred to the 2015 Scheme, the member will pay that charge and the FRA will compensate the member for any annual allowance</p>

	charge that is demanded (or any excess over the lesser charge that would have applied).	charge that is demanded (or any excess over the lesser charge that would have applied).
Scheme pays (MSP/VSP)	Member pays tax through VSP for statutory tax years for which it becomes due.	Member pays tax through VSP for statutory tax years for which it becomes due.
Converting scheme pays debits	FRA to recalculate the pension debit as if taken at time of original scheme pays election using actuarial factors applicable at time.	FRA to recalculate the pension debit as if taken at time of original scheme pays election using actuarial factors applicable at time.
Converting pension sharing debits	Deal with on a case by case basis as issues arise.	Deal with on a case by case basis as issues arise.
Dependents	Deal with on a case by case basis as issues arise (and in accordance with the timeframes set out in Annex 2 where reasonably practicable).	Deal with on a case by case basis as issues arise (and in accordance with the timeframes set out in Annex 2 where reasonably practicable).
Taper members	Tapering to stop (because that is the only step that is consistent with the ET decision).	Tapering to stop (because that is the only step that is consistent with the ET decision).
Unauthorised payments	N/A	The FRA will compensate the member for unauthorised payment charges which the member has had to pay and which he or she would not have had to pay if the member had not transferred to the 2015 Scheme.

## ANNEX 2 – THE PROCESS

- 1 Any Member who believes that he or she is a Category 1 or a Category 2 case, and any person who believes that he or she is a dependant of a Category 1 or a Category 2 case Member ('an **Applicant**'), may give notice to the FRA which last employed the Member concerned requiring the FRA to investigate their case. Any such notice must be given in writing (by post or by email).
- 2 Within 14 days of receipt, the FRA shall acknowledge receipt of any such notice in writing (by post or by email), and inform the Applicant:
  - 2.1 either that the FRA accepts that the Applicant is entitled to a remedy under the Framework; or
  - 2.2 explain why, in the FRA's view, the Applicant is not entitled to a remedy under the Framework.
- 3 If the FRA accepts that the Applicant is entitled to a remedy under the Framework, as soon as reasonably practicable and in any event within 62 days after receiving an application under paragraph 1, the FRA shall send to the Applicant:
  - 3.1 In a Category 1 Case:
    - 3.1.1 a statement of the benefits that the Member would be entitled to receive if he or she retires under the rules of the Member's Legacy Scheme;
    - 3.1.2 a statement of the benefits that the Member would be entitled to receive if he or she retires under the rules of the 2015 Scheme; and,
    - 3.1.3 a form inviting the Applicant to choose to take benefits in accordance with the rules of the 2015 Scheme or the Member's Legacy Scheme.
  - 3.2 In a Category 2 Case:
    - 3.2.1 a statement of the benefits that the Member would have received if he or she had retired under the rules of the Member's Legacy Scheme, calculated as at the date of retirement or, in the case of a Member who left employment without an immediate pension, as at the date of leaving;
    - 3.2.2 a statement of the benefits that the Member received or was prospectively entitled to receive under the rules of the 2015 Scheme, calculated as at the date of retirement or, in the case of a Member who left employment without an immediate pension, as at the date of leaving;
    - 3.2.3 a statement of the arrears of pension and lump sum that the FRA will pay if the Applicant chooses to take benefits under the terms of the Member's Legacy Scheme;
    - 3.2.4 a statement of the arrears of contributions that will have to be paid or that will be reimbursed (if any) if the Applicant chooses to take benefits under the terms of the Member's Legacy Scheme;
    - 3.2.5 a statement of any tax adjustments that will have to be made if the Applicant chooses to take benefits under the terms of the Member's Legacy Scheme (including details of any "scheme pays" election that the Applicant might be able to make); and

3.2.6 a form inviting the Applicant to choose to take benefits in accordance with the rules of the 2015 Scheme or the Member's Legacy Scheme.

4 If the Member's entitlements under their Legacy Scheme cannot be determined without further medical advice, the period between the date of the request for further medical advice and the date when that advice is received shall be ignored for the purposes of the timetable set out in paragraphs 2 and 3 above.

5 Once the FRA receives notice of the Applicant's election, and if the Applicant chooses to receive benefits under the rules of the Member's Legacy Scheme:

5.1 In a Category 1 Case, the Applicant's entitlements shall be progressed as "business as usual".

5.2 In a Category 2 Case, the FRA shall:

5.2.1 adjust the Applicant's pension debit if required to allow for any "scheme pays" election that the Applicant makes on account of any annual allowance charge that would have arisen if the Member had never been treated as a Member of the 2015 Scheme;

5.2.2 begin to pay benefits in accordance with the Legacy Scheme rules with effect from the next pension payroll date which is at least one month after the receipt of the Applicant's election;

5.2.3 as soon as reasonably practicable and in any event within 28 days after receipt of the Applicant's election, pay to the Applicant the arrears of pension and lump sum, calculated under 3.2.3 above and rolled forward to the date of payment, with interest calculated in accordance with the Framework to the date of payment, plus compensation for any excess contributions paid, after deducting:

(a) any arrears of contributions calculated under 3.2.4 above; and

(b) any additional tax required to be paid under PAYE on arrears of pension that would have arisen if the Member had never been treated as a Member of the 2015 Scheme.

If the deductions to be made under paragraph 5.2.3(a) and (b) exceed the arrears to be paid under 5.2.3, the FRA shall not be obliged to begin to pay benefits under the Legacy Scheme rules in accordance with 5.2.2 until a reasonable schedule for payment of the excess has been agreed between the Applicant and the FRA.

6 In a Category 2 case, no further action is required if the Applicant chooses to continue to receive benefits under the Rules of the 2015 Scheme.

7 Until the Applicant makes an election under paragraph 3.1.3 or 3.2.6, no further action is required.

8 Giving effect to the Applicant's election under paragraph 3.1.3 or 3.2.6 to receive benefits calculated in accordance with the Legacy Scheme rules shall be conditional on the Applicant signing and returning a settlement agreement substantially in the form of the record of agreed compensation and remedy set out in Annex 3 to the MoU.

9 The member and an FRA's commitment to adhere to the process and timeframes as set out above is in consideration of the Principles of Collaboration and the ongoing review of the Framework as provided for at clauses 3 and 7.2 of the MoU respectively.



### ANNEX 3 – RECORD OF AGREED COMPENSATION / REMEDY

I [NAME OF MEMBER] have agreed with [NAME OF FRA] in its capacity as both an employer and scheme manager to receive compensation and/or a remedy in line with the framework set out in the MoU dated [DATE] between the LGA (on behalf of FRAs) and the FBU (on behalf of its members).

I am a “Category [1/2]” case.

I understand and agree that:

- the Government has proposed to make new legislation that is intended to provide me with the pension benefits that I could have received if the pension changes made in 2015 had not been made, but that new legislation may not come into force until October 2023;
- some of the issues relating to my pension benefits have not been fully resolved and will not be fully resolved until the new legislation comes into force in October 2023, and as a consequence some payments (including tax relief and some interest amounts) might be calculated and processed once the new legislation comes into force. These issues are noted in the table below;
- The compensation I have received will be taken into account for the purposes of the new legislation (to avoid a situation where I receive additional amounts under the new legislation which have already been compensated for under the agreed framework);
- I understand that survivor benefits under the 1992 Firefighters Pension scheme are payable only to a legal spouse or civil partner, meaning a partner with whom I have entered into a formal registered civil partnership. If I choose to receive benefits under the rules of the Firefighters’ Pension Scheme 1992 and I am unmarried and not in a civil partnership at the date of my death then a survivor’s pension will not be payable;
- The decision I make to receive benefits under the rules of the Firefighters’ Pension Scheme 1992/ Firefighters’ Pension Scheme 2006/ Firefighters’ Pension Scheme 2015 [delete as applicable] is irrevocable. Neither I nor my dependants will be given an option to reconsider this decision once the new legislation comes into force;
- The way in which the issues relevant to my case are dealt with under the framework (as noted in the table below) amounts to a full and final settlement of my claim. I will not commence or continue any court or tribunal proceedings against [NAME of FRA] (in its capacity as employer or pension scheme manager) in relation to any matters that are covered by this agreement (other than a failure to abide by the terms of this agreement); and

The issues in my case have or will be addressed as follows:

[PARTIES TO INSERT RELEVANT ROWS FROM THE ANNEX 1 FRAMEWORK TABLE WITH AN ADDITIONAL COLUMN TO DOCUMENT THE ACTUAL PAYMENT, ADJUSTMENT AND/OR RECORD ALTERATION MADE FOR EACH SPECIFIC ISSUE FOR THAT MEMBER.]

Signed by [NAME of MEMBER] on [DATE]

Signed by [NAME] on behalf of [FRA] on [DATE]

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# Immediate Detriment Framework (IDF) - Guidance for Fire and Rescue Authorities in their role as scheme managers

Version number	Date of publication
1.0	8 October 2021

The IDF has been developed and agreed by the LGA (in line with the decisions of the Steering Committee specifically set up to deal with matters arising from Sargeant) and the FBU based on the current understanding of the provisions contained for remedy in the [Public Service Pensions and Judicial Offices Bill 2021](#). Its purpose is to provide a framework under which members in scope can receive benefits prior to all remedying legislation being in force, therefore avoiding significant additional numbers of Immediate Detriment legal claims as a result of the [Sargeant age discrimination case](#).

This document makes reference to Category 1 (Cat 1) and Category 2 (Cat 2) cases. These are respectively those members who have not yet had benefits brought into payment and those who have had benefits brought into payment. The exception is members who did not qualify for ill-health retirement under the FPS 2015 and are not currently in receipt of benefits and are applying for FPS 1992 ill-health benefits, who are treated as Category 2.

Payments made under the IDF will either be a scheme payment and therefore from the pension fund account or an employer payment which cannot be met from the pension fund account. The table in [Annex 1](#) sets out which payments are from the pension fund account and which are not.

It is for each Fire and Rescue Authority (FRA) as the relevant [scheme manager](#) within the Firefighters Pension Scheme (FPS) to adopt the IDF. FRA's are encouraged to do so particularly given the breadth and complexity of the matters covered, which will support a consistent approach across FRAs.

In considering its decision an FRA will also wish to take into account the risks in terms of potential legal claims should they not do so, given the FBU has previously indicated its intention to bring claims should it feel a case has not been dealt with correctly.

The FBU are of course party to the Memorandum of Understanding (MoU) which contains the Framework agreement and in that MoU they agree that where a member receives a remedy/compensation under the IDF they will not provide any financial or other support to the member to bring legal action relating to such remedy/compensation (they can of course back action where there is a dispute about whether the Framework has been applied correctly).

## Adoption of the Framework

In considering the adoption of the IDF, the FRA should undertake the following steps immediately on the announcement of the framework agreement:

1. Obtain the necessary FRA agreement to make use of the IDF, involving the FRA's Nominated Contact for the purposes of the transitional protections claims. Although we understand that the FBU will be communicating the details of the IDF to their members, FRAs should ensure that they communicate the timeframe for this decision to all scheme members.
2. Notify their administrator of their intention to make use of the IDF and the timescales contained.
3. **The FRA will need to discuss with the administrator the necessary resourcing and/or re-prioritising or work to ensure the IDF can be delivered or if this is not possible arrange for alternative resourcing to deliver the IDF.**
4. If the decision is that the IDF will not be adopted, it will be for the FRA to make their own arrangements with regard to any claims and payments made by/to members in this area.
5. Once the IDF is adopted, scheme members should be made aware of their right to apply under the IDF and the local process for doing so through an appropriately widespread and proven means of communication. Such communications could include, for example, a note on payslips of all post 2015 pensioners and a page on the intranet for active members. They should also indicate that the scheme member will need to sign the Compensation Record (set out at Annex 3 of the MoU)
6. These communications should include at least the following information/options:
  - i. The dates and rules for being in scope.
  - ii. The process for applying under the IDF – for example in writing/ by email/ completion of a form, and what information is required within the application. This could include the member's personal details, date of joining, FPS scheme they were a member of, any previous public service pension membership, and the basis for the application i.e. ill-health pension not in payment, or revision of normal retirement.

- iii. The potential for delay if incomplete or inaccurate information is supplied by the member (for example if the member has public service pension membership that has not already been notified to the FRA).

## Implementing the framework

Once the FRA has adopted the IDF, the steps below will need to be undertaken in respect of members who apply under it. Although some of these steps will be undertaken by the appointed scheme administrator on behalf of the FRA, the FRA as scheme manager is responsible in law for managing the scheme and paying benefits and as employer for the payment of any compensation.

This document should be read in conjunction with the IDF, and particular attention is drawn to timescales in Annex 4 of the IDF.

### Step 1 Collect the data required to assess if member is in scope of the IDF

1. Date of commencement in the FPS.
2. If the date of commencement is after 31 March 2012 and before 1 April 2015, the date of leaving any public service pension scheme in condition iii. below prior to the date of commencement in the FPS (the member will have to provide this if there is no record).
3. If the member is applying for retrospective ill-health benefits under the FPS 1992 the original report of the Independent Qualified Medical Practitioner's (IQMP) report (Cat 2 only). Note that FRAs were advised in [FPS Bulletin 28](#) to obtain IQMP assessments against both final salary and CARE schemes for current and new ill-health cases.

### Step 2 Determine if member is in scope of the IDF

1. To be in scope a member must meet all of the following conditions:
  - i. They must have pensionable service under FPS 2015 in the period beginning 1 April 2015 and ending 31 March 2022 (the remedy period).
  - ii. That service would have been pensionable service under FPS 1992 or FPS 2006 but for the person's failure to meet the condition relating to the person's attainment of normal pension age by a specified date. (i.e., they are unprotected or tapered members).
  - iii. They must have been, on 31 March 2012 or any earlier day, in service in any employment or office that is pensionable service under:
    - a) a public service legacy scheme,
    - b) a judicial legacy scheme or
    - c) A local government legacy scheme.
  - iv. There must not be a continuous break of 5 years or more without any pensionable service in the schemes listed in condition iii., from the last

day of pensionable service in condition iii. to the first day of pensionable service in condition i.

2. If the member is applying for retrospective ill-health retirement under the FPS 1992 in addition to meeting the conditions above, they must also meet the qualifying conditions for ill-health retirement in that scheme.
3. If a Category 1 member meets each of the conditions above, they should be informed within 14 days of application that they are in scope of the IDF and that their options and figures will be available at the time they take their benefits. Although the steps below are not immediately required in these cases, FRAs are advised to begin the process set out in step 3 to ensure they have the necessary data in place when the member does take their benefits. The remainder of the steps should be followed once the member has notified the FRA of their intention to retire.
4. If a Category 2 member meets each of the conditions above, they should be informed within 14 days of application that they are in scope of the IDF and that their options and figures will follow.
5. If the member does not meet the conditions above, they should be informed within 14 days of application that they are not in scope of the IDF and the conditions which they did not meet.

### Step 3 Data required for calculations of ID

FRAs are advised to read this section in conjunction with the [Age discrimination remedy data collection guidance for administrators and FRAs](#).

1. Obtain a breakdown of the original benefit calculation to include:
  - i. The FPS 2015 pension and lump sum
  - ii. The total pensionable service, pensionable pay, commutation decision, pension, and lump sum in respect of the FPS 1992 or FPS 2006.
2. Determine the pensionable service which would have been accrued under the FPS 1992 or FPS 2006 during each year of the remedy period (the “remediable service”). For further information on pensionable service please see the [Age discrimination remedy data collection - Guidance for administrators and FRAs](#).
3. Determine the appropriate pensionable pay and any Additional Pension Benefits (APBs) due for each year of remediable service. Any entitlement to a two-pension award should also be determined at this point. For further information on pensionable pay and two pensions please see the [Age discrimination remedy data collection - Guidance for administrators and FRAs](#).
4. Determine the total gross contributions which were paid by the member during each year of remediable service

5. Determine the FPS 1992 or FPS 2006 employee contribution rates applicable to each year of remediable service as per the tables in the following links:

[FPS 1992 contribution rates 2015/16 - 2021/22](#)

[FPS 2006 \(standard\) contribution rates 2015/16 - 2021/22](#)

[FPS 2006 \(special\) contribution rates 2015/16 - 2021/22](#)

6. Determine to what extent the member would have qualified for a contributions holiday during the remedy period. For further information on contribution holidays please see the [Age discrimination remedy data collection - Guidance for administrators and FRAs](#)
7. If the member is applying on health grounds, determine if they would have qualified for ill-health retirement under the FPS 1992. See [FPS Bulletin 28](#) for more information on assessing current/ new or retrospective ill-health applications.
8. Obtain details of any transfers into the FPS 2015 scheme.
9. Obtain details of any contract in place to pay contributions for additional pension in the FPS 2015.
10. Obtain details of any divorce pension debit or scheme pays deductions in place.

#### **Step 4 Determine any change in Annual Allowance (AA)**

For some members the impact of treating them as if they had never left their previous final salary scheme might mean that they would have breached the annual allowance limits in former pension input period years.

1. For each pension input period calculate the opening balance and closing balance in respect of each year in the remedy period as if the member had remained in their relevant legacy scheme (FPS 1992 or FPS 2006).
2. Calculate the excess, if any, of the growth in each year (the difference between the opening and closing balance) over the relevant Annual Allowance limit including any carry forward.
3. Do the same calculations for the member based on the current mix of FPS 1992 or FPS 2006 plus FPS 2015 pension (the transitional benefits) and compare the two sets of values.
4. Further information on the Annual Allowance, including pension input periods, opening and closing balances, and carry forward can be found on the [Annual Allowance page](#) of the FPS member website or in [HMRC Tax Manual PTM051100 - Annual allowance: essential principles](#).

#### **Step 4A Determine the extent of an FPS 1992 or FPS 2006 breach of the AA limit**

5. If the Annual Allowance limit is breached (or the breach is increased) because of FPS 1992 or FPS 2006 benefits calculate the relevant amount of new or increased pension deduction under mandatory scheme pays or voluntary scheme pays using the relevant scheme factors. Note that the member is only liable for any charge that would have arisen if they had remained in their legacy scheme throughout the remedy period.

#### **Mandatory scheme pays (MSP)**

6. Section 237B of the Finance Act 2004 allows MSP where:
  - i. the tax charge is over £2,000, and
  - ii. the individual is subject the standard annual allowance (currently £40k)
  - iii. this relates to a single scheme and to the immediately preceding tax year.
7. If the conditions are met, then the scheme administrator becomes jointly and severally liable (with the member) for the annual allowance charge and must pay this to HMRC within a given timescale. They must also make a consequential adjustment to the member's pension savings or their benefits under the pension scheme.
8. MSP can only apply to the immediately preceding tax year, so MSP cannot be used to pay breaches of annual allowance in previous years within the remedy period.
9. For periods within the statutory time limits, where an individual has already used MSP, pension debits for previous years can be adjusted to accommodate any revisions to the annual allowance charge owed.

#### **Voluntary Scheme Pays (VSP)**

10. Where in certain circumstances an individual cannot use MSP to pay a relevant HMRC tax charge, they may be able to use VSP, so called because the scheme can agree to voluntarily pay the tax charge and deduct from the member via the debit.
11. As a voluntary arrangement there are no conditions attached to it other than the scheme agreeing they can pay it.
12. However, under VSP the member is individually and solely liable and the charge must be paid within the normal HMRC rules for paying tax (31 January following the year of tax charge).



13. In May 2017, following legal advice a [technical note](#) was issued to confirm that FRAs were able to utilise VSP to pay tax charges on a member's behalf, and guidance was subsequently issued with [FPS Bulletin 4](#) including election forms for the member and scheme manager.
14. FRAs may now wish to re-visit the decisions they made about allowing VSP, to amend the conditions they apply to payments under VSP.
15. For more information on calculating the scheme pays debit see the [Tax charge debits \(scheme pays\) page](#) on the FPS Regulations and Guidance website

#### **Step 4B Determine the extent of an FPS 2015 breach of the AA limit**

16. If the Annual Allowance was breached under the FPS 2015 benefits but is not breached or the breach is less under FPS 1992 or FPS 2006 benefits calculate any new amount of reduced pension deduction under mandatory scheme pays or voluntary scheme pays using the relevant scheme factors.
17. For more information on calculating the scheme pays debit see the [Tax charge debits \(scheme pays\) page](#) on the FPS Regulations and Guidance website.
18. If applicable, calculate the amount of compensation equal to the excess scheme pays deductions made as a result of 16 above since the member took their benefits.

#### **Step 5 Calculate the difference in benefits payable (Category 2 only)**

1. Calculate FPS 1992 or FPS 2006 pension and any lump sum as if the member had continued in that scheme until the date they retired.
2. These calculations should be performed using the original commutation decision made by the member. Note that the effect of the Bill provision is understood to effectively return the member back to immediately prior their benefits coming into payment so they could, if they wish, revisit the commutation decision made at the time and should be informed accordingly as set out below.
3. If the member has applied to have their ill health decision and/or benefits revisited under the IDF then the FRA should reassess the qualification for ill health under the FPS 1992, including obtaining an IQMP determination if this is not already available, and if appropriate calculate the amount of benefits payable under that scheme.
4. If the FPS 1992 or FPS 2006 benefits are higher than those currently in payment, calculate the amount of arrears of pension and lump sum due.

5. Calculate interest on the arrears of benefits payable to the member at a rate of 3% per annum simple. Note this interest will be subject to tax at 20%, and the FRA will need to deduct that on paying it to the scheme member. Interest on pension arrears must be calculated for each month or part month at 3% simple (without compounding), for the period between the date of the original monthly pension payment and the date of the arrears payment.

#### **Step 6 Calculate the lump sum unauthorised payment charge and compensation**

1. Calculate the revised unauthorised payment charge in respect of the arrears of lump sum relating to the excess over 25% (maximum tax-free cash).
2. Calculate the unauthorised payment charge in respect of late payment of the arrears of lump sum (if payable more than 12 months after the original date that the benefits came into payment).
3. The amount of unauthorised payment charge compensation is equal to the amount in respect of late payment but not that in respect of exceeding 25%.
4. The LGA's current understanding is that compensation for unauthorised payment charges in relation to late payments is not subject to tax and should therefore be paid without a deduction for tax. It is anticipated that legislation will confirm the position on tax in relation to compensation for unauthorised payment charges. Should this compensation be determined, either by legislation or HMRC prior to the laying of legislation, to be taxable the FRA will be required to further compensate the member for any tax which becomes payable.

#### **Step 7 Calculate contributions owed by the member – FPS 1992 (ignoring any contribution holiday)**

1. For each year of remediable service calculate the gross employee contributions due under the FPS 1992 using the appropriate pensionable pay and contribution rates. The effect of any contribution holidays should be ignored as any overpayment will be compensated for later in the process.
2. Compare the result with the actual gross contributions paid under the FPS 2015.
3. If the amount paid is less than amount due the member will owe an amount equal to the difference which they may elect to be deducted from any arrears of lump sum. If no lump sum is payable, the member will need to pay any contributions owed from their own resources and to be given a reasonable time to pay based on their individual circumstances.
4. Category 1 members can pay arrears through their pay or as a deduction from their pension commencement lump sum (PCLS).

## **Step 8 – Calculate compensation for an amount equivalent to net contributions overpaid by an FPS 1992 or FPS 2006 member**

1. It is important to be aware that this part of the process does not impact whatsoever on the amount of contributions paid into the scheme and does not constitute neither refund of contributions nor a reconciliation of tax as if the contributions had not been made. It is designed to compensate the member for contributions which were overpaid and will remain so.
2. **The amount calculated in 8A and 8B below is payable as compensation for overpaid contributions NOT as a refund of contributions.**

### **Step 8A – Calculate contributions owed to the member – FPS 2006**

3. For each year of remediable service calculate the gross employee contributions due under the FPS 2006 using the appropriate pensionable pay and contribution rates.
4. Compare the result with the actual gross contributions paid under the FPS 2015.
5. If the FPS 2015 contributions are greater than the FPS 2006 contributions, calculate a best estimate of the net amount of contributions overpaid. This should be done using the marginal rate for the member at the time the contributions were deducted.
6. Calculate the gross compensation necessary to achieve the net figure in 5 above when applying the current marginal rate. If both rates are 20% the gross compensation will be the same as the gross contributions. If not, the gross compensation will need to be adjusted to result in the correct net outcome – see example below.
7. The amount deducted from the compensation should be withheld until the tax position of compensation is clarified by legislation. If this does not happen before the tax becomes due, the FRA should contact the member to agree that it should be paid to HMRC on their behalf to avoid any tax liability falling on the member.

### **Examples of compensation calculation**

#### **Example 1**

The member paid a gross excess contribution of £100 in a period when the member's marginal rate was 20%. The net overpayment was therefore £80.

The member's marginal rate now is also 20% so the amount of gross compensation required to achieve an outcome after tax of £80 is also £100

#### **Example 2**

The member paid a gross excess contribution of £100 in a period when the member's marginal rate was 40%. The net overpayment was therefore £60.

The member's marginal rate now is 20% so the amount of gross compensation required to achieve an outcome after tax of £60 is £75

### **Example 3**

The member paid a gross excess contribution of £100 in a period when the member's marginal rate was 20%. The net overpayment was therefore £80.

The member's marginal rate now is 40% so the amount of gross compensation required to achieve an outcome after tax of £80 is £133

## **Step 8B – Contributions holiday for an FPS 1992 member**

8. Under the terms of the FPS 1992 the maximum pensionable service that a member can accrue is 30 years' service, while the earliest point at which they can retire is at age 50. This means that some scheme members – mainly those who joined before age 20 – must continue to pay employee contributions beyond the point of accruing maximum pensionable service but before they are able to retire.
9. For example, if someone joined the scheme at 18 and paid contributions for 30 years by age 48, they would have accrued maximum pensionable service in the pension scheme yet could not retire until age 50.
10. The government introduced an employee contributions holiday for FPS 1992 members who accrue the maximum 30 years' pensionable service prior to age 50. This applies from the point of accruing maximum pensionable service in the scheme until the member's 50th birthday.
11. Calculate the gross amount of contributions which would have been payable by the member under the FPS 1992 including the effect of their contributions holiday during the appropriate years of remediable service.
12. Compare the result with the actual gross contributions paid under the FPS 2015.
13. If FPS 2015 contributions are greater than FPS 1992 contributions including the effect of the contributions holiday, then calculate a best estimate of the net amount of contributions overpaid and gross compensation using the same method as shown above for an FPS 2006 member.
14. The amount deducted from the compensation should be withheld until the tax position of compensation is clarified by legislation. If this does not happen before the tax becomes due, the FRA should contact the member to agree

that it should be paid to HMRC on their behalf to avoid any tax liability falling on the member.

**Step 9 – Inform the member of their options (including mandate for deducting unauthorised payment tax from lump sum and scheme pays) and await a decision**

1. The member should be notified of the results of the calculations and their options within 62 days (unless a revised medical opinion is required) of the date of application, in particular:
  - i. A statement of the benefits available under the FPS 1992 or FPS 2006, to include any dependents benefits available.
  - ii. The amount of arrears of pension and lump sum if the FPS 1992 or FPS 2006 benefits are higher than those currently in payment (Cat 2 only).
  - iii. Their right to revisit their original commutation decision, noting that such a revisit will delay the process as new calculations will be required (Cat 2 only).
  - iv. The amount of any unauthorised payment charge due to exceeding the maximum tax-free lump sum.
  - v. An estimate of any new, or increase or decrease in any existing, breach of the Annual Allowance together with any scheme pays deduction.
  - vi. The amount of underpaid gross contributions which will be deducted from the arrears of lump sum (or PCLS for Cat 1 members).
  - vii. The amounts of any compensation for late payment of lump sum unauthorised payment charges, overpaid contributions, or excess scheme pays deductions.
  - viii. The amount of interest on the appropriate elements of the above amounts.
2. The member should also be provided with:
  - i. The option to elect for benefits under the IDF and the Compensation Record (set out at Annex 3 of the MoU).
  - ii. A mandate for deducting unauthorised payment charges from the lump sum arrears.
  - iii. The option to deduct any underpaid gross contributions from the arrears of lump sum or PCLS. If the member does not elect for this, they must be informed that they will be required to pay the gross amount of contributions to the FRA directly.
  - iv. The option to confirm no change to the original commutation decision. If the member wishes to change their commutation decision, they

should be notified that further calculations will be required which will delay the payment of arrears.

### **Step 10 – Payment of sums due**

The process for payment will depend which category the member is in.

#### **Step 10A – Business as usual (Cat 1)**

1. Category 1 members making a benefit election shall be processed as business as usual in line with an FRAs normal timescales/ dates for payment.

#### **Step 10B – Revise the pension in payment (Cat 2)**

2. Category 2 members making an election for legacy scheme benefits will have their pension in payment adjusted from the next pension payroll date, at least one month after the FRAs receives the election.

#### **Step 10C – Arrears of pension and lump sum (Cat 2)**

3. Arrears of pension and lump sum should be paid to the member within 28 days of their election.
4. The amount payable in respect of arrears of pension shall be made up of the total of pension underpaid relating to the remediable service plus interest at 3% simple less any new or increased deduction for scheme pays. Where possible this should be paid via the payroll in order to ensure the correct tax is taken. If this is not possible the member should be informed that they must declare the arrears as taxable income.
5. The amount payable in respect of lump sum shall be made up as follows:
  - i. The amount of underpaid lump sum
  - ii. Plus interest at 3% simple
  - iii. Less any mandated unauthorised payment deductions
  - iv. Less any amount of underpaid gross contributions
  - v. Plus any compensation

## **Governance**

1. FRAs will need to ensure that the details of calculations, how they applied before remedy, and the underpinned benefits on the reformed basis are properly recorded to enable any rectification needed or answer questions once the legislation comes into force.
2. Local Pension Boards (LPBs) may want to consider what assurances they can seek that additional processes are in place to check decision making.

3. LPBs will also want to assure themselves that TPR requirements are being complied with. Particularly to ensure:
  - i. The policies in place to support the [six key processes](#) TPR use to measure performance are updated to ensure they take account of immediate detriment decision making and payments.
  - ii. How [breaches of law](#) will be recorded and reported to TPR.
  - iii. How immediate detriment data will be measured as part of the TPR [data scoring requirements](#), without automated systems, and methods to record the data.

Issue	Category 1 cases	Category 2 cases	Payment type
Shortfall in retirement lump sum and past pension payments	Retirement lump sum and benefits paid on retirement through Legacy scheme (so that no shortfall arises).	Pay as lump sums (comprising pension lump sum and arrears lump sum likely made in two payments) through the 1992 scheme (as arrears). Pension arrears will be subject to PAYE, but if any additional income tax is payable by the member that would not have been payable if the member had never been treated as a member of the 2015 Scheme, the FRA will compensate the member for that tax liability.	Scheme benefit payable from the pension fund account under Section 61 Equality Act
Interest on shortfall in retirement lump sum and past pension payments	No interest due because correct lump sum and pension benefits will be paid on retirement.	Interest paid at 3% p.a. simple, from the date lump sum / benefits should have been paid.	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.
Employee contributions: 1992 Scheme	Member pays shortfall (since 2015) through payor as a deduction from retirement lump sum.	Member pays any shortfall (since 2015) as a deduction from retirement lump sum. If no lump sum is payable, the member will need to pay any contributions owed from their own resources and to be given a reasonable time to pay based on their individual circumstances.	N/A



Employee contributions: 2006 Scheme	Compensation for excess contributions to be paid on retirement. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	FRA to pay compensation for excess contributions. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.
Tax relief on employee contributions	<p>Process through PAYE to the extent possible if time/amount allows. If time does not allow, then any tax relief not collected through PAYE will be calculated and paid when the remedying legislation is in force.</p> <p>FBU and FRAs will encourage members to give as much notice of retirement as possible to facilitate payment through PAYE.</p>	Compensation for any tax relief foregone will be paid to the individual when the remedying legislation is in force. So, for now, individuals will pay the gross amount of contributions due.	N/A – will be dealt with when legislation is available
Interest payable on adjusted employee contributions (1992 Scheme)	Interest to be paid by the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation). If tax relief was not processed through PAYE (because time/amount did not allow), where the individual is due to receive a future payment to compensate him or her for the tax relief foregone, the interest amount will be deducted from that payment.	Interest to be paid by the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation). Where the individual is due to receive a future payment to compensate him or her for the tax relief foregone, the interest amount will be deducted from that payment.	N/A

Interest payable on adjusted employee contributions – compensatory amount (2006 Scheme)	Interest to be paid to the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation).	Interest to be paid to the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation).	N/A – will be dealt with when legislation is available
Contribution holidays: excess employee contributions	Compensation for excess contributions to be paid on retirement. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	FRA to pay compensation for excess contributions. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.
CETVs and added pension	If an issue arises, then look at it at that point. Individual and FRA will work together to agree a holding compromise that the CETV/added pension will stay in the 2015 scheme until the legislative solution arrives.	Deal with as and when arises.	N/A
Annual Allowance charges	<p>Recalculate pension input amount for each year of remedy.</p> <p>If an annual allowance charge would have arisen if the individual had not been transferred to the 2015 Scheme, the charge remains payable by the member (through scheme pays or otherwise).</p> <p>If an annual allowance charge would not have arisen (or a lesser charge applied) if the member had</p>	<p>Recalculate pension input amount for each year of remedy.</p> <p>If an annual allowance charge would have arisen if the individual had not been transferred to the 2015 Scheme, the charge remains payable by the member (through scheme pays or otherwise).</p> <p>If an annual allowance charge would not have arisen (or a lesser charge applied) if the member had not transferred to the 2015 Scheme, the member will pay that charge and the FRA will compensate the member for any</p>	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012. Only relates to compensation for AA charges that would not have arisen save for the discrimination.

	not transferred to the 2015 Scheme, the member will pay that charge and the FRA will compensate the member for the annual allowance charge that is demanded (or any excess over the lesser charge that would have applied).	annual allowance charge that is demanded (or any excess over the lesser charge that would have applied).	
Scheme pays (MSP/VSP)	Member pays tax through VSP for statutory taxyears for which it becomes due.	Member pays tax through VSP for statutory taxyears for which it becomes due.	N/A
Converting scheme pays debits	FRA to recalculate the pension debit as if taken at time of original scheme pays election using actuarial factors applicable at time.	FRA to recalculate the pension debit as if taken at time of original scheme pays election using actuarial factors applicable at time.	N/A
Converting pension sharing debits	Deal with on a case-by-case basis as issues arise.	Deal with on a case-by-case basis as issues arise.	N/A
Dependents	Deal with on a case-by-case basis as issues arise (and in accordance with the timeframes set out in Annex 2 where reasonably practicable).	Deal with on a case-by-case basis as issues arise (and in accordance with the timeframes set out in Annex 2 where reasonably practicable).	Scheme benefit payable from the pension fund account under Section 61 Equality Act
Taper members	Tapering to stop (because that is the only step that is consistent with the ET decision).	Tapering to stop (because that is the only step that is consistent with the ET decision).	N/A
Unauthorised payments	N/A	The FRA will compensate the member for unauthorised payment charges which the member has had to pay and which he or she would not have had to pay if the member had not transferred to the 2015 Scheme.	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.

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## Buckinghamshire & Milton Keynes Fire Authority

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**Meeting and date:** Executive Committee, 17 November 2021

**Report title:** TVFCS - Transfer of the Secure Solutions and Services (“SSS”) business to Capita (SSS) Limited (“Capita SSS”) and subsequent sale of Capita SSS

**Lead Member:** Councillor Lesley Clarke OBE

**Report sponsor:** Deputy Chief Fire Officer Mick Osborne

**Author and contact:** Area Commander Steve Wells, [swells@bucksfire.gov.uk](mailto:swells@bucksfire.gov.uk),

**Action:** Decision

### Recommendations:

1. That approval be given for the Deed or Novation between Oxfordshire County Council, Royal Berkshire Fire Authority, Capita Secure Information Solutions Limited (“CSIS”) and Capita (SSS) Limited (in relation to the ‘Mobilising System Contract’) to be completed.
  2. That approval be given for the Deed of Novation between Royal Berkshire Fire Authority Capita Secure Information Solutions Limited (“CSIS”), and Capita (SSS) Limited, in relation to the contract for the provision, maintenance and support of the DS3000 Integrated Communication Control System (ICCS).
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### Executive summary:

Thames Valley Fire Control Service (TVFCS) utilises the ‘Vision 4’ mobilising system, which is provided by the Secure Solutions and Services business (“SSS”) that currently sits within Capita Secure Information Solutions Limited (“CSIS”) a subsidiary wholly owned by Capita plc.

Thames Valley partners - the Authority, Oxfordshire County Council (OCC), and Royal Berkshire Fire Authority (RBFA) - entered into an inter authority agreement which included this provision which formally commenced when TVFCS ‘went live’ in **April 2015**.

At the meeting of the Executive Committee held on the **15 September 2021**, there was approval given following the recommendation from the Thames Valley Fire Control Service (TVFCS) Joint Committee on **12 July 2021**, pursuant to the inter authority agreement (IAA) relating to the steady state operation of the TVFCS, to

extend the contract of the 'Vision 4' mobilising system of one year from **April 2022 – March 2023**.

Earlier this year Capita plc undertook an extensive review of its portfolio, with an aim – in its words - to consolidate its activities into consulting, transformation and digital services, which has led to a decision to restructure some areas of its business.

As a result, it is its intention to transfer the entire SSS business to a new company within the Capita group, namely Capita (SSS) Limited. The contract between OCC and RBFA and CSIS for the 'Mobilising System Contract' "Agreement") is one such contract that would transfer to the new company.

Furthermore, the contract between RBFA and CSIS for the provision of DS3000 (ICCS) support and maintenance (the "Call-off Agreement"), is a further customer contract that would also transfer to the new company. It is believed that the Call-Off Agreement is the successor to a contract between RBFA and CSIS dated 2 October 1995 in place at the date of the IAA.

At the point of transfer, both the Agreement and Call-off Agreement would become the responsibility of Capita SSS for all the obligations and liabilities under those agreements, as though it had always been a party to the Agreement and Call-off Agreement. This would ensure TVFCS experience no break in service continuity whatsoever.

Finally, against the backdrop of the restructure, Capita plc have also entered into negotiations with NEC Software Solutions UK Limited, in relation to the proposed purchase of Capita SSS.

#### **Financial implications:**

The maintenance and support aspects of both the Agreement and Call-off Agreement are paid from the TVFCS Revenue Account.

In accordance with Schedule 7 of the IAA, one of the receipts made into the TVFCS Revenue Account under this agreement comprises: payments of Annual TVFCS Contribution.

The Annual TVFCS Contribution payable by each party is determined in accordance with the cost apportionment model in the IAA.

Any changes in cost are incorporated into the Buckinghamshire Fire and Rescue Service (BFRS) budget, which will be presented at the Authority meeting in February 2022.

#### **Risk management:**

The agreement to extend the contract of the 'Vision 4' mobilising system of one year from **April 2022 – March 2023** ensured the necessary technical support arrangements between TVFCS Capita SSS service contract could be maintained.

Furthermore, in evaluating the optimum extension period, consideration was given toward the announcement made by Capita plc in March 2021, relating to a restructuring programme that would result in the sale of Capita SSS.

This was captured as a high risk in the TVFCS risk register, as follows.

*If Capita SSS is sold and the purchaser makes unfavourable decisions on software development and provision of support, which is likely given commercial uncertainties around the sale, then we can expect TVFCS to experience substantial impacts on their ability to deliver an efficient, effective and resilient service which is significant in respect of delivering our statutory fire and rescue functions.*

By agreeing to the one year extension, this will allow BFRS to monitor and react to the outcome of the sale and consider how to proceed beyond the extended contract end date.

Officers will bring forward recommendations to the TVFCS Joint Committee in **July 2022** setting out whether to further extend the contract in line with the agreement or seek to commence a full replacement.

By agreeing to recommendations 1 and 2, the Authority is also allowing OCC and RBFA to consent to the subsequent sale of Capita SSS Limited to NEC Software Solutions UK Limited. This consent will remain in place for 6 months from the novation of the contracts to Capita SSS and applies only to a sale to NEC Software Solutions UK Limited. This is in the event that either the Agreement or the Call-Off Agreement allow for termination by OCC and RBFA if there occurs a 'change of control' of Capita SSS.

#### **Legal implications:**

RBFA and OCC are parties to the 'Mobilising System Contract' and contract for the provision, maintenance and support of DS3000 (ICCS). The legal implications of terminating or extending the contract are set out in the contract and procurement teams of RBFA and OCC have been engaged to ensure that the contracting authorities comply with the relevant legislation.

Both contracts are detailed within the IAA, "Clause 17.5. No material variation shall be made to a TVFCS Contract without the prior agreement of the Fire Authorities (not to be unreasonably withheld or delayed) [...]"

"Clause 17.3. [...] A Fire Authority, on its own account or jointly with another, shall not enter into a new TVFCS Contract without the agreement of the Fire Authorities (not to be unreasonably withheld or delayed) [...]."

#### **Privacy and security implications:**

No privacy or security implications have been identified that are directly associated with this report.

#### **Duty to collaborate:**

TVFCS is a collaborative shared service between BFRS, Oxfordshire Fire and Rescue Service (OFRS) and Royal Berkshire Fire and Rescue Service (RBFRS). Officers will review collaborative opportunities with the Police and Ambulance Services for the 'hardware refresh' through the collaboration governance boards.

**Health and safety implications:**

There are no Health, Safety or Wellbeing implications arising from this report.

**Environmental implications:**

There are no environmental implications arising from this report.

**Equality, diversity, and inclusion implications:**

There are no equality and diversity implications identified at this time.

**Consultation and communication:**

The decision-making bodies within RBFA and OCC will be receiving similar reports; and will be notified by the author of the content of this report and the decisions of the Executive Committee.

Detailed within the IAA the three fire and rescue authorities created a joint committee (the "Joint Committee") under section 102 of the Local Government Act 1972 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012.

The agreement sets out the basis on which the Joint Committee is established and the agreed arrangements for its operation.

The interests of the Authority are currently represented on the Joint Committee by Councillors Lesley Clarke OBE the Joint Committee's current vice-chairman and Steven Lambert.

**Background papers:**

Buckinghamshire and Milton Keynes Fire Authority meeting held on the 22 October 2014 (item 8, pages 21 to 39)

[https://bucksfire.gov.uk/documents/2020/03/fire\\_authority\\_agenda\\_221014.pdf/](https://bucksfire.gov.uk/documents/2020/03/fire_authority_agenda_221014.pdf/)

Agenda for the Thames Valley Fire Control Service Joint Committee - 12 July 2021 (item 12)

<https://decisionmaking.rbfrs.co.uk/ieListDocuments.aspx?CId=159&MId=1719>

Agenda for the Royal Berkshire Fire Authority Management Committee - 29 July 2021 (item 9)

<https://decisionmaking.rbfrs.co.uk/ieListDocuments.aspx?CId=137&MId=1543&Ver=4>



Buckinghamshire and Milton Keynes Fire Authority Executive Committee meeting held on the 15 September 2021 (item 7)

<https://bucksfire.gov.uk/documents/2021/09/item-7-tvfcs-mobilising-agreement-ex-150921.pdf/>

Agreement relating to the steady state operation of the TVFCS (with consolidated amendments as approved by resolution of the TVFCS Joint Committee 25 July 2016)

<https://bucksfire.gov.uk/documents/2021/09/legal-agreement-relating-to-the-steady-state-operation-of-the-thames-valley-fire-control-service.pdf/>

Appendix	Title	Protective Marking
1 (a) and (b)	Letters from Capita dated 30 September (a) and 12 October 2021 (b), in relation to the - Transfer of the Secure Solutions and Services ("SSS") business to Capita (SSS) Limited ("Capita SSS") and subsequent sale of Capita SSS.	None

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Email: HarrisS@tvfcs.org.uk

FAO: Simon Harris  
Royal Berkshire Fire Authority  
Thames Valley Fire Control Service  
Newsham Court  
Pincents Kiln  
Calcott, Reading  
RG31 7SD

30 September 2021

(Sent by post and email)

Dear Simon

**Transfer of the Secure Solutions and Services (“SSS”) business to Capita (SSS) Limited (“Capita SSS”) and subsequent sale of Capita SSS**

**1. Capita plc restructure**

As you are already aware, Capita plc has recently conducted an extensive review of its portfolio with a view to consolidating its activities into consulting, transformation and digital services. As a result of this, we are proposing to restructure some areas of our business. A number of businesses within the Capita family are being affected by the restructure. The Secure Solutions and Services business (“SSS”) that currently provides services to your organisation has been identified as one such business.

The SSS business currently sits in Capita Secure Information Solutions Limited (“CSIS”) which is a wholly owned subsidiary of Capita plc. CSIS also houses other Capita businesses. As part of the restructure, we are intending to transfer the entire SSS business to a new company within the Capita group which has been set up for this purpose. This company is called Capita (SSS) Limited (Company Number: 13052116) (“Capita SSS”). At this point we do not have a precise date for the proposed transfer.

The transfer of the SSS business to Capita SSS would, in order to be fully effective, involve all customer contracts, supplier contracts, licences and employees transferring to Capita SSS. The contract between your organisation and CSIS (the “Agreement”) is one such customer contract that would transfer for that purpose. At the point of transfer all Capita’s rights under your Agreement would transfer to Capita SSS, and Capita SSS would become responsible for all of the obligations and liabilities under your Agreement as though it had always been a party to the Agreement. As under the proposal all supplier contracts, resources and employees transfer to Capita SSS at the same point, your organisation would experience no break in service continuity whatsoever.

**2. Proposed share sale of Capita SSS**

Against the backdrop of our restructure (as outlined above), we also wanted to inform you NEC Software Solutions UK Limited has been identified as a potential purchaser of Capita SSS. Capita plc has therefore entered into negotiations with NEC Software Solutions UK Limited in relation to the purchase of Capita SSS.

It goes without saying that Capita plc want to protect the interests of its employees and, importantly, its customers and suppliers. Following extensive considerations and due diligence, we are confident that NEC Software Solutions UK Limited is ideally placed to take Capita SSS forward during 2021 and beyond.

### 3. Next steps

We are therefore writing to you as one of the customers of SSS (and in similar terms to other customers) to ask for your co-operation in transferring the Agreement. For that purpose we have enclosed with this letter a formal Deed of Novation and Consent. This document serves two purposes:

1. Firstly, it sets out the basis on which your Agreement will be novated from CSIS to Capita SSS, and provides you with comfort that your rights and obligations under your Agreement remain unchanged following the transfer. The actual date of the business transfer (which will also be the “effective date” of the novation) will be notified to you separately in writing once known;
2. Secondly, it provides your consent to the subsequent sale of Capita SSS NEC Software Solutions UK Limited and confirmation that you would not as a result wish to exercise any right of termination that you may have under the Agreement in relation to changes in control of the contractor. This consent will remain in place for 6 months from the novation of the contract to Capita SSS, and applies only to a sale to NEC Software Solutions UK Limited.

Please note that no other changes to your Agreement are anticipated by this Deed of Novation and Consent. Following signature, it will continue in all other respects as currently drafted.

In anticipation of your agreement, this Deed of Novation and Consent has already been executed by both CSIS (as the outgoing supplier) and Capita SSS (as the new supplier). Assuming that you are comfortable we would ask that you arrange signature on behalf of your organisation and return the document to us as soon as possible. This could be by hard copy (addressed to Capita SSS at Methuen Park, Bath Rd, Corsham, Chippenham SN14 0TW) or by email to [SSS.Transfer@capita.com](mailto:SSS.Transfer@capita.com).

We are mindful that the Agreement may have been originally awarded to CSIS following a public procurement exercise conducted in accordance with the Public Contracts Regulations (“PCR 2015”) or equivalent Regulation in force at the time. We fully appreciate that as a contracting authority required to comply with PCR 2015, you will need to be confident that the corporate restructuring (to transfer the SSS business to Capita SSS) and any subsequent share sale of Capita SSS to NEC Software Solutions UK Limited will not undermine your ongoing compliance obligations. For the reasons outlined above, we are confident that notwithstanding the restructure and any subsequent share sale to NEC Software Solutions UK Limited, at all times Capita SSS will have the same technical ability and financial standing required to continue supplying the high quality services you are used to receiving from CSIS. Should you require any further information in relation to the proposed corporate restructuring and/or proposed share sale in the context of procurement law (or other) considerations, then please do not hesitate to contact us as we would be pleased to assist and provide any evidence that may be required.

Once you have received notification that the business transfer has taken place, all payments relating to your Agreement should be made to Capita SSS. We would therefore ask that you make the necessary internal arrangements to set Capita SSS up on your system as a supplier now. Payment details for Capita SSS are set out in full in the Appendix to this letter. If you currently pay by Direct Debit, Capita SSS will be in touch separately regarding the transfer of your Direct Debit mandate.

Your key contact, their telephone number and email address remain the same. However, we request that any future correspondence and notices relating to your Agreement are sent to Capita SSS at Methuen Park, Bath Rd, Corsham, Chippenham SN14 0TW marked for the attention of your key contact. All correspondence and notices in relation to the transfer of SSS should be sent by email to [SSS.Transfer@capita.com](mailto:SSS.Transfer@capita.com).

We will of course keep you updated on the progress of the sale. Should you have any questions or concerns at this point please do not hesitate to get in touch with me.



This letter and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

Yours faithfully

A handwritten signature in grey ink, appearing to read 'P. Eggleton', with a long horizontal flourish extending to the right.

**Paul Eggleton**

**Managing Director – Secure Solutions and Services**

## Appendix

### Payment Details

Bank details	Payee	Capita (SSS) Limited
	Bank name	Barclays Bank
	Account number	13837386
	Sort code	206759
	IBAN number	GB98BARC20675913837386
	SWIFT number	BARCGB22
Remittance advices	To be emailed to	<a href="mailto:CBSremittances@capita.com">CBSremittances@capita.com</a>
	To be sent to	PO Box 212 Faverdale Industrial Estate Darlington. GB DL1 9HN Telephone: +44 (0)208 535 8221

THIS DEED OF NOVATION is made on

2021

## BETWEEN

- (1) **OXFORDSHIRE COUNTY COUNCIL** whose office is at County Hall, New Road, Oxford, OX1 1ND (“**Client A**”);
- (2) **ROYAL BERKSHIRE FIRE AUTHORITY** whose office is at Thames Valley Fire Control Service, Newsham Court, Pincents Kiln, Calcott, Reading, Berkshire, RG31 7SD (“**Client B**” and together with Client A, the “**Clients**”);
- (3) **CAPITA SECURE INFORMATION SOLUTIONS LIMITED** incorporated and registered in England and Wales with company number 01593831 whose registered office is at 65 Gresham Street, London, EC2V 7NQ (the “**Transferor**”); and
- (4) **CAPITA (SSS) LIMITED** incorporated and registered in England and Wales with company number 13052116 whose registered office is at 65 Gresham Street, London, EC2V 7NQ (the “**Transferee**”).

## RECITALS

- (A) The Clients and the Transferor are party to a contract for the provision of a Mobilising System and Related Services for the Thames Valley Fire Control Service dated 21 January 2014 as may have been varied from time to time (the “**Contract**”).
- (B) The Transferor and Transferee are parties to a business transfer agreement dated 30 September 2021 whereby the Transferor has agreed to transfer its Secure Solutions and Services business to the Transferee (the “**Business Transfer Agreement**”) at a future date, which will be notified by e-mail to the Clients and the Transferee by the Transferor (the “**Effective Date**”).
- (C) Notwithstanding that the Transferor is an original party to the Contract, due to the Business Transfer Agreement, the parties have agreed to novate the Transferor’s rights, obligations and liabilities under the Contract to the Transferee on the terms of this Deed with effect from the Effective Date.
- (D) The Clients have further provided consent for a limited period to the proposed change of control of the Transferee as set out in this Deed.

## **IT IS AGREED AS FOLLOWS**

### **1 NOVATION**

#### **1.1 With effect from the Effective Date:**

- 1.1.1 the Transferor transfers all its rights and obligations under the Contract to the Transferee;
- 1.1.2 the Transferee shall enjoy all the rights and benefits of the Transferor under the Contract. The Transferee agrees to perform the Contract and be bound by its terms in every way as if it were the original party to it in place of the Transferor;
- 1.1.3 the Clients agree to perform the Contract and be bound by its terms in every way as if the Transferee were the original party to it in place of the Transferor; and
- 1.1.4 all references to the Transferor in the Contract shall be read and construed as references to the Transferee.

#### **1.2 If there is a conflict between this Deed and the Contract, this Deed shall take precedence.**

### **2 RELEASE OF OBLIGATIONS AND LIABILITIES**

#### **2.1 With effect from the Effective Date:**

- 2.1.1 the Clients and the Transferor release and discharge each other from all claims, obligations and demands whatsoever in respect of the Contract, whether arising before, on or after the Effective Date, and in each case whether known or unknown to the releasing party;
- 2.1.2 each of the Clients and the Transferee shall have the right to enforce the Contract and pursue any claims and demands under the Contract against the other with respect to matters arising before, on or after the Effective Date as though the Transferee were the original party to the Contract instead of the Transferor; and
- 2.1.3 each of the Clients and the Transferor agree to the ownership, right and interest of the Transferee in and to any unpaid billings, fees, reimbursable payable to or accrued by the Transferor in or under the terms of the Contract for the period prior to the Effective Date and the Clients agree to pay any such unpaid or accrued amounts to the Transferee.

### **3 CONSENT TO CHANGE OF CONTROL**

#### **3.1 In executing this Deed the Clients also provides the necessary consent to any subsequent change of control of the Transferee generated by the sale of the Transferee from Capita plc to NEC Software Solutions UK Limited within a period of 6 months from the Effective Date and confirms that it will not exercise and waives any right of termination under the Contract in relation to a change of control of the Transferee to NEC Software Solutions UK Limited within a period of 6 months from the Effective Date.**

#### **3.2 The parties agree that such consent and waiver shall satisfy:**



3.2.1 any requirements set out in the Contract on the Transferee or any other entity in the Capita group of companies to notify the Clients in relation to the proposed change of control of the Transferee as set out in Clause 3.1 above; and

3.2.2 any requirements set out in the Contract on the Clients to provide any further consent or waiver (written or otherwise) to the proposed change of control of the Transferee as set out in Clause 3.1 above.

## **4 TERMINATION**

In the event that the Effective Date does not occur within 6 months of the date of this Deed it will automatically terminate and all obligations and rights of the Parties under this Deed of Novation shall lapse (except for Clauses 7 to 14 (inclusive)) and no party shall have any claim against another, save in respect of any prior breach of the underlying Contract.

## **5 PERIOD FOR BRINGING CLAIMS CAUSED BY BREACH OF THE CONTRACT**

The period of time permitted for bringing a claim for breach of this Deed, where that breach is caused by a party's alleged failure to perform its duties and/or discharge its obligations under the Contract, shall be the same period of time permitted for bringing a claim solely for breach of the Contract in respect of such alleged failure.

## **6 FURTHER ASSURANCES**

Each of the parties to this Deed agrees to perform (or procure the performance of) all further acts and things and execute and deliver (or procure the execution and delivery of) such further documents as may be required by law or as any party may reasonably require to effect the novation referred to in Clause 1, the release and discharge of the obligations referred to in Clause 2, and the consent to change of control referred to in Clause 3 to give any party the full benefit of this Deed.

## **7 NOTICES**

7.1 Subject to Clause 7.3, any notice or other communication given under or in connection with this Deed will be in writing (which shall include email) in the English language and may be delivered by hand, first class post (or air mail if overseas) or e-mail and addressed to the recipient using the details below (and each party will promptly notify the other in writing of any change to its details for service):

**Client A**

For the attention of: Sarah Hayes

Address: County Hall, New Road, Oxford, OX1 1ND

Email: [sarah.hayes@oxfordshire.gov.uk](mailto:sarah.hayes@oxfordshire.gov.uk)

Copy to: N/A

**Client B**

For the attention of: Simon Harris

Address: Thames Valley Fire Control Service, Newsham Court, Pincent's Kiln, Calcott, Reading, Berkshire, RG31 7SD

Email: [HarrisS@tvfcs.org.uk](mailto:HarrisS@tvfcs.org.uk)

Copy to: N/A

**Transferee**

For the attention of: Paul Eggleton

Address: Methuen Park, Chippenham, SN14 0TW

Email: [SSS.Transfer@capita.com](mailto:SSS.Transfer@capita.com)

Copy to: [richard.green2@capita.com](mailto:richard.green2@capita.com)

**Transferor**

For the attention of: James Cowan

Address: 65 Gresham Street, London, England, EC2V 7NQ

Email: [SSS.Transfer@capita.com](mailto:SSS.Transfer@capita.com)

Copy to: [sarah.millington@capita.com](mailto:sarah.millington@capita.com)

- 7.2 Any such notice or communication given in accordance with Clause 7.1 will be deemed to have been served if delivered by:
- 7.2.1 hand, at the time the demand, notice or communication is left at that party's proper address for service;
  - 7.2.2 prepaid first class post, on the second Business Day after posting it or in the case of airmail on the fifth Business Day after posting it; and
  - 7.2.3 email, at the time of transmission
- provided that if a notice or communication is deemed to be served before 9.00am on a Business Day it will be deemed to be served at 9.00am on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00pm on a Business Day it will be deemed to be served at 9.00am on the immediately following Business Day.
- 7.3 To prove service of a notice or communication it will be sufficient to prove that the provisions of Clause 7 were complied with.
- 7.4 This Clause 7 will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

7.5 For the purposes of this Clause 7, "Business Day" shall mean any day (other than a Saturday or Sunday) on which banks are open in London for normal banking business.

## **8 INVALIDITY**

If any provision in this Deed shall be held to be illegal, invalid or unenforceable, in whole or in part, such provision or part shall to that extent be deemed not to form part of this Deed but the legality, validity or enforceability of the remainder of this Deed shall not be affected.

## **9 COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one deed.

## **10 VARIATION**

No variation of this Deed shall be effective unless it is in writing and signed by the parties, or their authorised representatives.

## **11 ASSIGNMENT**

Neither party shall assign any of its rights and/or obligations under this Deed without the prior written consent of the other party.

## **12 THIRD PARTY RIGHTS**

The parties do not intend that any term of this Deed of Novation will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

## **13 GOVERNING LAW**

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

## **14 JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation.

This document has been entered into as a deed and is delivered and takes effect on the day and the year first stated above.

Executed as a **DEED** by **OXFORDSHIRE  
COUNTY COUNCIL**

acting by two directors or a director and a  
secretary:

.....

Director

.....

Director / Secretary

Executed as a **DEED** by **ROYAL BERKSHIRE  
FIRE AUTHORITY**

acting by two directors or a director and a  
secretary:

.....

Director

.....

Director / Secretary

Executed as a **DEED** by **CAPITA SECURE  
INFORMATION SOLUTIONS LIMITED**

acting by two directors or a director and a  
secretary:



.....

Director



.....

Secretary



Executed as a **DEED** by **CAPITA (SSS) LIMITED**

acting by two directors or a director and a secretary:

A handwritten signature in blue ink, appearing to read 'Zdd', positioned above a dotted line.

Director

A handwritten signature in black ink, appearing to read 'Karan', positioned above a dotted line.

Secretary

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Email: HarrisS@tvfcs.org.uk

(Sent by post and email)

FAO: Simon Harris  
Royal Berkshire Fire Authority  
Pincent's Kiln Industrial Park,  
Newsham Court, Calcot, Reading  
RG31 7SD

FAO: Simon Harris

12<sup>th</sup> October 2021

Dear Sirs,

**Transfer of the Secure Solutions and Services ("SSS") business to Capita (SSS) Limited ("Capita SSS") and subsequent sale of Capita SSS**

**1. Capita plc restructure**

As you are already aware, Capita plc has recently conducted an extensive review of its portfolio with a view to consolidating its activities into consulting, transformation and digital services. As a result of this, we are proposing to restructure some areas of our business. A number of businesses within the Capita family are being affected by the restructure. The Secure Solutions and Services business ("**SSS**") that currently provides services to your organisation has been identified as one such business.

The SSS business currently sits in Capita Secure Information Solutions Limited ("**CSIS**") which is a wholly owned subsidiary of Capita plc. CSIS also houses other Capita businesses. As part of the restructure, we are intending to transfer the entire SSS business to a new company within the Capita group which has been set up for this purpose. This company is called Capita (SSS) Limited (Company Number: 13052116) ("**Capita SSS**"). At this point we do not have a precise date for the proposed transfer.

The transfer of the SSS business to Capita SSS would, in order to be fully effective, involve all customer contracts, supplier contracts, licences and employees transferring to Capita SSS. The contract between your organisation and Capita Business Services Limited for the provision of DS3000 support and maintenance dated 27<sup>th</sup> April 2021 (the "**Call-off Agreement**"), which was awarded pursuant to the framework agreement between KCS Professional Services and Capita Business Services Ltd for the provision of KCS Framework Y16018 (the "**Framework Agreement**"), is one such customer contract that would transfer for that purpose. At the point of transfer the Framework Agreement would remain with Capita and all Capita's rights under your Call-off Agreement would transfer to Capita SSS, and Capita SSS would become responsible for all of the obligations and liabilities under your Call-off Agreement as though it had always been a party to the Call-off Agreement. As under the proposal all supplier contracts, resources and employees transfer to Capita SSS at the same point, your organisation would experience no break in service continuity whatsoever.

**2. Proposed share sale of Capita SSS**

Against the backdrop of our restructure (as outlined above), we also wanted to inform you that NEC Software Solutions UK Limited has been identified as a potential purchaser of Capita SSS. Capita plc has therefore entered into negotiations with NEC Software Solutions UK Limited in relation to the purchase of Capita SSS.

It goes without saying that Capita plc want to protect the interests of its employees and, importantly, its customers and suppliers.

Capita Business Services Ltd.  
65 Gresham Street  
London  
EC2V 7NQ

[www.capita.com](http://www.capita.com)

Registered Office: 65 Gresham Street, London, EC2V 7NQ. Registered in England No. 02299747.

Royal Berkshire Fire Authority 10465

STA-CGCSHBM-2-0821

Following extensive considerations and due diligence, we are confident that NEC Software Solutions UK Limited is ideally placed to take Capita SSS forward during 2021 and beyond.

### 3. Next steps

We are therefore writing to you as one of the customers of SSS (and in similar terms to other customers) to ask for your co-operation in transferring the Call-off Agreement. For that purpose we have enclosed with this letter a formal Deed of Novation and Consent. This document serves two purposes:

1. Firstly, it sets out the basis on which your Call-off Agreement will be novated from Capita Business Services Limited to Capita SSS, and provides you with comfort that your rights and obligations under your Call-off Agreement remain unchanged following the transfer. The actual date of the business transfer (which will also be the “effective date” of the novation) will be notified to you separately in writing once known;
2. Secondly, it provides your consent to the subsequent sale of Capita SSS to NEC Software Solutions UK Limited and confirmation that you would not as a result wish to exercise any right of termination that you may have under the Call-off Agreement in relation to changes in control of the contractor. This consent will remain in place for 6 months from the novation of the contract to Capita SSS, and applies only to a sale NEC Software Solutions UK Limited.

Please note that no other changes to your Call-off Agreement are anticipated by this Deed of Novation and Consent. Following signature it will continue in all other respects as currently drafted.

In anticipation of your agreement, this Deed of Novation and Consent has already been executed by both Capita Business Services Limited (as the outgoing supplier) and Capita SSS (as the new supplier). Assuming that you are comfortable we would ask that you arrange signature on behalf of your organisation and return the document to us as soon as possible. This could be by hard copy (addressed to Capita SSS at Methuen Park, Bath Rd, Corsham, Chippenham SN14 0TW) or by email to [SSS.Transfer@capita.com](mailto:SSS.Transfer@capita.com).

We are mindful that the Framework Agreement and Call-off Agreement may have been originally awarded to CSIS following a public procurement exercise conducted in accordance with the Public Contracts Regulations (“**PCR 2015**”) or equivalent Regulation in force at the time. We fully appreciate that as a contracting authority required to comply with PCR 2015, you will need to be confident that the corporate restructuring (to transfer the SSS business to Capita SSS) and any subsequent share sale of Capita SSS to NEC Software Solutions UK Limited will not undermine your ongoing compliance obligations. For the reasons outlined above, we are confident that notwithstanding the restructure and any subsequent share sale to NEC Software Solutions UK Limited, at all times Capita SSS will have the same technical ability and financial standing required to continue supplying the high quality services you are used to receiving from Capita Business Services Limited. Should you require any further information in relation to the proposed corporate restructuring and/or proposed share sale in the context of procurement law (or other) considerations, then please do not hesitate to contact us as we would be pleased to assist and provide any evidence that may be required.

Once you have received notification that the business transfer has taken place, all payments relating to your Call-off Agreement should be made to Capita SSS. We would therefore ask that you make the necessary internal arrangements to set Capita SSS up on your system as a supplier now. Payment details for Capita SSS are set out in full in the Appendix to this letter. If you currently pay by Direct Debit, Capita SSS will be in touch separately regarding the transfer of your Direct Debit mandate.

Your key contact, their telephone number and email address remain the same. However, we request that any future correspondence and notices relating to your Call-off Agreement are sent to Capita SSS at Methuen Park, Bath Rd, Corsham, Chippenham SN14 0TW marked for the attention of your key contact. All correspondence and notices in relation to the transfer of SSS should be sent by email to [SSS.Transfer@capita.com](mailto:SSS.Transfer@capita.com).





We will of course keep you updated on the progress of the sale. Should you have any questions or concerns at this point please do not hesitate to get in touch with me.

This letter and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

Yours faithfully

A handwritten signature in grey ink, appearing to read 'P. Eggleton', with a long horizontal flourish extending to the right.

**Paul Eggleton**

**Managing Director – Secure Solutions and Services**

## Appendix

### Payment Details

Bank details	Payee	Capita (SSS) Limited
	Bank name	Barclays Bank
	Account number	13837386
	Sort code	206759
	IBAN number	GB98BARC20675913837386
	SWIFT number	BARCGB22
Remittance advices	To be emailed to	<a href="mailto:CBSremittances@capita.com">CBSremittances@capita.com</a>
	To be sent to	PO Box 212 Faverdale Industrial Estate Darlington. GB DL1 9HN Telephone: +44 (0)208 535 8221

THIS DEED OF NOVATION is made on

2021

## BETWEEN

- (1) **ROYAL BERKSHIRE FIRE AUTHORITY** of Pincent's Kiln Industrial Park, Newsham Court, Calcot, Reading, RG31 7SD (the "**Client**");
- (2) **CAPITA BUSINESS SERVICES LIMITED** incorporated and registered in England and Wales with company number 02299747 whose registered office is at 65 Gresham Street, London, EC2V 7NQ (the "**Transferor**"); and
- (3) **CAPITA (SSS) LIMITED** incorporated and registered in England and Wales with company number 13052116 whose registered office is at 65 Gresham Street, London, EC2V 7NQ (the "**Transferee**").

## RECITALS

- (A) The Client and the Transferor are party to an agreement for the provision of DS3000 support and maintenance dated 27th April 2021 which was awarded pursuant to KCS Framework Y16018 as may have been varied from time to time (the "**Contract**").
- (B) The Transferor and Transferee are parties to a business transfer agreement dated 30<sup>th</sup> September 2021 whereby the Transferor has agreed to transfer its Secure Solutions and Services business to the Transferee (the "**Business Transfer Agreement**") at a future date, which will be notified by e-mail to the Client and the Transferee by the Transferor (the "**Effective Date**").
- (C) Notwithstanding that the Transferor is an original party to the Contract, due to the Business Transfer Agreement, the parties have agreed to novate the Transferor's rights, obligations and liabilities under the Contract to the Transferee on the terms of this Deed with effect from the Effective Date.
- (D) The Client has further provided consent for a limited period to the proposed change of control of the Transferee as set out in this Deed.

## IT IS AGREED AS FOLLOWS

### 1 NOVATION

#### 1.1 With effect from the Effective Date:

- 1.1.1 the Transferor transfers all its rights and obligations under the Contract to the Transferee;
- 1.1.2 the Transferee shall enjoy all the rights and benefits of the Transferor under the Contract. The Transferee agrees to perform the Contract and be bound by its terms in every way as if it were the original party to it in place of the Transferor;

- 1.1.3 the Client agrees to perform the Contract and be bound by its terms in every way as if the Transferee were the original party to it in place of the Transferor; and
  - 1.1.4 all references to the Transferor in the Contract shall be read and construed as references to the Transferee.
- 1.2 If there is a conflict between this Deed and the Contract, this Deed shall take precedence.

## **2 RELEASE OF OBLIGATIONS AND LIABILITIES**

- 2.1 With effect from the Effective Date:
  - 2.1.1 the Client and the Transferor release and discharge each other from all claims, obligations and demands whatsoever in respect of the Contract, whether arising before, on or after the Effective Date, and in each case whether known or unknown to the releasing party;
  - 2.1.2 each of the Client and the Transferee shall have the right to enforce the Contract and pursue any claims and demands under the Contract against the other with respect to matters arising before, on or after the Effective Date as though the Transferee were the original party to the Contract instead of the Transferor; and
  - 2.1.3 each of the Client and the Transferor agree to the ownership, right and interest of the Transferee in and to any unpaid billings, fees, reimbursable payable to or accrued by the Transferor in or under the terms of the Contract for the period prior to the Effective Date and the Client agrees to pay any such unpaid or accrued amounts to the Transferee.

## **3 CONSENT TO CHANGE OF CONTROL**

- 3.1 In executing this Deed the Client also provides the necessary consent to any subsequent change of control of the Transferee generated by the sale of the Transferee from Capita plc to NEC Software Solutions UK Limited within a period of 6 months from the Effective Date and confirms that it will not exercise and waives any right of termination under the Contract in relation to a change of control of the Transferee to NEC Software Solutions UK Limited within a period of 6 months from the Effective Date.
- 3.2 The parties agree that such consent and waiver shall satisfy:
  - 3.2.1 any requirements set out in the Contract on the Transferee or any other entity in the Capita group of companies to notify the Client in relation to the proposed change of control of the Transferee as set out in Clause 3.1 above; and
  - 3.2.2 any requirements set out in the Contract on the Client to provide any further consent or waiver (written or otherwise) to the proposed change of control of the Transferee as set out in Clause 3.1 above.

#### **4 TERMINATION**

In the event that the Effective Date does not occur within 6 months of the date of this Deed it will automatically terminate and all obligations and rights of the Parties under this Deed of Novation shall lapse (except for Clauses 7 to 14 (inclusive)) and no party shall have any claim against another, save in respect of any prior breach of the underlying Contract.

#### **5 PERIOD FOR BRINGING CLAIMS CAUSED BY BREACH OF THE CONTRACT**

The period of time permitted for bringing a claim for breach of this Deed, where that breach is caused by a party's alleged failure to perform its duties and/or discharge its obligations under the Contract, shall be the same period of time permitted for bringing a claim solely for breach of the Contract in respect of such alleged failure.

#### **6 FURTHER ASSURANCES**

Each of the parties to this Deed agrees to perform (or procure the performance of) all further acts and things and execute and deliver (or procure the execution and delivery of) such further documents as may be required by law or as any party may reasonably require to effect the novation referred to in Clause 1, the release and discharge of the obligations referred to in Clause 2, and the consent to change of control referred to in Clause 3 to give any party the full benefit of this Deed.

#### **7 NOTICES**

- 7.1 Subject to Clause 7.3, any notice or other communication given under or in connection with this Deed will be in writing (which shall include email) in the English language and may be delivered by hand, first class post (or air mail if overseas) or e-mail and addressed to the recipient using the details below (and each party will promptly notify the other in writing of any change to its details for service):

##### **Client**

For the attention of: Simon Harris

Address: Royal Berkshire Fire Authority, Pincent's Kiln Industrial Park, Newsham Court, Calcot, Reading, RG31 7SD

Email: [HarrisS@tvfcs.org.uk](mailto:HarrisS@tvfcs.org.uk)

Copy to: N/A

**Transferee**

For the attention of: Paul Eggleton

Address: 65 Gresham Street, London, England, EC2V 7NQ

Email: [SSS.Transfer@capita.com](mailto:SSS.Transfer@capita.com)

Copy to: [richard.green2@capita.com](mailto:richard.green2@capita.com)

**Transferor**

For the attention of: James Cowan

Address: 65 Gresham Street, London, England, EC2V 7NQ

Email: [SSS.Transfer@capita.com](mailto:SSS.Transfer@capita.com)

Copy to: [sarah.millington@capita.com](mailto:sarah.millington@capita.com)

- 7.2 Any such notice or communication given in accordance with Clause 7.1 will be deemed to have been served if delivered by:
- 7.2.1 hand, at the time the demand, notice or communication is left at that party's proper address for service;
  - 7.2.2 prepaid first class post, on the second Business Day after posting it or in the case of airmail on the fifth Business Day after posting it; and
  - 7.2.3 email, at the time of transmission
- provided that if a notice or communication is deemed to be served before 9.00am on a Business Day it will be deemed to be served at 9.00am on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00pm on a Business Day it will be deemed to be served at 9.00am on the immediately following Business Day.
- 7.3 To prove service of a notice or communication it will be sufficient to prove that the provisions of Clause 7 were complied with.
- 7.4 This Clause 7 will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.
- 7.5 For the purposes of this Clause 7, "Business Day" shall mean any day (other than a Saturday or Sunday) on which banks are open in London for normal banking business.

**8 INVALIDITY**

If any provision in this Deed shall be held to be illegal, invalid or unenforceable, in whole or in part, such provision or part shall to that extent be deemed not to form part of this Deed but the legality, validity or enforceability of the remainder of this Deed shall not be affected.

## **9 COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one deed.

## **10 VARIATION**

No variation of this Deed shall be effective unless it is in writing and signed by the parties, or their authorised representatives.

## **11 ASSIGNMENT**

Neither party shall assign any of its rights and/or obligations under this Deed without the prior written consent of the other party.

## **12 THIRD PARTY RIGHTS**

The parties do not intend that any term of this Deed of Novation will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

## **13 GOVERNING LAW**

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

## **14 JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation.

This document has been entered into as a deed and is delivered and takes effect on the day and the year first stated above.

Executed as a **DEED** by **ROYAL BERKSHIRE  
FIRE AUTHORITY**


acting by two directors or a director and a  
secretary:


.....  
Director

.....  
Director / Secretary

Executed as a **DEED** by **CAPITA BUSINESS  
SERVICES LIMITED**

acting by two directors or a director and a  
secretary:


  
.....  
Director

  
.....  
Secretary

Executed as a **DEED** by **CAPITA (SSS)  
LIMITED**

acting by two directors or a director and a  
secretary:

  
.....  
Director

  
.....  
Secretary





# Buckinghamshire & Milton Keynes Fire Authority

**Meeting and date:** Executive Committee, 17 November 2021

**Report title:** Exemption from Standing Orders Relating to Contracts: –

- Resource Management System
- Premises Risk Management System
- Asset Management System

**Lead Member:** Councillor David Hopkins

**Report sponsor:** Anne-Marie Carter, Head of Technology, Transformation & PMO

**Author and contact:** Anne-Marie Carter, [acarter@bucksfire.gov.uk](mailto:acarter@bucksfire.gov.uk)

**Action:** Decision

## Recommendations:

It is recommended that in accordance with Standing Orders Relating to Contracts, Standing Order 4(a) that:

- 1) the Resource Management System contract with FireServiceRota be renewed for a further three years until 7 November 2025
- 2) the Premises Risk Management System contract with Active Informatics be renewed for a further three years until 31 March 2026
- 3) the Asset Management System contract with Redkite Systems be renewed for a further two years until 31 March 2025

## Executive summary:

The Service has a number of business-critical systems that help meet our Strategic Objectives and enablers.

Following competitive tendering exercises undertaken 4-5 years ago, the Authority moved the following systems to new suppliers:

System	Supplier	Commencement	Term (years)	Current End Date
Resource Management System	FireServiceRota	08/11/2017	4+1	07/11/2022
Premises Risk Management System	Active Informatics	01/04/2018	4+1	31/03/2023

Asset Management system	Redkite	01/04/2019	3+1	31/03/2023
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The challenge faced is that all these systems are due to come to the end of their contract over a period of six months; and the respective contracts did not provide for modifications, which would allow for their duration to be extended, any further, as part of the initial procurement exercise. These systems are business critical to the operation of the Service

Replacing systems is a costly and time-consuming process, that has a large impact on teams as they deliver and learn a new system alongside their day job.

Officers have assessed two options:

- a) To retender for each system over the next 24 months at significant expense (approx. £350k upfront) and Service wide impact or
- b) Complete a contract modification to extend the current contract agreement in accordance with the Public Contracts Regulation 72(1)(b) PCR 2015, which allows the Authority to extend a contract provided certain criteria are met and the increase in price does not exceed 50% of the value of the original contract.

It is recommended that the Authority extends the contracts with the three existing contract providers for the following terms:

System	Supplier	Extension Term (Years)	New End Date
Resource Management System	FireServiceRota	3	07/11/2025
Premises Risk Management System	Active Informatics	3	31/03/2026
Asset Management system	Redkite	2	31/03/2025

All three systems are used by other fire and rescue services and other public sector organisations, and this extension would allow us to continue to collaborate with the other Services to develop these systems. There is a separate budget challenge submission to support ongoing development.

As the total value of the contract extension is over £50,000 the Authority's Standing Orders Relating to Contracts require the Authority to follow a publicly advertised competitive tender process under Standing Order 8 unless an exemption is approved by a Committee of the Authority.

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**Financial implications:**

The current contracts relating to the three systems equates to an aggregated annual cost of £57,000 per year. It is anticipated that the contracts could be extended at a similar rate, and therefore the whole-life cost of the new contracts will be circa £200,000.

Based on the competitive tenders previously undertaken for this service, it is unlikely that alternative providers would provide the service for less than the amount we are currently paying.

A move to new supplier(s) for any of these three systems would incur set up costs of circa £350,000 plus additional internal resource costs and there is no guarantee that the ongoing costs would remain as-is.

**Risk management:**

Extending the existing contracts would avoid the risks associated with changing system providers.

Not undertaking a competitive tender increases the risk of not achieving value for money, although based on the previous competitive tendering exercise, it is unlikely another provider would provide the same level of service at a lower cost.

The Authority will publish contract modification notices for each contract, in accordance with the Public Contracts Regulations 2015, which does carry the risk of a supplier challenging the justification for the contract modification. Officers believe this to be low risk and in the event a challenge were made, the early publication of the intention to modify the contracts does allow the Authority adequate time to reconsider a competitive process.

**Legal implications:**

The contract extensions are permissible under the Public Contracts Regulations 2015 Regulation 72(1)(b) (as amended by the Public Procurement (Amendments, Repeals and Revocations) Regulations 2016):

*72.—(1) Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases:—*

*[...]*

*(b) for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor—*

*(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing*

*equipment, services or installations procured under the initial procurement, and*

*(ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority,*

*provided that any increase in price does not exceed 50% of the value of the original contract;*

Standing Order 4 allows for exemptions for contracts to be placed by direct negotiation with one or more suppliers rather than in accordance with Standing Order 8 (cited above).

Prior approval of a Committee of the Authority is required if the value of the proposed contract is over £50,000 if one of the following criteria is met:

a) special expertise [...] is required for which only one source has been identified. In this case a written quotation shall be obtained from that source; or

b) special expertise [...] is required which is only available from such a limited number of sources that competitive tendering is not practicable. In this case all sources shall be invited to provide quotations.

**Privacy and security implications:**

All Systems have a Data Protection Impact Assessment in place. These will be reviewed and updated regularly and if any changes are made to the system.

**Duty to collaborate:**

Approval of the exemption would allow the Authority to continue to work with other Fire and Rescue services and organisations that also use the systems.

**Health and safety implications:**

There have been no health and safety implications identified.

**Environmental implications:**

There have been no environmental implications identified.

**Equality, diversity, and inclusion implications:**

There have been no equality, diversity and inclusion implications identified.

**Consultation and communication:**

Stakeholders of the systems have been part of the review and decision-making process and champion the extension of the three contracts.

End users of the system should not be impacted by the contract extensions.

The paper has followed the agreed governance process and has been presented to:

Board	Date	Feedback
Business Transformation Board	7 October 21	
Senior Management Board	19 October 21	

#### Next steps -

- If approved, publish a contract modification notice for each contract, in accordance with the Public Contracts Regulations 2015

#### Background papers:

Standing Orders relating to contracts:

[https://bucksfire.gov.uk/documents/2020/03/contract\\_standing\\_orders\\_-\\_february\\_2020.pdf/](https://bucksfire.gov.uk/documents/2020/03/contract_standing_orders_-_february_2020.pdf/)

Appendix	Title	Protective Marking
N/A		

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# Buckinghamshire & Milton Keynes Fire Authority



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**Meeting and date:** Executive Committee, 17 November 2021

**Report title:** Exemption from Standing Orders Relating to Contracts: Wide Area and Local Area network (WAN/LAN) provision

**Lead Member:** Councillor David Hopkins

**Report sponsor:** Mark Hemming, Director of Finance & Assets

**Author and contact:** Anne-Marie Carter, [acarter@bucksfire.gov.uk](mailto:acarter@bucksfire.gov.uk)

**Action:** Noting

**Recommendations:**

In accordance with Standing Orders Relating to Contracts, Standing Order 4.2 it be noted that the Chief Finance Officer has authorised renewal of the WAN/LAN contract with Udata for a further one year until 24 September 2022.

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**Executive summary:**

The Authority's Wide Area Network (WAN) and Local Area Network (LAN) have, for the last 9 years, been provided under an umbrella contract set up by the then Buckinghamshire County Council with Udata. This contract was due to end on 24 September 2021.

Following the budget approval in January 2021 officers have been working with Buckinghamshire Council and the new supplier, BT, to transition the WAN and LAN.

Unfortunately, the move to the new supplier has been hit by delays leading to both the Authority and Buckinghamshire Council needing to extend the current contract with Udata.

WAN and LAN are business critical systems, without it the Service would not be able to operate. (See Appendix 1 for a brief WAN/LAN description)

Therefore, to ensure Buckinghamshire Fire and Rescue Service (BFRS) can continue to operate, officers have had to complete an emergency extension to the contract, extending the contract by 12 months until September 2022 at an annual cost of £118,000.

As the total value of the contract extension is over £50,000 the Authority's Standing Orders Relating to Contracts require the Authority to follow a publicly advertised competitive tender process under Standing Order 8 unless an exemption is approved by a Committee of the Authority.

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**Financial implications:**

The current contract has an annual cost of £162,000. It has been confirmed that the contract could be extended at a slightly reduced rate, and therefore the whole-life cost of the new contract will be circa £118,000.

Based on the competitive tenders previously undertaken for this service, it is unlikely that alternative providers would provide the service for less than the amount being currently paying.

The move to the new supplier is going to cost circa £500,000 plus additional internal resource costs. There is no option for another supplier to provide this service for the next 12 months.

**Risk management:**

Extending the existing contract would ensure BFRS can continue to operate.

During the 12-month extension BFRS will have limited Wi-Fi support, but officers are confident that this could be supported internally for this period.

**Legal implications:**

The contract extensions are permissible under the Public Contracts Regulations 2015 Regulation 32(2)(c) if the following criteria are met:

“32(2) The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases:— [...]

(c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.

[...]

(4) For the purposes of paragraph (2)(c), the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.”

Standing Order 4 allows for exemptions for contracts to be placed by direct negotiation with one or more suppliers rather than in accordance with Standing Order 8 (cited above).

- 4.2 If an Officer requires an exemption from one or more Orders in an emergency, the Chief Finance Officer can provide this. A report must be made to a Committee of the Authority subsequent to the award of the



contract. An emergency means a situation involving risk of injury or loss of life or risk to the security or structural viability of a property.

**Privacy and security implications:**

Whilst the WAN/LAN doesn't have a Data Protection Impact Assessment all systems that use it should. These will be reviewed and updated regularly.

**Duty to collaborate:**

Approval of the exemption would allow the Authority to continue to work with Buckinghamshire Council that also use Udata and the services they provide.

**Health and safety implications:**

There have been no health and safety implications identified.

**Environmental implications:**

There have been no environmental implications identified.

**Equality, diversity, and inclusion implications:**

There have been no equality, diversity and inclusion implications identified.

**Consultation and communication:**

Stakeholders of the systems have been part of the review and decision-making.

End users of the system should not be impacted by the contract extension.

The paper has followed the agreed governance process and has been presented to:

Board	Date	Feedback
Business Transformation Board	7 October 21	Approved
Senior Management Board	19 October 21	Updated to ensure correct legal compliance is applied

**Background papers:**

Standing Orders relating to contracts:

[https://bucksfire.gov.uk/documents/2020/03/contract\\_standing\\_orders\\_-\\_february\\_2020.pdf/](https://bucksfire.gov.uk/documents/2020/03/contract_standing_orders_-_february_2020.pdf/)

Appendix	Title	Protective Marking
1	<i>WAN/LAN Description</i>	Not Applicable

## **Appendices**

### *Appendix 1- WAN/LAN Description*

Wide Area Network or more commonly WAN is the connection between all our Fire Stations to each other and to the internet, these connections are normally outside of the Authority's premises and run securely across the internet, private circuits and utilise a variety of the available technology to do so, dependant on availability of circuits, capacity requirements and the cost to provision.

Local Area Network or more commonly LAN is the connection within BFRS's buildings it provides the connection (wireless or wired) between end user peripherals, PC's Laptops, printers & servers and each other through a Switch which then provides connection to internal resources or where appropriate to the WAN.

Associated peripherals and services include web traffic filtering, network security including intrusion detection and monitoring, remote access, firewalls, level three service desk, wireless network and connections to Azure, all of these need to be included as they are all, currently, provided by the incumbent WAN / LAN supplier.



# Buckinghamshire & Milton Keynes Fire Authority

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**Meeting and date:** Executive Committee, 17 November 2021

**Report title:** Budget Monitoring Report April – September 2021

**Lead Member:** Councillor David Hopkins

**Report sponsor:** Mark Hemming, Director of Finance and Assets

**Author and contact:** Asif Hussain, [ahussain@bucksfire.gov.uk](mailto:ahussain@bucksfire.gov.uk), 01296 744421

**Action:** Noting

**Recommendations:**

That the provisional outturn forecast for the Authority as of 30 September 2021 be noted.

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**Executive summary:**

The report in Appendix A sets out the Authority's revenue and capital spending position as of 30 September 2021, together with the projected outturn position for the financial year.

As part of the Medium-Term Financial Plan, the budget requirement required £1.113m use of reserves in order to set a balanced budget. Due to a favourable position on the level of funding to be received, underspends in pension costs and a rebate due on rates due to a rates review carried out on our estates has resulted in minimal use of reserves. The current projection for the use of reserves is nil with a net underspend of £0.038m

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**Financial implications:**

As set out in the main body of the report.

**Risk management:**

Management of our financial resources is a key risk to the Authority and the performance reports to Committee inform Members of the main financial risks facing the Authority in year.

**Legal implications:**

None.

**Privacy and security implications:**

None.

**Duty to collaborate:**

None.

**Health and safety implications:**

None.

**Environmental implications:**

None.

**Equality, diversity, and inclusion implications:**

None.

**Consultation and communication:**

None.

**Background papers:**

Medium Term Financial Plan 2021/22 to 2025/26, Fire Authority Meeting 17 February 2021 (see pages 47-92)

<https://bucksfire.gov.uk/documents/2021/02/fire-authority-agenda-and-reports-17-february-2021.pdf/>

Revised Appendices

<https://bucksfire.gov.uk/documents/2021/02/item-7b-revised-appendices-1-and-2.pdf>

Appendix		Title	Protective Marking
A		Appendix A – Budget Monitoring Report April – September 2021	None

**1. Revenue Forecasts by Service Area**

Table 1 shows the budget and actual expenditure for each Directorate as at the end of September 2021. The budget of £32.277m compared to the forecast outturn of £31.456m gives a forecast yearend underspend of £0.821m. Furthermore, the level of funding is showing a favourable variance of £0.329m which has resulted in an overall net underspend of £1.151m against the net budget. Due to these underspends, we will no longer need to utilise the £1.113m planned use of reserves and therefore we are currently projecting a nil transfer from reserves. We anticipate this figure to fluctuate throughout the financial year subject to actual activity, but we will monitor this closely to ensure the use of reserves is minimised and offset against any underspends identified within the expenditure.

The funding is currently projecting £0.329m above the budgeted level; £0.186m relates to the residual balance of Protection funding as well as additional Protection funding of £0.098m received during 2021/22. Furthermore, due to the Covid-19 Pandemic, the government introduced a local tax income guarantee which will compensate local authorities for 75% of irrecoverable losses in council tax and business rates income in respect of 2020-21. Based on the first payment received, we are anticipating the level of compensation to be better than projected by £0.065m. This additional funding is offset by a reduction in Airwave grant for 2021/22 compared to the original allocation as a result of an error Home Office made in their calculations. Therefore, the forecast for Airwave funding has been reduced to reflect this.

The residual COVID-19 grant balance of £0.143m will be utilised this financial year. A detailed breakdown of the expenditure up to 30th September 2021 is provided in section 3.

The forecasts also reflect the 2% pay award for Support Staff from July 1st, 2021 in line with the final year of the three-year pay deal. The forecast also includes 1.5% pay award for Operational staff (from July 1st, 2021) and Brigade Managers (backdated to January 1st, 2021) as per national agreements.

**Table 1**

<b>Directorate</b>	<b>Total Budget £</b>	<b>Actual Year to Date £</b>	<b>Forecast Outturn £</b>	<b>Projected Year End Variance £</b>
Corporate Core	1,605,460	652,537	1,476,690	-128,770
Finance & Assets	6,419,300	3,334,051	6,117,680	-301,620
Human Resources	528,430	281,829	474,163	-54,267
Delivery, Corp. Dev. Planning	21,693,770	10,143,103	21,382,921	-310,849
Statutory Acc. & Contingency	2,030,240	124,008	2,004,500	-25,740
<b>Total Expenditure</b>	<b>32,277,200</b>	<b>14,535,528</b>	<b>31,455,954</b>	<b>-821,246</b>
<b>Total Funding</b>	<b>-31,164,200</b>	<b>-16,614,325</b>	<b>-31,493,656</b>	<b>-329,456</b>
<b>Use of Reserves</b>	<b>-1,113,000</b>	<b>0</b>	<b>0</b>	<b>1,113,000</b>
<b>Net Position</b>	<b>0</b>	<b>-2,078,797</b>	<b>-37,702</b>	<b>-37,702</b>

## Variance by Directorate

**Corporate Core £0.129m under** – The underspend of £0.068m within Legal & Governance and £0.061m within Corporate Management predominantly relates to staffing costs being less than budgeted.

**Finance & Assets £0.302m under** – The underspend is mainly attributable to rebate due on rates. This contributes to an underspend of £0.256m whereby a business rates review which was carried out by an external organisation and the challenge resulted in a reduction in rateable values for most of our estates. Most of this is a one-off saving as it relates to backdated payments from 2017 as this was the furthest, we could backdate our claim. In addition to this, there are underspends within employee costs as a result of vacant positions and underspends within supply and services. The team structures have been reviewed within the Directorate whereby certain roles have been combined into one role and the residual underspend will be offered as a saving as part of the 2022/23 Medium Term Financial Plan (MTFP) process.

**Human Resources £0.054m under** – The underspend of £34k relates to staffing costs due to not all employees taking part in the LGPS pension schemes and an employee working less than the budgeted 100% FTE. Additional £20k underspend is seen under other supplies and services elements.

**Delivery, Corporate Development & Planning £0.311m under** – The overall underspend for the directorate is primarily due to underspends seen within pension costs, On-call activity and Wholetime posts which are not top of pay scale. As a result of new recruits joining the 2015 pension scheme which has lower employer contributions than the 1992 pension scheme, underspends are also seen within the pension budgets. As part of the pension legislation, all Wholetime staff will need to transfer into the 2015 pension scheme from April 2022 and therefore the budget will be updated and reduced as part of the MTFP process. On-call Firefighter activity relating to attendances are lower than projected levels which also contribute towards the underspend. With the current Wholetime (WT) Firefighter recruitment, we are projecting the recruitment of 18 WT trainee Firefighters who are expected to join in the last quarter of 2021/22 and is reflected in the outturn position.

**Statutory Accounting and Contingency £0.026m under** – The underspend relates to funds set aside for pay awards relating to employees earning below £24k. We no longer need to utilise this budget as this additional cost relating to the pay award was covered from existing underspends.

**Funding** - The level of funding is forecast to exceed the original budget by £0.329m, which relates to the residual protection funding of £0.186m from 2020/21 and additional £0.098m for the current year. Furthermore, we are anticipating receiving additional funding in relation to local tax income guarantee which is forecast to be circa £0.065m better than projected. This additional funding is offset by a reduction in Airwave grant for 2021/22 compared to the original allocation as a result of an error Home Office made in their calculations.

## 2. Direct Employee Variances

**Table 2** shows the breakdown of all the favourable (-) and adverse (+) variances for each sub-heading within the direct employees subjective as at the 30 September 2021.

Subjective	Salary (Including Training costs) £	Allowances £	NI £	Pension £	Total £
Wholetime	62,867	-43,601	106,183	-269,766	-144,317
On-Call	45,437	-212,787	30,015	-28,624	-165,959
Support	-172,591	-620	-21,359	-77,026	-271,596
Technicians	-22,399	0	-4,349	-5,763	-32,511
Sessional	-11,510	9,745	1,370	0	-395
Agency	34,441	0	0	0	34,441
<b>Grand Total</b>	<b>-63,755</b>	<b>-247,263</b>	<b>111,860</b>	<b>-381,179</b>	<b>-580,337</b>

**Wholetime** – The underspend of £0.144m predominantly within pensions, which relates to new recruits joining the 2015 scheme and replacing existing post holders who may have been on a 1992 scheme which have higher employer contributions. From April 2022, all Wholetime staff will be budgeted on the 2015 scheme as per the pension regulations.

**On Call** – Underspends predominantly seen within allowances which is based on activity/training in year.

**Support Staff** – There is a net underspend on support staff budgets across the directorates due to a delay in recruitment caused by the COVID-19 pandemic and restructures which have taken place in departments that have resulted in savings in establishment costs.

**Agency Staff** – Agency staff have been used to partly cover interim vacancies within support staff roles and this offsets the underspend on support staff.



### 3. COVID-19 Spend Analysis

**Table 3**

Subjective	2020/21 Actuals £	2021/22 Q2 Actuals £	Total £
Staffing Costs	471,615*	135,974	607,589
Protective Equipment	115,277	7,092	122,369
Other Costs	71,467	5,314	76,781
<b>Total</b>	<b>658,359</b>	<b>148,380</b>	<b>806,739</b>

\* This figure includes all staffing expenditure incurred in relation to COVID-19 since the start of the pandemic (March 2020).

**Funding** - Central Government have allocated funding of £0.801m of which £0.090m was received in March 2020 and £0.710m over two tranches in 2020/21. This included a successful bid (of £0.034m) by the Authority in relation to a bid submitted in round two of the COVID-19 contingency fund. Table 3 provides a breakdown of the expenditure to date against the total grant funding of £0.801m.

**Staffing Costs** – All additional employee costs (operational and support staff) incurred as a result of the Pandemic. An example of this has been the use of bank staff to provide the operational resilience when members of staff have had to isolate.

**Protective Equipment** – All costs in relation to the purchase of personal protective equipment (PPE) to ensure the safety of all employees and providing employees with the appropriate PPE in order to carry out their roles safely. This also includes cleaning materials to be used for all brigade sites by employees/visitors for sanitising and disinfecting areas before and after they are used.

**Other Costs** – Predominantly costs relating to IT upgrades to allow meetings to take place online and costs relating to signage put up on all sites in relation to COVID-19.

## 4. Funding

**Table 4** details the budget and forecast outturn for each category of funding.

<b>Funding</b>	<b>Total Budget £</b>	<b>Actual Year to Date £</b>	<b>Projected Forecast</b>	<b>Projected Year End Variance £</b>
Government Funding	-3,544,210	-2,193,988	-3,544,210	0
Specific Grants	-1,459,080	-1,204,444	-1,707,291	-248,211
NNDR	-3,547,020	-1,396,722	-3,628,260	-81,240
Top-up Grant	-1,936,750	-1,459,658	-1,936,750	0
Precept	-20,677,140	-10,359,514	-20,677,145	-5
Use of Reserves	-1,113,000	0	0	1,113,000
<b>Grand Total</b>	<b>-32,277,200</b>	<b>-16,614,325</b>	<b>-31,493,656</b>	<b>783,544</b>

The funding is currently projecting £0.329m above the budgeted level; £0.186m relates to the residual balance of Protection funding (£0.246m) received in 2020/21 which is forecast to be spent or committed by March 2022 as per the conditions of the grant as well as additional Protection funding of £0.098m received during 2021/22. Furthermore, due to the COVID-19 Pandemic, the government introduced a local tax income guarantee which will compensate local authorities for 75% of irrecoverable losses in council tax and business rates income in respect of 2020-21. Based on the first payment received, we are anticipating the level of compensation to be better than projected by circa £0.065m. This additional funding is offset by a reduction in Airwave grant for 2021/22 compared to the original allocation as a result of an error Home Office made in their calculations. Therefore, the forecast for Airwave has been reduced to reflect this.

Due to the underspends seen in the expenditure budget and increased funding shown above, we will no longer need to utilise the £1.113m use of reserves and based on current projections, there will be a nil transfer from reserves. We anticipate this figure to fluctuate throughout the financial year subject to actual activity, but we will monitor this closely to ensure the use of reserves is minimised and offset against any underspends identified in the expenditure.

## 5. Capital Monitoring

### Capital Forecast

The capital programme for 2021/22 is £2.402m, including £0.472m from 2020/21 carry forward capital projects, less £0.050m in-year movement.

Project Name	Original Budget 2021/22 £	Carry Forwards 2020/21 £	In-Year Movements 2021/22 £	Revised Budget 2021/22 £	Actuals Year to Date £	Slippage £	Provisional Outturn £	Projected Year End Variance £
Property	500,000	121,000	-50,000	571,000	36,065	0	571,000	0
Property Review	0	0	0	0	209,153	0	560,000	560,000
<b>Total Property Portfolio</b>	<b>500,000</b>	<b>121,000</b>	<b>-50,000</b>	<b>571,000</b>	<b>245,217</b>	<b>0</b>	<b>1,131,000</b>	<b>560,000</b>
Hydraulic Equipment	65,000	10,000	0	75,000	0	0	75,000	0
Operational Equipment	90,000	25,000	0	115,000	37,265	0	115,000	0
Operational Red Fleet Vehicles	750,000	310,500	0	1,060,500	243,530	535,500	525,000	0
<b>Total Fire Appliances &amp; Equipment</b>	<b>905,000</b>	<b>345,500</b>	<b>0</b>	<b>1,250,500</b>	<b>280,795</b>	<b>535,500</b>	<b>715,000</b>	<b>0</b>
ICT	575,000	5,000	0	580,000	27,509	0	580,000	0
<b>Total Support</b>	<b>575,000</b>	<b>5,000</b>	<b>0</b>	<b>580,000</b>	<b>27,509</b>	<b>0</b>	<b>580,000</b>	<b>0</b>
<b>Grand Total</b>	<b>1,980,000</b>	<b>471,500</b>	<b>-50,000</b>	<b>2,401,500</b>	<b>553,521</b>	<b>535,500</b>	<b>2,426,000</b>	<b>560,000</b>

## Capital Funding

The capital programme will be funded as follows:

<b>Funding</b>	<b>Balance at 1 April 2021 £000</b>	<b>Estimated Transfers (in) £000</b>	<b>Estimated Transfers Out £000</b>	<b>Estimated Balance at 31 March 2022 £000</b>
Revenue Contribution to Capital	-2,611	-1,734	790	-3,555
Other Capital Contributions	0	-41	41	0
<b>Total Capital Reserves</b>	<b>-2,611</b>	<b>-1,775</b>	<b>831</b>	<b>-3,555</b>

## Property Portfolio

Property Portfolio has a capital budget of £0.571m for 2021/22, which includes carry forward budget from 2020/21 of £0.121m, less in-year movement of £0.050m. The capital funds will be utilised to carry out planned capital projected as agreed at Business Transformation Board, which included £0.050m to be transferred to revenue to support the completion of non-capital works following recent station audits and fire risk assessment. The carry forward budget of £0.121m relates to a number of planned capital investments that were delayed due to COVID-19 pandemic and will now be completed during 2021/22.

The West Ashland build is now complete, and the final account have been agreed. The final payments for the build including retention fees on the project are reflected in the forecast. The Authority will also be looking to recover some of the increased costs from the professional design team. The forecast variance for West Ashland total project costs is expected to be offset by additional capital receipts and contributions which will result in a net variance of circa £1m against the forecast expenditure and risks previously reported to Executive Committee for the Blue Light Hub project.

## Fire Appliances & Equipment

Fire Appliances & Equipment has a capital budget of £1.251m for 2021/22, which includes carry forward budget from 2020/21 of £0.346m. The majority of the capital funds will be utilised to purchase red fleet appliances and to purchase operational equipment for these appliances in line with the fleet strategy. The carry forward budget of £0.346m relates to delays in the delivery of the two 2020/21 fire appliances and equipment due to COVID-19 pandemic which will now be delivered during quarter 3 of 2021/22. A slippage of £0.536m has been forecast due to delays in the delivery of the 2021/22 fire appliances, which are expected to be delivered in quarter 1 of 2022/23.

## Support

ICT has a capital budget of £0.580m for 2021/22, which includes carry forward budget from 2020/21 of £0.005m. this budget will be utilised for the purchase of ICT hardware equipment, as per the ICT replacement strategy. The £0.500m is for the replacement of Wide Area Network (WAN) & Local Area Network (LAN) across all Buckinghamshire and Milton Keynes estates, this capital project is expected to be delivered during 2021/22.

## 6. Reserves

The table below shows the provisional movement in reserves during the year.

<b>Reserves</b>	<b>Balance at Start of year £000</b>	<b>Projected Movement £000</b>	<b>Balance at End of Year £000</b>
General Fund	-1,500	0	-1,500
Earmarked Reserves (Revenue)*	-2,422	-88	-2,510
Earmarked Reserves (Capital)	-2,611	-944	-3,555
<b>Total Reserves</b>	<b>-6,533</b>	<b>-864</b>	<b>-7,397</b>

\* This figure includes £0.638m, which represents this Authority's share of the joint control room renewals fund (which is held by Oxfordshire)

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# Buckinghamshire & Milton Keynes Fire Authority



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**Meeting and date:** Executive Committee, 17 November 2021

**Report title:** Emergency Services Mobile Communications Programme

**Lead Member:** Councillor David Hopkins

**Report sponsor:** Anne-Marie Carter, Head of ICT, Transformation and PMO

**Author and contact:** Marie Crothers - Programme Manager [mcrothers@bucksfire.gov.uk](mailto:mcrothers@bucksfire.gov.uk)

**Action:** Noting

**Recommendations:** That this update be noted.

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## Executive summary:

This paper provides Members with an update regarding the latest developments in the Emergency Services Mobile Communications Programme (ESMCP). The last briefing was provided to Members in February 2021.

The ESMCP Full Business Case was formally approved by the Government's Major Projects Review Group (MPRG) on Friday 23 July 2021. A briefing regarding the Full Business Case is expected to be released by the Programme and will be made available to Members in a future paper.

Members may be interested to note that the Competitions and Markets Authority (CMA) recently launched a consultation on a proposal to make a market investigation in relation to the supply of the Airwave network and ancillary services in Great Britain. The consultation closed on 2 September 2021, and their report was published on 25 October 2021. The CMA have confirmed that a Market Investigation Referral should be made. Further developments will be reported as they become available to us.

An Independent Assurance Panel has been established to provide assurance and advice regarding several key topics that affect the strategic direction of the ESMCP. In May 2021, the Home Office requested the IAP to undertake a review of the Local user Resource model that forms the basis of the funding support provided by the Home Office to fire services to transition to the new Emergency Services Network (ESN).

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## Report:

The ESMCP Full Business Case was formally approved by the Government's Major Projects Review Group (MPRG) on Friday 23 July 2021. This is a key milestone and provides the needed cross-government support to move the programme into the delivery phase, however this is conditional on the programme meeting the challenges of cost, coverage scope and resilience. The programme will now pick up pace to roll-out ESN with transition now indicated as commencing no earlier than Spring 2024; and

enable Airwave switch-off by the end of 2026. A briefing regarding the Full Business Case is expected to be released and will be made available to Members in a future paper.

The Competitions and Markets Authority recently launched a consultation on a proposal to make a market investigation in relation to the supply of the Airwave network and ancillary services in Great Britain. This consultation closed on 2 September 2021, and their report was published on 25 October 2021. The CMA have confirmed that a Market Investigation Referral should be made, and an inquiry group has now been appointed.

A press release regarding the consultation including a link to the full consultation document can be seen at Appendix A. Both the National Fire Chiefs Council (NFCC) and the Local Government Association (LGA) Fire Services Management Committee (FSMC) have provided responses to the consultation, these can be seen at Appendices B and C. The report published by the CMA on 25 October 2021 can be seen [here](#).

An Independent Assurance Panel (IAP) has been established to provide assurance and advice regarding several key topics that affect the strategic direction of the ESMCP. In May 2021, the Home Office requested the IAP to undertake a review of the Local user Resource model that forms the basis of the funding support provided by the Home Office to fire services to transition to the new Emergency Services Network. One outcome of their report was a recommendation to establish an ESMCP Resources Board, which comprises representation from Home Office, the Programme, and the National Fire Chiefs Council. The Board has set up a Task and Finish Group to be chaired by the NFCC ESN Senior User which will meet for the first time in November. The first task that will be looked at is that of the roles of the NFCC led Regional Co-ordination Managers and the Programme Managers who are employed by each regional Board and how they can work together in a different way to deliver national work.

Members will recall the ongoing issue of whether the Service will require its own link into the Emergency Services Network via a link known as a Direct Network Service Provider (DNSP) link. A meeting between the Programme and representatives from all non-DNSP connected services took place in July and representatives from this service attended. Following this meeting, a further South Central (SC) regional workshop took place to agree an approach to take forward to the technical team within the Programme. This approach and a series of 12 questions have been submitted to the Programme and we await their response.

The acting Regional Programme Managers recently drafted an ESMCP presentation that was delivered to the Thames Valley Fire Control Service (TVFCS) Joint Committee in July. This was largely for update purposes but also provided a background regarding ESMCP to any Members recently introduced to the ESMCP world. This presentation can be seen at Appendix D to this document.

The South Central region has run three recruitment campaigns for a replacement Regional Programme Manager (RPM), the first two with no success. The most recent recruitment process has successfully been completed, and it is planned that the new incumbent will take on the role later in the year. The interim arrangement to cover the SC RPM role utilising the Oxon and BFRS project managers continues.



**Financial implications:**

As the Programme now falls under the direction of the Crime, Policing and Fire Group within the Home Office, changes have been made to its monitoring process for LTR spend for 2021/2022. These changes are being monitored by the treasurer for the South Central region, however each service is now required to make an individual return to the ESMCP Funding team rather than the regional approach that had previously been agreed.

Infrastructure funding will continue to be directed through the Fire Directorate via a business case.

**Risk management:**

The South Central Programme team maintains a risk register on behalf of the South Central Programme Board. The Risk Register v21 was reviewed by the three TV FRS project managers on 12 May 2021.

In line with the quarterly review schedule, the risk register was due to be reviewed by 12 August 2021. However, the NFCC have been reviewing and updating their risk register and processes, and we have also been made aware that the Programme is reviewing their process. The South Central review will be completed with a review across all documents.

**Legal implications:**

Buckinghamshire Fire and Rescue Service have already signed up to the principles of the ESN. Officers will continue to monitor the progress of the Programme closely and will provide challenge to the process where it is felt necessary.

**Privacy and security implications:**

As the Programme remains in the 'Prepare' phase, there have been no privacy issues or security implications identified. This will remain under review, particularly when the Programme moves to the 'Mobilisation' phase.

**Duty to collaborate:**

This Authority remains an active participant of the South Central Transition Delivery arrangements. The governance and delivery models have now been established and Buckinghamshire Fire and Rescue Service officers are involved at each level. The principle has been adopted that information is shared across all three South Central services and where appropriate, joint responses to work requests are submitted.

The South Central region is also working with the South East region and Thames Valley Police on activities such as the Coverage and Assurance work in order to achieve a consistent approach and effective use of the limited resources available.

**Health and safety implications:**

There are no health and safety implications perceived at this time. There is constant review of this and any issues that may arise in the future will be referred.

**Environmental implications:**

There are no environmental implications perceived at this time. There is constant review of this and any issues that may arise in the future will be referred.

**Equality, diversity, and inclusion implications:**

There have been no equality and diversity implications identified to date. As the programme progresses, further information, and a confirmed plan become available, then an Integrated Impact Assessment will be completed.

**Consultation and communication:**

The need to communicate and consult with all identified stakeholders is reviewed regularly. Once the Programme has entered its mobilisation and transition phases then regular communications will be established.

**Background papers:**

[ESMCP Update, Executive Committee 10 February 2021](#)

Appendix	Title	Protective Marking
A	CMA Consultation	None
B	NFCC response to the Competition and Market Authority consultation on the supply of the Airwave network in Great Britain	None
C	LGA response to the Competition and Market Authority consultation on the supply of the Airwave network in Great Britain	None
D	Introduction to ESMCP	None

**CMA consults on market investigation into emergency services' mobile radio network**

**The CMA is consulting on whether to launch a market investigation into Motorola's Airwave network – the mobile radio network used by all emergency services in Great Britain.**

From: [Competition and Markets Authority](#)

Published: 8 July 2021

The move follows concerns expressed about the impact of the dual role of Motorola as the owner of the company providing the current mobile radio network (Airwave Solutions) and as a key supplier in the roll-out of the planned new 'Emergency Services Network' (ESN).

The Government, the National Audit Office and the Public Accounts Committee have expressed concerns regarding Motorola's position and incentives to deliver ESN, given the continuing high profitability of the Airwave network. The Competition and Markets Authority (CMA) is particularly concerned that Motorola could stand to make excess profits of about £1.2 billion in the period from 2020 to 2026 – a cost which will ultimately fall to the British taxpayer. This issue has arisen because the planned replacement of the Airwave network with ESN has been delayed from 2019 to the end of 2026.

The CMA's initial review of the evidence available indicates that the supply of the Airwave network in Great Britain is not working well, resulting in significant detriment to customers and the taxpayer. Given the nature and significance of the issues the CMA has identified, it has reached the initial view that further investigation is needed.

Andrea Coscelli, Chief Executive of the CMA, said:

"At the moment, Motorola is the only provider of critical mobile radio network services used by our emergency service workers and is involved in both the current and future set-up. We're worried that the company could be cashing in on its position, while taxpayers are left to foot the bill.

"The CMA is minded to launch a market investigation to dig deeper into its concerns and will now consult with a range of stakeholders, including the Government, on its plans."

Motorola gained its dual role by purchasing Airwave in February 2016, two months after it had entered into a contract with the Government to provide software for ESN, intended to replace Airwave. The merger was cleared by the CMA, in part because of the expectation of the Government that the Airwave network would be shut down by 2019.

While the probe is still in early stages, the CMA has identified two potential solutions in its consultation that may, in principle, be available should a market investigation confirm its initial concerns: regulate Motorola's rate of return in relation to the Airwave network or require Motorola to sell the Airwave network.

The CMA is required to consult before making a market investigation reference. Following its consultation, which is open until 2 September 2021, the CMA will decide whether to launch a market investigation.

[Proposal to make a market investigation reference \(publishing.service.gov.uk\)](#)

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**NFCC**  
National Fire  
Chiefs Council

The professional voice of the  
UK Fire & Rescue Service

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West Midlands Fire Service  
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Telephone +44 (0)121 380 7311  
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**For the attention of:**

Stephanie Canet,  
Director, Markets  
Competition and Markets Authority  
The Cabot, 25 Cabot Square  
London  
E14 4QA

**By email**

02 September 2021

Dear Sir / Madam,

**Response to the Competition and Market Authority Consultation On the Supply of the Airwave Network in Great Britain**

The National Fire Chiefs Council (NFCC) is an overarching body that has a unique role in representing all fire and rescue services (FRS) in the UK on the national stage with one voice for maximum impact, harnessing the knowledge and expertise across the country and bringing it together for the benefit of all. The NFCC is a non-political organisation and is committed to supporting FRSs as they seek to improve service delivery at a local level. Safety is at the heart of what FRSs do; they provide a 24/7 insurance policy for communities and require excellence in systems that support this endeavour. The collaboration that the NFCC can encourage, negotiate and support with stakeholders from within the Fire and Rescue Service and beyond recognises that solutions and risk go beyond organisational boundaries, at a national or even international level.

The NFCC welcomes the opportunity to be invited to respond to the Competition and Markets Authority's (CMA) consultation on the Proposal to make a market investigation reference (MIR) the Mobile radio network for the emergency services. At this juncture, it is pertinent for the NFCC to highlight that for the main Firelink contract [the Airwave contract for the Fire and Rescue Service], the Home Office is the contract holder. Fire and Rescue Services (FRS) are users of the Airwave system and financially contribute to the overall cost paid for the Firelink contract and therefore have an interest in value for the public purse and local tax payers. There are instances whereby FRSs have procured some elements of an Airwave service or provision outside of the main contract and maybe classed as contract holders in this context, but, in terms of the Firelink contract, this represents a small proportion of the overall totality.

The information and analysis within the CMA's consultation documents details a comprehensive picture of a complex and long standing situation, and one where the NFCC recognises the accuracy and pertinence of many aspects. As set out in the documentation, the CMA makes a compelling case to undertake a market investigation reference (MIR) relating to the Airwave network.

Whilst the CMA consultation appears to quote 2019 as being the original end date for Airwave contracts, the NFCC believe that this should in fact read the end of 2016 for the end date of the (original) Firelink contract. The implication of this being that the Firelink contract and any advantage described by the CMA could potentially last for 10 years to the end of 2026, double the life of the original contract with consequential implications for FRS budgets and the public purse accordingly.

Specific examples and instances that the NFCC considers have relevance to any reference the CMA may undertake are to be found at appendix A, and the NFCC considers that these should not be for public disclosure. The Airwave Management Team at the Home Office, representing the Firelink contract holder, should be able to furnish much of the further detail and documentation relating to these.

The NFCC are open minded to any remedy that may emanate from a reference or that may be offered in lieu. Ultimately, the NFCC's priorities in this area revolve around the continuance of a mission critical, secure and resilient communications system to support the vital work that FRSs do allied to the cost of this to the public purse. The NFCC's view is that any reduction in cost, savings or other remedy must not be to the detriment of standards or quality of service of current or future essential communications systems.

Concerns have existed within FRSs for some time regarding Motorola's position in holding key contracts for both the current and future emergency services communications provision. This has inevitably incorporated perceptions of a perverse incentive in seeking to extend the elements that are more profitable and as such more costly to the public purse. Should the CMA undertake a MIR it will assist in clarifying this position and aid FRSs in delivering, and being assured about, value for the public purse.

Should you require further information or engagement with the NFCC or individual FRSs, please contact either Assistant Chief Officer Ben Norman, the Operational Communications Strategic Lead for the NFCC [bennorman@lancsfirerescue.org.uk], or Assistant Chief Fire Officer Ian Taylor, the NFCC's Deputy Lead for Operational Communications and Senior User for the Emergency Services Mobile Communications Programme [ian.taylor3@homeoffice.gov.uk].

Yours sincerely



Ben Norman

Assistant Chief Fire Officer  
Director of Strategy and Planning  
Lancashire Fire and Rescue Service

Operational Communications Strategic Lead for the National Fire Chiefs Council

# Competition and Markets Authority: Mobile radio network for the police and emergency services

August 2021

Submission

## 1. About the Local Government Association

- 1.1. The Local Government Association (LGA) is the national voice of local government. We work with councils and fire and rescue authorities (FRAs) to support, promote and improve local government. We are a politically-led, cross-party organisation, which works to ensure local government has a strong, credible voice with national government.
- 1.2. This response provides you with the view of the LGA's Fire Services Management Committee (FSMC).

## 2. Key issues

- 2.1. The FSMC has had long held concerns around the delays to Emergency Services Network (ESN) and the many implications, including financial, as a result. We have always highlighted particular concerns around the costs FRAs with the transfer to the ESN. We are therefore supportive of your aim to understand whether there have been adverse effects on competition in the supply of the Airwave network.
- 2.2. With the continued delays to the introduction of the ESN, perceptions of Motorola having a perverse incentive to keep extending the Airwave service at considerable expense to the public purse have been prevalent for some time and a concern for FRAs and the FSMC. The proposed Market Investigation Reference (MIR) relating to the Airwave network will aid in identifying if these concerns are founded, and, if so, to what degree, and what may be done to redress the balance for the public purse, especially if money is being unfairly paid to Airwave rather than on frontline emergency services.
- 2.3. We understand that the NFCC will be providing you with more detailed feedback on the issues that have faced the sector and we are supportive of their work.

Contact

**Lucy Ellender**

Senior Adviser

Email: [lucy.ellender@local.gov.uk](mailto:lucy.ellender@local.gov.uk)

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# *Emergency Services Mobile Communications Programme*



# ESMCP v ESN

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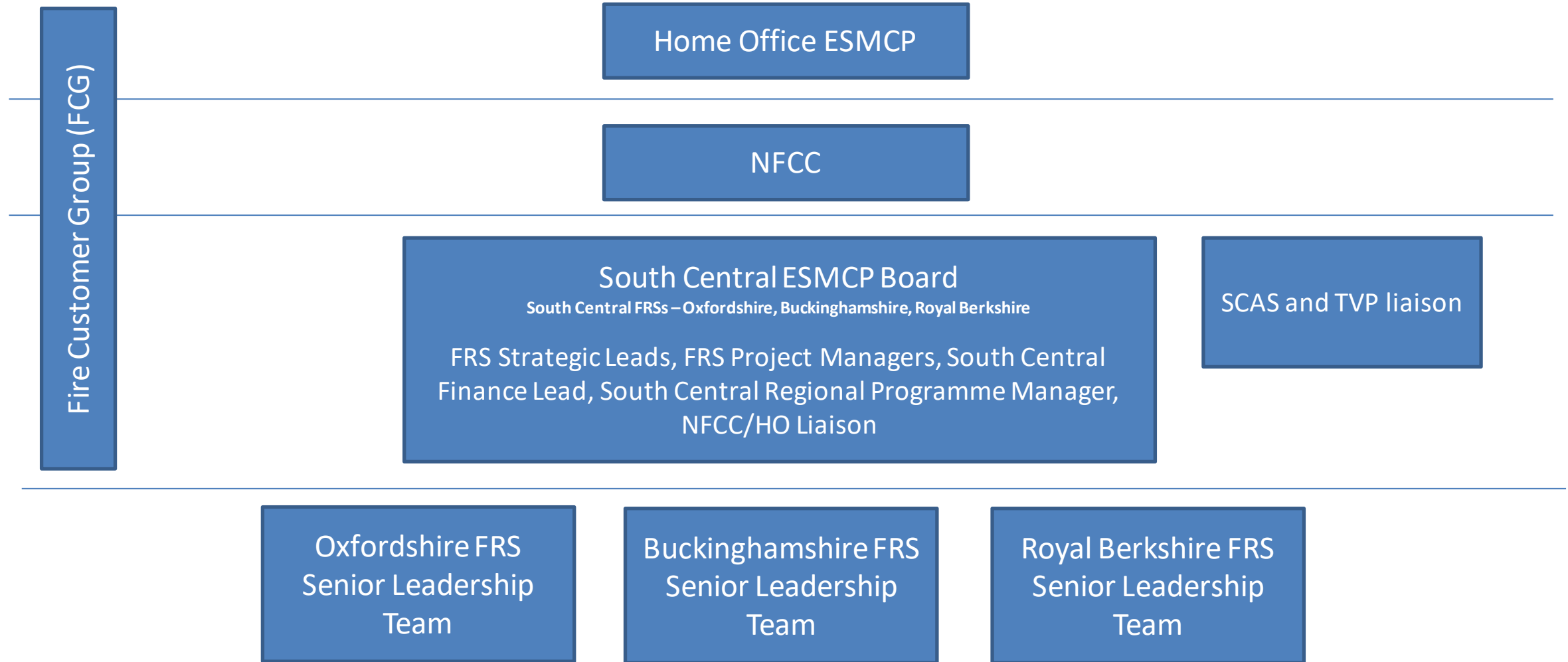
- **Airwave** - our existing radio communications system, provided by Motorola
- **ESN** - Emergency Services Network - this is the name given to the network which will replace Airwave.
- **ESMCP** - Emergency Services Mobile Communications Programme - this is the name of the Home Office project.

# Why Change?

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- Airwave is expensive when compared with other services
- Airwave cannot provide broadband data services, so will not be able to support future technology
- EU legislation required a re-competition
- Contract was due to expire Dec 2019

# Local Governance



# Full Business Case (FBC)

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- Original Business Case released in 2015
  - All current Airwave users strongly advised to sign up to the ESMCP
  - Sign-up packs advised that ESN would be cheaper to FRAs than continuing with Airwave
  - Sign-up packs indicated that full national transition to ESN expected for completion by Jan 2020
- Revised drafts FBC released for consultation April 2021
- Accepted, with caveats, by the Fire Customer Group on 17 June 2021 that the Full Business Case would meet the sector's operational requirements

# Current Programme Approach

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- Product Driven Adoption
- Customer Focussed
- Change Programme
- Service Roadmap Adoption
- Airwave Offboarding

# As at June 2021

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## ➤ Full Business Case (FBC):

- Revised drafts released for consultation April 2021; approved with caveats by Fire Customer Group on 17 June 2021; government sign-off July 2021
- Timescales extended - transitions to ESN to commence Spring 2024; Airwave switch-off Dec 2026
- ESN costs projected to be £0.9Bn lower overall than Airwave, but
- Local FRS cost increases likely due to loss of section 31 grants
- Net Impact could be as high as £150k for each FRS - further refinement is required
- The programme SRO will raise with Treasury, aiming to ensure that no local FRS is worse off as a result of migrating to ESN
- Local FRS should monitor this closely as a potential financial risk
- Any adverse impact unlikely to manifest before 2024/25 financial year

# As at June 2021

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- Big ticket issues:
- Network resilience - current Airwave resilience too expensive to replicate for ESN
  - Coverage - especially in-building - not covered in government contract with EE and cost responsibility unclear
  - Potential timescale and resource clashes for FRSs' implementations of technology changes for ESMCP v. business-as-usual works (e.g. Control contracts/refresh)
  - Ongoing degradation of legacy technology
  - Potential budget implications of expense of ESN to FRAs, for the long term
  - Lack of clarity on any additional ESN delivery costs to be met by FRAs
  - Lack of confidence in the ESMCP ability to deliver