

**AMENDED REPORT**

**EAST SUSSEX FIRE AUTHORITY**

Date: 7 February 2013

Title: Preparations for the future delivery of financial services for East Sussex Fire Authority (ESFA)

By: Chief Fire Officer & Chief Executive

Title: To seek the Fire Authority's approval to delegate responsibility for the approval of appropriate inter-authority co-operation agreements for a range of financial services for the Fire Authority with effect from 1 April 2013.

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**RECOMMENDATION:** The Fire Authority is asked to:

- i. delegate responsibility for the approval of appropriate inter-authority co-operation agreements for a range of financial services for ESFA with effect from 1 April 2013 to the Chief Fire Officer & Chief Executive and consultation with the Chairman and Treasurer following any further legal advice, and the satisfactory completion of terms; and
- ii. approve the waiver of Contract Standing Orders 13 to 23 which will then allow for inter-authority co-operation agreements to be progressed.

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**MAIN ISSUES**

1. At its meeting in January 2013, the Policy & Resources Panel considered a report advising on the need to secure new arrangements for financial services with effect from 1 April 2013 ( Agenda Item 870 - copy in the Minute Book). An oral update on progress was also given to the Fire Authority at its last meeting by the Treasurer.
2. In essence, currently, the Treasurer to the Fire Authority is an appointment, but as part of larger financial management and exchequer services contract with East Sussex County Council (ESCC) which has been in existence since 1 April 2006. In turn, ESCC has a contract with SERCO for the provision of all exchequer services including those for the Fire Authority. The Fire Authority has no direct contractual relationship with SERCO. These collective contract arrangements expire on 31 March 2013.
3. Negotiations on replacement arrangements have not been able to take place until after ESCC formally agreed its future financial management arrangements. These were agreed in principle at a recent Cabinet meeting and have now been publicly agreed by Surrey County Council (Surrey CC). In effect, ESCC and Surrey CC will create a financial services partnership taking in exchequer services currently provided by SERCO. In a similar way to the Section 16 Agreement for the Sussex Control Centre, an appropriate legal vehicle was needed to create this partnership that complies with EU procurement law – both parties have now agreed a delegation of function from ESCC to Surrey CC.

4. It was proposed, in principle, but subject to further detailed legal consideration and advice, that the following route would be adopted for East Sussex Fire Authority to secure its financial services for the foreseeable future, following this decision:
  - Appointment of Treasurer –that the Fire Authority makes its own direct appointment to the Treasurer role for a fixed period contract, subject to review;
  - ESFA financial management services including internal audit, treasury management, financial management, VAT and client & statutory governance of exchequer services – partnership contract likely to be via a delegation of function from ESFA to ESCC ( ESCC full council would have had to agree to this – so timings are crucial prior to 31 March); and
  - ESFA exchequer services – either delegation of function to ESCC or delegation of function to Surrey CC (again this would have had to have either been agreed by ESCC or Surrey CC full councils).
5. However, further legal advice was sought from Brighton & Hove City Council’s lawyers, acting on our behalf, as well as East Sussex County Council lawyers and their external legal advisers Eversheds and a Q.C, on how the financial services functions for ESFA could be fulfilled with effect from 31 March 2013, to comply with EU procurement law.
6. Following the consideration of all legal advice, it has been determined that it is not possible to use the ‘delegation of function’ route due to the implications of corporate governance statute across local authorities with specific regard to executive functions. Hence, it is now proposed to use inter-authority co-operation agreements which have been advised as the appropriate vehicles to meet both EU procurement rules and the ESFA’s requirements in the circumstances.
7. ESCC and/or Surrey CC are entitled to supply services to ESFA under powers set out in the Localism Act 2011 and other enabling powers. ESFA is entitled to enter into arrangements for receipt of these services under section 5A of the Fire & Rescue Services Act 2004. The inter-authority co-operation agreements proposed fall outside of the scope of the European procurement rules provided they demonstrate that there is a genuine co-operation between the participating authorities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties. Recent case law provides guidance on these types of arrangements and what conditions should be fulfilled in order for them to fall outside the ambit of the European procurement rules. It is important that this guidance is followed as otherwise the arrangements (provided their value is over threshold) may be viewed as public service contract(s) and subject to challenge under the Public Contracts Regulations 2006.

8. It will take time to draft the necessary form of Agreement(s). It is most likely that the following arrangements will be progressed:
- Appointment of Treasurer – that a direct appointment to the Treasurer role is made for a fixed period contract, subject to review;
  - For ESFA financial management services including treasury management, financial and accountancy services management, VAT and client & statutory governance of exchequer services – that an inter-authority co-operation agreement be entered into with ESCC
  - For ESFA internal audit requirements; that a separate inter-authority co-operation agreement be entered into with ESCC which may be subject to an earlier termination date;
  - For ESFA exchequer services that an inter-authority co-operation agreement be entered into with Surrey CC.
  - That a tri-partite partnership agreement between ESCC, Surrey and ESFA is approved to underpin the inter-authority co-operation agreements detailing the practical governance and mutual working arrangements.
9. These agreements will not only involve the professional services, but also our SAP financial system. The intention will be for ESCC and Surrey CC (as well as ESFRS) to prepare a mutually agreed set of specifications for our financial management systems and approach the market.
10. The current size of the ESFA/ESCC contract including all of its functions is £327,000 p.a. The proposed new arrangements for ESCC and Surrey CC have already been through a detailed Business Case, and the principles and benefits to be gained from their arrangements will have a direct benefit to ESFA, albeit to be provided through a different legal vehicle. The key benefits to ESFRS will include:
- a) The continued achievement of Best Value through collaboration in economy; efficiency and effectiveness benefits;
  - b) The professional financial services currently provided by ESCC below Treasurer level across a range of functions will be able to be sustained with no loss of continuity;
  - c) Expected shared financial savings will be achieved initially when the exchequer services are taken in-house by Surrey CC; followed in due course by mutual consolidation of joint needs and rationalisations along with a shared vision for the development of partnership provided services which will realise further benefits in due course;
  - d) Developing the future requirements for ESFRS can be considered alongside the future requirements for Surrey Fire & Rescue Services and as such offer additional economies of scale in spreading any specific FRS service needs;
  - e) The lack of any cheaper alternative courses of action for ESFA bearing in mind the restricted timescales now available and the importance of maintaining service delivery once the ESFRS contract ceases on 31 March 2013.

11. As it is proposed to enter into arrangements with East Sussex CC and Surrey CC without seeking competitive tenders or quotes, a waiver of Contract Standing Order (CSO) 13 (Quotation or formal Tender process) is required. Although the inter-authority co-operation agreements proposed by this report are not contracts for the purposes of the EU procurement rules, they are "contracts" for the purposes of the Authority's CSOs. There is no legal restriction on waiving this Standing Order, and indeed a waiver appears appropriate in order to maintain service delivery and to secure savings. There is also insufficient time to make alternative arrangements. The successive Contract Standing Orders from 14 onwards should be waived for consistency.
12. East Sussex County Council has advised that any approval processes required from its perspective can be achieved by the 31 March 2013 deadline. However, at the time of writing this report, officers are still awaiting further advice from Surrey County Council officers about any specific approvals it may require to be made and when. Should there be any issues of principle or unforeseen delays in any decisions, it would be necessary for ESFRS to seek to continue temporarily with current arrangements, as amended for all practical purposes, until new arrangements for the Fire Authority could be secured - at the earliest this would be likely to take nine months to achieve, with a significant risk factor being the impact upon ESFRS Exchequer Services including payroll, pensions, debtors and creditor payments.
13. Members will be updated on any new information at the meeting.
14. Accordingly, it is requested that the Fire Authority is asked to delegate responsibility for the approval of the intended inter-authority co-operation agreement(s) for a range of financial services for ESFA with effect from 1 April 2013 to the Chief Fire Officer & Chief Executive in consultation with the Chairman and Treasurer following any further legal advice, and the satisfactory completion of terms.

**Des Prichard**  
**CHIEF FIRE OFFICER & CHIEF EXECUTIVE**  
6 February 2013

## **ADDITIONAL PART B TO AGENDA ITEM 711**

### **Agenda Item No. 711 b**

#### **EAST SUSSEX FIRE AUTHORITY**

Date: **7 February 2013**

Title: **Role of Treasurer**

By: **Chief Fire Officer & Chief Executive and Monitoring Officer**

Purpose of Report: **To seek the Fire Authority's approval to the appointment of Mo Hemsley to the role of Treasurer and Section 151 Officer until the Authority makes a direct appointment to both roles and to authorise the Chief Fire Officer & Chief Executive, after consultation with the Chairman and Monitoring Officer, to make that direct appointment for a period not exceeding 18 months.**

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**RECOMMENDATION:** The Fire Authority is asked to:

- i) formally approve the appointment of Mo Hemsley to the role of Treasurer and Section 151 Officer to the Fire Authority until the Authority makes a direct appointment to both roles, and
- ii) authorise the Chief Fire Officer & Chief Executive, after consultation with the Chairman and Monitoring Officer, to appoint a Treasurer and Section 151 Officer for a period not exceeding 18 months.

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#### **MAIN ISSUES**

1. The role of Treasurer to the Fire Authority is part of the larger financial and exchequer services contract with East Sussex County Council, which is due to come to an end on 31 March 2013. In May 2012, Duncan Savage was formally appointed to the role of Treasurer and Section 151 Officer. On 1 February 2013, the Authority was formally notified that he will be leaving the County Council on 8 February 2013. Therefore, it is necessary to put in place interim arrangements until such time as a Treasurer is formally appointed to East Sussex Fire Authority.
2. It is proposed that, as an interim measure, Mo Hemsley, East Sussex County Council's Assistant Director Service Finance be appointed to the position of Treasurer to the Fire Authority and Section 151 Officer.
3. The East Sussex Fire Service's Combination Scheme requires the Authority to appoint a Treasurer, and Section 151 of the Local Government Act 1972 requires every local authority to secure that one of their officers is responsible for the proper administration of their financial affairs.
4. Mo Hemsley is an experienced CCAB qualified accountant and has previously served as Deputy Treasurer to the South Downs Joint Committee.
5. The Authority is now requested to formally approve these appointments.

6. The necessary adjustments to formal Treasurer signatories are being undertaken.
7. As indicated in item 711 (as amended), preparations for the future delivery of financial services for East Sussex Fire Authority, it is proposed in the near future that the Authority will make its own direct appointment to the role of Treasurer and Section 151 Officer for a fixed period not exceeding 18 months. The Fire Authority is recommended to authorise the Chief Fire Officer & Chief Executive, after consultation with the Chairman and Monitoring Officer, to make those appointments.

**Des Prichard**  
**CHIEF FIRE OFFICER & CHIEF EXECUTIVE**

**Abraham Ghebre-Ghiorghis**  
**MONITORING OFFICER**

6 February 2013