Creating and operating a successful fire trading company

February 2019

Contents

Glossary

To help the reader we have set out below definitions of some key terms used in our report.

Terms defined by Grant Thornton UK LLP

Fire and rescue authority (FRA) – this is the legislative body that governs each fire and rescue service. The term is used to apply to all FRAs operating across England and Wales, including police, fire and crime commissioners, combined fire authorities, county councils, unitary authorities, mayoral arrangements and the London Fire Commissioner. It is a statutory body made up of either local councillors, the elected mayor, the London Fire Commissioner or the Police, Fire and Crime Commissioner.

Fire and Rescue National Framework for Wales, 2016 – FRAs in Wales have a duty to have regard to the framework: http://gov.wales/topics/people-and-communities/communities/safety/fire/national-framework/?lang=en.

Fire and rescue service (FRS) – this is the term used to refer to the delivery of fire and rescue operational services. The FRS will be led by either a chief fire officer, chief executive or the London Fire Commissioner who is employed by the FRA.

Fire and Rescue Service Framework for England, May 2018 – FRAs in England have a duty to have regard to the framework: https://www.gov.uk/government/publications/fire-and-rescue-national-framework-for-england--2.

Fire sector – this refers to FRAs, FRSs and FTCs operating in the public sector. The public sector is a subsector operating in England and Wales. A much larger proportion of services are provided by individuals and private companies within the fire industry.

Fire trading company (FTC) – throughout our report the term is used as a generic term to refer to any company established as a separate legal entity either by an FRA or following an options appraisal by an FRA, regardless of its legal structure or the level of ongoing control or involvement of the FRA post-incorporation.

Full business case (FBC) – this is a more detailed business case that builds on the OBC.

Full cost recovery of seconded staff of the FRA – costs should include all those incurred by the FRA, for example pension, National Insurance and expenses.

Market rate – this is the rate that that would be comparable with the external commercial market, for example rental for premises would be comparable with current commercial rates.

Outline business case (OBC) – this is the first business case that sets out sufficient information to enable the proposal to be evaluated.

Police, fire and crime commissioner (PFCC) – this is an elected representative who has responsibility for the governance of the police force and the FRS in one area. Approval is required by the Home Secretary.

Legal terms defined by Trowers & Hamlins LLP

Best value - It is important to note that the statutory "best value" duty is completely different from the common law fiduciary duty to obtain value for money, as described below. The best value duty was established in 1999 to replace the former compulsory competitive tendering regime which used to apply to local government in the 1980s. The best value duty places an obligation on a relevant authority to ensure constant improvements in the way in which its functions are exercised, having regard to principles of economy, efficiency and effectiveness in relation to the provision of services, as set out in section 3, Local Government Act 1999. A detailed explanation of the best value legislation can be found in: 'A Guide to the Local Government Act 1999' (Butterworths annotated legislation service) Kath Nicholson and Helen Randall, LexisNexis Butterworths,1999, ISBN 9780406929433.

Common law – this means law that comes from decided cases rather than from legislation.

Fiduciary – this means you are placed in a position of trust, for example by members of the public.

Fiduciary duty – value for money - fire and rescue authorities are public authorities. Case law developed by the courts over the last two centuries (i.e. "common law") has decided that members of the public trust public authorities to act as the stewards of public money and the authorities must therefore carry out their functions (including any exercise of trading powers) in compliance with the fiduciary duty to obtain value for money on behalf of taxpayers and act in a business-like manner.

Objects - this means the purpose for which a company is set up.

Ordinary functions - this means the statutory functions of an FRA as set out in Part 2 of the Fire and Rescue Services Act 2004 (detailed in Appendix A).

Statutory - this means that a legal duty is imposed as a result of legislation (eg Acts of Parliament) rather than case law.

Foreword

Grant Thornton is a purpose led organisation, committed to creating a vibrant economy across the UK, including public services.

We are passionate supporters of all parts of the public sector and are delighted to have worked in partnership with the National Fire Chief's Council and the Fire Industry Association on this research project. In publishing this report we hope to make a positive contribution to the fire sector.

This report is the latest in our series on alternative models of service delivery, which are increasingly being considered by public sector bodies as part of their ongoing response to austerity and in utilising the relevant enabling legislation.

The report provides guidance, case studies and lessons learned for fire and rescue authorities considering setting up a fire trading company as well as providing good practice for established fire trading companies in their ongoing operational delivery.

At Grant Thornton we recognise the value of working with other specialists and would like to thank Towers & Hamlins LLP, Sir Ken Knight, and the fire trading companies who contributed to the project and to the production of this report.

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Executive summary

Introduction

Our report has been jointly commissioned by the National Fire Chiefs Council (NFCC) and the Fire Industry Association (FIA). We were engaged to provide good practice guidance based on research into fire trading companies (FTCs), to understand how they operate and to explore the reasons for their success or otherwise. To do this we have researched a number of FTCs to identify the reasons for their different outcomes. Our report provides guidance for those FTCs currently operating and those fire and rescue authorities (FRAs) considering setting one up.

Our report:

- covers the full life cycle of an FTC, from the initial drivers for change and thought processes around set-up, through to the options appraisal, business case development and running a successful trading company
- takes into account the results of our research into FTCs currently operating in England and Wales (we have excluded Scotland and Northern Ireland as no FTCs were identified)
- sets out a summary of the legal powers and framework for FRAs and FTCs
- sets out good practice and the key considerations when operating an FTC, including the use of uniformed officers
- provides a high-level narrative on the factors to take into account relating to staff such as pay and pensions
- provides high-level guidance on governance structures – both within the FTC and the associated FRA.

We have carried out our research through a range of stakeholder meetings and by drawing on our own knowledge of the fire sector and wider public sector in relation to alternative delivery models. We would like to thank all stakeholders who contributed to our report.

Our report does not seek to revise or replace the state aid guidance issued by the Chief Fire Officers' Association in 2015, 'Guidance on the use of Fire and Rescue Authorities' names and logos'. We have referred to this guidance to support our findings and conclusions at various points throughout our report.

Context

FRAs, along with all public sector organisations, find themselves in a period of continued austerity, having to adapt and change in order to address funding challenges. The fire sector has seen the creation of FTCs as one means of addressing some of these challenges, with the benefit of the wider commercial freedoms gained from operating through a company structure. FTCs provide the opportunity to realise benefits such as generating additional income, utilising spare capacity within the fire and rescue service (FRS), providing a social return and improving fire safety.

The public sector FTCs established by FRAs are just one part of the wider fire sector industries operating across England and Wales. A much larger proportion of fire-related services are provided by private individuals and commercial companies in which the FRAs have little or no involvement or control over the business operations.

The Home Office has included 'trading' within the Fire and Rescue National Framework for England[1] and for the first time includes guidance for FRAs on trading. The guidance includes commentary on the powers under which FRAs can trade and potential areas of concern, such as board members' conflict of interests, state aid implications and the requirements of competition law.

The Fire and Rescue National Framework for Wales 2016[2] does not include any guidance on trading; it does, however, address collaboration and improving efficiency.

Grant Thornton UK LLP and Trowers & Hamlins LLP have not considered nor commented on the legality of the operations and services provided by FTCs identified within our report. This does not fall within the remit of our report and remains wholly the responsibility of the individual FRAs and FTCs. General guidance on FRA powers can be found in Appendix A. Trowers & Hamlins LLP has taken all reasonable precautions to ensure the information contained in our report is accurate but stresses that the content is not intended to be legally comprehensive and recommends that no action be taken on matters covered in the document without taking full legal advice.

1 Fire and Rescue National Framework for England, Home Office, May 2018, para 5.16

2 Fire and Rescue National Framework 2016, Welsh Government, November 2015

Summary findings

FTCs are relatively new and began to be established in 2004, when the powers to trade were first introduced. However, not all types of FRAs were able to trade and the numbers remained low until the change of legislation under the Localism Act 2011. Our research has identified that only 15 FTCs are operating today. Taking into account there are only 48 FRAs in England and Wales, the number of FTCs is never likely to be significant. This relatively low number of FTCs (in comparison to local authorities, where 60% have at least one trading company) may be attributed to factors such as a lack of willingness to trade; the restricted, specialist and competitive market in which FTCs operate; and the fact that some FTCs have ceased trading.

Our research has identified that some FTCs are successfully competing and are on a growth trajectory, whereas others are less successful with uncertain futures. We found that the most successful FTCs are not just financially sustainable but are also providing social value and wider benefit to their local communities. They tend to be larger companies who understand the commercial market in which they operate, are able to capitalise on their specialist skills and are looking for ways to expand and widen their activities within the legal constraints placed upon FTCs.

FTCs must ensure they operate in accordance with the law while either operating as an FRA-owned company or a company closely associated with an FRA; further guidance is provided in Appendix A. As with all businesses, FTCs should ensure that their board of directors have between them a sufficiently broad mix of commercial skills and sector knowledge to support the FTC's objectives and enable the business to compete effectively within this specialised commercial marketplace.

What is a fire trading company?

An FTC is a company operating as a separate legal entity that has been established for a specific purpose or purposes relating to the provision of fire-related services and may generate income or otherwise achieve its objectives through the delivery of these services. The services provided typically include training, emergency response services for private companies and/or the sale of fire appliances. FTCs range in size, but tend to fall into one of two categories: smaller companies with turnover below £2 million or larger companies with turnover in the range of £2 million to £4 million that offer a wider range of services.

A range of legal structures exist, including companies limited by shares or guarantee and community interest companies (CICs) limited by shares or guarantee. The most commonly used structures for FTCs currently operating in the UK are companies limited by shares and CICs limited by guarantee.

Deciding to set up a fire trading company

The first stage when considering setting up an FTC is for the FRA to decide and document its rationale and objectives for trading. It should consider whether it is worthwhile setting up a company, or whether its objectives could be achieved without transferring the services into a separate legal entity (See Appendix A - "Powers to charge, powers to make a profit" for further details). West Midlands Fire Authority is an example of an FRA that trades services directly without the use of a separate company.

Each FRA will have its own rationale for setting up a company and should ensure it undertakes a process of due care and consideration in reaching its decision before doing so. Our research has established that this includes providing social value and wider community benefits as well as commercial objectives. This process should begin with a full options appraisal, including specific legal advice detailing the pros and cons of each of the legal structures that may be used to achieve the desired outcomes, followed by an outline business case, progressing to a full business case. This process helps to ensure that the right structure is selected at the outset to achieve the identified objectives. Our research into existing companies indicates that some may have not carried out a sufficiently detailed options analysis at the outset and may not be operating through the most appropriate legal structure as a result. This can ultimately hamper the ability of the company to achieve its intended outcomes.

Legal considerations - Towers & Hamlins LLP

The most suitable legal structure for an FTC will depend on its intended purpose, or 'objectives', which should be clearly identified in its constitution.

Not-for-profit organisations will usually be set up as a form of company limited by guarantee (having restrictions on the distribution of profits to members of the company) or social enterprise, while companies that wish to trade for profit and have the power to distribute profits by way of dividend to their members will usually be set up as a company limited by shares.

Although CICs have the same fundamental structure as regular limited companies, a CIC will usually have a community benefit purpose and must use its income, assets and profits for the benefit of the community it is formed to serve. Although the primary purpose of a CIC is the benefit of its community, a CIC limited by shares does have a limited ability to distribute profits to its shareholders. There are many provisions that apply specifically to CICs but two of the key features are the additional level of regulation governing the operation of a CIC (with oversight by the CIC Regulator) and the restriction on transfer of assets for less than market value ('asset lock').

Ultimately, it is the membership/shareholding structure and constitutional documentation of the FTC that will determine whether it is wholly owned and/or controlled by the FRA or distinct from it and/or has the power to operate freely and commercially. For more details see see Appendix A.

Careful consideration should be given to the following and included within the options appraisal and the business case:

- market – the extent of the market opportunity and the impact of limitations arising from the FRA's statutory functions
- financial support – if this is to be provided by the FRA (eg a working capital loan), and on what basis, to be compliant with legal requirements
- equipment and premises – whether these are to be provided by the FRA and if so, taking the necessary recharges into account. The FTC must be charged for these at a market rate to be compliant with legal requirements
- branding, name, logos and uniforms – whether the FTC establishes its own brand and if not, the FRA brand should be valued and the FTC charged accordingly
- back-office services – if these will be provided by the FRA, provided in-house or purchased externally. If the FRA provides these, a market rate should be charged
- people – how many staff are required and the terms of employment (eg directly employed or seconded at the full cost to the FTC).

Creating a fire trading company

Where the FTC is incorporated using a limited company structure, and once the necessary approvals from the FRA have been secured for the company to be set up, it must be registered at Companies House. CICs will also need to be registered with the CIC Regulator. The documentation required will differ depending on the type of legal structure selected, but all will require a memorandum of understanding (which under the Companies Act 2006 reforms is no longer a living document but rather a form stating the initial members/shareholders) and articles of association (which are the rules that will govern the operation of the FTC).

All companies must have a board of directors and will appoint one of their number as chair of the board. The board of directors has strategic responsibility for the company. A company limited by shares is owned by its shareholder(s), whereas a company limited by guarantee is owned by its members.

The composition of the board, as set out in the Companies Act 2006 should enable representation of relevant stakeholders with sufficient independence to allow the board to make robust decisions on behalf of the company. Our research indicates that FTCs' boards often include senior staff of the FRA as board directors, such as the chief or deputy fire officer and/or FRA members. Board directors should be trained to ensure they understand their statutory duties and responsibilities.

It will be important for the FTC to ensure that adequate board training is provided to ensure that all directors are fully aware of their statutory directors' duties, in particular the duty of care owed by each director to the FTC, and the FTC policies and procedures and company law requirements around the management of conflicts of interest. All company directors have a duty to act in the best interests of the company rather than in the best interests of the body that has appointed the director to the company (eg the FRA). It can therefore be challenging for directors where they also have other duties (eg as members of the FRA) that may on occasion conflict with their directors' duties. In such situations, conflicts may not always be avoidable.

Legal considerations - Towers & Hamlin LLP

The FTC must also do everything in its power to control conflict situations, such as adopting clear conflict of interest protocols and directors' mandates, ensuring a careful selection process is followed for the appointment of the board and that regular board training on directors' duties and conflicts of interests is provided for its directors. It is vital that directors (both new and continuing) fully understand their legal duties, as well as company policies and protocol, and that they receive appropriate and ongoing training, both for the protection of the FTC and the directors themselves.

Running a successful fire trading company

Once in operation, the FTC needs to maintain and develop its commercial acumen and culture. FTCs need to have a different culture to FRSs because they are commercially focused and operate in a more flexible and responsive environment, eg they do not have the same levels of scrutiny as a public body. To become a successful FTC, both leadership and staff, whether directly employed or seconded, should embrace this commercial culture.

The FTC will operate in accordance with its constitutional documents, any shareholder or member agreements and in accordance with company law and any other applicable laws and regulations. The governance structure of the FRA can either facilitate or hinder the development of the FTC, eg undue shareholder/member controls can hamper the day-to-day operation of the company by the directors and may mean that commercial opportunities are not maximised.

Our research identified that 15 FTCs are currently trading of which five have been established as CICs. The governance arrangements will differ for a CIC or company limited by guarantee compared to a company limited by shares. Based on our experience, the shareholder FRA should not be involved in the day-to-day running of the company in order to allow it the necessary freedoms to operate at arm's length.

A successful company needs to be dynamic and flexible to be able to adapt to the changing market and environment in which it finds itself. Several FTCs were set up more than 10 years ago and have not regularly evaluated their governance arrangements to ensure they remain effective and fit for purpose. The landscape in which they operate continues to change, and to remain successful the governance arrangements as well as the performance of the FTC (including the return on the investment for the FRA) should be regularly reviewed by the board and/or the shareholder(s).

Legal considerations - Towers & Hamlin LLP

From a legal viewpoint, performance of the FTC, including the return on the investment for the FRA where applicable, must be regularly reviewed by the board and the shareholders in line with the FTCs constitution and legislative obligations. The FRA should be mindful of its common law fiduciary duty to obtain value for money at all times and, where the FTC is delivering services on behalf of the FRA, the need to ensure compliance with best value legislation.

For established FTCs, the board and/or shareholders should consider:

- does the strategic fit remain valid?
- is it delivering on its strategic objectives and its business plan?
- is it delivering a return on its investment?

Based on these considerations, the FTC should consider its future position.

For those companies where the FRA is a shareholder it is important to be clear on what is the role of the FRA. The FRA requires sufficient strategic control to be able to exert influence at this level, but enable the company to run operationally. The role of the FRA is different from that of the board and management in that they are required to be involved in major business decisions, but they should not be involved in operational management. One way to facilitate this is to have a shareholder committee as part of the governance structure. This helps to ensure adequate safeguards that the company is carrying out work in line with the FRA's strategy.

Exit strategy

The key rationale for establishing an FTC is that it will be sustainable and generate a financial return for the FRA and/or community benefit. However, not all FTCs will continue trading indefinitely; both successful and unsuccessful companies may decide to stop trading. Therefore, consideration should always be given to an exit strategy. It should be carefully considered at the outset as part of the initial options analysis, to ensure that the potential impact of exit has been taken into consideration when choosing the most suitable legal structure and that the planned exit route is clearly documented. The content of the exit strategy will vary from organisation to organisation and will depend in part on the FTC's objects, its constitution and the chosen legal structure. For example, if an FTC is set up as a CIC, then consideration should be given to the asset lock.

Key success factors

Deciding to set up a fire trading company

Be clear on the rationale for setting up an FTC

Is it worth the effort and cost of setting up a separate FTC? What is the anticipated size of the market and expected returns in relation to the costs that will be incurred? The FRA may be able to trade without the need to form a company, with all the associated costs and time needed to do this. The following paragraphs set out the legal context in which this is possible.

Legal considerations - Trowers & Hamlins LLP

FRAs have the power to charge (or generate income) under section 18A (subject to limitations in section 18B) of the Fire and Rescue Services Act 2004 (FRSA 2004) (as amended by the Localism Act 2011), the Local Government Act 2003 and the Local Government Order 2009. FRAs can charge for the provision of persons employed by the FRA or its equipment to another person for any purpose that appears to the FRA to be appropriate under section 12(1). Section 12(2) enables this power to be exercised both within and outside of the FRA's area.

FRAs can charge for extinguishing fires, or protecting life and property in the event of fires that occur at or under the sea under section 18B(1) (this power can also be exercised beyond the territorial boundaries of the United Kingdom, pursuant to section 18A(7), FRSA 2004). This means that FRAs can charge for extinguishing fires at or under sea in foreign jurisdictions.

FRAs can charge for providing advice to trade and business under section 18B(7) FRSA 2004. However, it would not be permissible for an FRA to charge for providing advice to trade and business which falls within section 6(2)(b) FRSA 2004. The advice which an FRA must provide free of charge is described as follows:

(6)(2) In making provision under subsection (1) a fire and rescue authority must in particular, to the extent that it considers it reasonable to do so, make arrangements for–

(b) the giving of advice, on request, about–

I. how to prevent fires and restrict their spread in buildings and other property;

II. the means of escape from buildings and other property in case of fire.

However, this does allow FRAs to charge businesses for advice outside the scope of section 6(2)(b) FRSA 2004. The borderline as to where the FRA's statutory duty is fulfilled is unclear. Hence, it is a moot point as to when advice becomes above and beyond section 6(2)(b) FRSA 2004. We would suggest that FTCs seek expert legal advice on any proposals to provide fire prevention and means of escape advice for which they intend to charge customers. This is to ensure that it does not impinge on their parent FRA's statutory duty to provide such advice under section 6(2)(b). The general measure of a statutory duty is that of reasonableness. This means that the duty must be reasonable with regard to relevant considerations such as financial resources, for example. Whether the advice being provided is beyond the FRA's reasonable duty will depend on the particular circumstances of the FRA concerned and the particular circumstances of the recipient of the advice.

An FRA can also charge for and make a profit on entering into various agreements with designated public bodies to supply goods or materials, administrative, professional or technical services, vehicle, plant or apparatus and buildings, maintenance or works under section 1 of the Local Authorities (Goods and Services) Act 1970 (LAGSA) and the decision in R v Yorkshire Purchasing Organisation [1998] E.L.R. 195. This appears to apply only to FRAs that are constituted as PFCCs or the London Fire Commissioner. However, the Home Office has informally indicated that they do not differentiate between combined FRAs.

Be clear on the right legal structure

It is important to be clear on the ambitions and overall objectives for the FTC, and the options that will best deliver these objectives. Depending on the objectives of the FTC, the options analysis should include consideration of alternatives that do not require setting up a new legal structure, as well as suitable legal structures. Our research has shown that there is not a 'one size fits all' structure. The selection of legal form used should be driven by what the FRA is trying to achieve in the long term, and the objectives of the FTC should be clearly set out in its constitutional documentation.

Ensure the income stream and supporting market is sustainable and a clear business plan is in place

FTCs must be financially viable, whether their intended purpose is commercial ('for-profit') and/or social ('not-for-profit'), so understanding the intended market is vital. Projections on expected income generation should be realistic, both the amount and how long it will take to achieve. Income streams and market projections should form a key part of the business planning process.

Creating a fire trading company

Obtain the right specialist/professional advice

FTCs operate in a highly regulated and competitive marketplace. Obtaining the right professional support from the outset, especially when conducting the initial options analysis, can help avoid costly errors, saving time and resources in the long run. Where FRAs do not have experience or prior knowledge of setting up companies or fully analysing the pros and cons of the available structures, it is prudent to seek external legal and financial input at an early stage.

Do not underestimate the work involved to set up and become operational

Although registration of the chosen company structure may not take very long, it is the decision-making process leading up to incorporation – ensuring the right decisions for the FRA and the FTC are taken and obtaining the necessary authorisations, as well as the preparation of the supporting financial and legal documentation, such as the business case and the constitutional documentation to give effect to the intended outcomes – that can be a lengthy process, taking on occasion up to 18 months. Resources will also be needed to fund the process.

Running a successful fire trading company

Get the right management and people in place early

Having the right leadership from the outset is key to success. It is essential for the FTC to have a suitably diverse board of directors, with a broad range of skills and expertise and operating at arm's length from the FRA where applicable, having between them the relevant commercial expertise to further the FTC's objectives and enable the business to operate effectively.

Care should be taken when appointing the project lead that will be responsible for establishing the FTC. Ideally, it should be one or more individuals who possess sufficient commercial and technical awareness to support and drive the project to a successful outcome. Careful thought should be given when appointing the project lead/group to determine whether the suitable person(s), having the necessary transferable skills, can be sourced from within the FRA or whether the FRA may need to consider recruiting externally.

Operate on a commercial basis

Successful FTCs will operate on a commercial basis, whether they are delivering returns to the shareholders or the community (eg a charity). If services or support (such as equipment or back-office services) is to be provided by the FRS or the FRA, then clearly drafted, legally binding contracts should be put in place to document the terms on which such support will be provided, including costs/charges. This must be on reasonable market rates, which covers the costs incurred by the FRA if these are above market rates, and be neither over- nor under-priced to reduce the likelihood of disputes, state aid infringements (see Appendix A for further details) and to comply with the transfer pricing rules (see Appendix B for further details).

Create the right culture

Creating a more commercial culture in the people who are employed and work for the FTC is a key part of the development and success of the FTC. In our experience, successful FTCs have a different culture to the FRS. Identifying and developing the right people, who have the fire technical skills and understand the need to develop commercial skills and mindset, is vital to ensure success.

Establish effective governance arrangements

Effective governance arrangements facilitate and support the FTC to be a success. The governance structure in place will depend on the legal structure of the company and the level of control and influence required by the FRA. Ensure governance arrangements for both the FTC and the FRA are considered:

- for the FTC – agree the board composition and chair. Select on the basis of the skills required and who are best placed to provide them
- for the FRA – striking the right balance between influence and control and scrutiny will enable the company to operate effectively and at arm's length.

Be clear on roles and responsibilities

In compliance with the Companies Act 2016 members of the FRA and staff of the FRA need to be clear on their roles and responsibilities in relation to company directors and to avoid conflicts of interest. Drawing from a wider pool, including introducing independent non-executive directors, is very valuable in providing different perspectives to help support the company to achieve its objectives.

Structure of the report

We have researched a range of FTCs for our report, from those that are reported as being successful and lessons learned from those that have encountered challenges and ceased to trade. The report also provides information on the following:

- what is an FTC?
- deciding to set up an FTC
- creating an FTC
- running a successful FTC
- having an appropriate exit strategy.

Detailed case studies can be found from page 38 to 45 to page 42; extracts are also included in the main body of the report to highlight specific examples of our findings. Responsibility for the content of these case studies remains wholly with the management team of the relevant FTC, which provided the information. They have not been verified or validated by Grant Thornton UK LLP or Towers & Hamlins LLP as this is not within the scope of this engagement.

Creating a more commercial culture in the people who are employed and work for the FTC is a key part of the development and success of the FTC.

What is a fire trading company?

Background

The NFCC and the FIA have jointly commissioned our report. We were engaged to provide good practice guidance based on research into FTCs, to understand how they operate, to explore the reasons for their success or otherwise, and to provide guidance for those FTCs currently operating and those FRAs considering setting one up.

We have addressed the FIA's concern regarding some practices within FTCs, such as the use of branding, state aid and the use of uniformed firefighters, within our report. NFCC is committed to supporting this guidance to ensure it will be supported by FRAs and FTCs.

In recent years, like all parts of the public sector, there have been significant funding challenges faced by FRAs. Those FRAs who establish FTCs have been one of a range of responses to austerity. They offer the opportunity to generate additional income, utilise spare capacity within the FRS, provide a social return and improve fire safety.

We have researched FTCs operating today in England and Wales along with those no longer trading and identified reasons why this is the case. Some FTCs appear to have thrived while others seem to have been less successful. Our report looks at these different scenarios and identifies common themes to provide guidance for FTCs currently operational and for FRAs considering setting one up.

The Home Office has included 'trading' within the Fire and Rescue National Framework for England,[3] and for the first time. It includes the powers under which FRAs can trade and potential areas of concern, such as board members' conflicts of interest, state aid implications and the requirements of competition law.

The Fire and Rescue National Framework for Wales 2016[4] does not include any guidance on trading. It does, however, address collaboration and improving efficiency.

The first FTCs were established in 2004. However, the majority of FTCs were established after 2012, following amendments to the Fire and Rescue Services Act 2004 (contained within the Localism Act 2011). Therefore, the majority of FTCs are relatively new, the market is not yet mature and the range of services that FTCs can provide is restricted by legislation (namely, that services must be within prescribed statutory functions of the FRA).[5]

The local government sector has been using companies since the 19th century. The "general power of competence" introduced by section 1 of the Localism Act 2011 has, broadly speaking, given local authorities the ability to do anything that an individual can do (subject to limitations contained within the Localism Act 2011 and any other legislation). This change has brought about innovation in the local government sector, resulting in the existence of a greater number of local authority companies as compared to FTCs. Additionally, these local authority companies have varied structures and cover almost all local government services.

Legal considerations - Towers & Hamlins LLP

Stand-alone FRAs do not have the "general power of competence". However, amendments to the Fire and Rescue Services Act 2004 gave FRAs wide-ranging powers enabling FRAs to do anything connected with or incidental to their functions. These powers are explained in Appendix A.

3 Fire and Rescue National Framework for England, Home Office, May 2018, para 5.16

4 Fire and Rescue National Framework 2016, Welsh Government, November 2015

5 [With respect to FRA's that are local authorities (eg Norfolk County Council), when setting up an FTC under the local authority's fire functions, the company will still be limited by legislative limits, but if the company is a local authority trading company, set up under the "general power of competence", then it will have wide trading abilities. A due diligence check/vires audit is recommended to verify the powers under which the company was established.]

Like any other trading company, FTCs are competing in the commercial sector, against private companies providing similar services. FTCs are often supported by and associated with their owning FRA enabling them to access facilities, skills and expertise that other private companies cannot. FTCs need to ensure they trade in accordance with the law and do not have an unfair advantage.

Public bodies are different from corporate ones in a number of ways, for example they have wider stakeholder accountabilities. There is a political dimension as well as operational management arrangements to take into account. FTCs can operate more freely and should have fewer bureaucratic hurdles in comparison to FRAs, so they can be agile in a commercial environment. This can be a strong advantage for FRAs who can see a commercial opportunity, because a company could facilitate commercial gains as a result.

What is a fire trading company and what are its features?
An FTC carries out trading of fire-related services with the intention of generating an income through delivery of these services. The list opposite includes services that an FTC might provide. It does not include all services but provides examples:

- training – a range of training can be provided both to FRSs and commercial companies. It is usually accredited and includes routine training such as fire safety, medical as well as specialist, such as working at height and in confined spaces
- sale of fire appliances
- commercial emergency and hazardous materials response teams – this includes large companies in the petrochemical industry, airports or manufacturing industries.

The FTCs currently operating in England and Wales tend to fall into one of two categories in terms of size:

- smaller companies with an annual turnover below £2 million, these companies tend to deliver training and consultancy services
- larger companies, which offer a wider range of services, including emergency response services to large commercial organisations.

Case study 1

CFB Risk Management Services CIC is a larger FTC with turnover in the region of £4 million per annum. Its focus is on large-value, low-volume contracts, such as delivering emergency response services to large companies operating in the petrochemical industry. The training it provides is limited to specialist training.

Further details on this case study can be found on page 38.

Case study 2

Norfolk Safety CIC is an example of a small FTC, with turnover under £1 million per annum. Its focus is on providing fire safety and risk reduction through the delivery of training. During April 2015 to March 2018 it trained over 5,440 delegates.

Further details on this case study can be found on page 39.

Legal considerations - Trowers & Hamlins LLP

Different legislation governs the different types of FRA. However, the effect of the legislation is the same, which is that:

- all FRAs must perform their statutory duties within their area at no cost, unless the legislation specifically allows them to charge
- FRAs have a power to charge for their services in certain defined circumstances
- FRAs have a broad General Power of Competence but this cannot be used to override prohibitions in other legislation
- any FRA that wants to do things for a commercial purpose must use a company (FTC) to pursue these activities
- case law (common law) applies when an FRA is establishing an FTC. This means that the FRA must act for a proper purpose and not an improper purpose. For example, an FRA cannot establish an FTC to circumvent existing legal prohibitions.

Some FRAs were given the General Power of Competence under section 1 of the Localism Act 2011 because they were part of a county council. Other FRAs were given "wide-ranging powers"[6] enabling FRAs to do anything connected or incidental to their functions by amendments to existing legislation, namely the Fire and Rescue Services Act 2004 (the FRSA 2004). The government's policy objective in doing this was to ensure that all FRAs had the same broad powers.

Powers to trade/act for a commercial purpose

Further details are provided in Appendix A. This is a summary.

The Fire and Rescue National Framework for England, with which FRAs must comply, produced by the Home Office sets out that FRAs must demonstrate and support commercial transformation programmes where appropriate. It further outlines that FRAs should be able to demonstrate awareness of the need to standardise requirements, combine demand and manage suppliers of products and services within their various commercial arrangements

Broad powers under section 5A of the FRSA 2004:

- FRAs have broad general powers and are able to act for a commercial purpose pursuant to section 5A, FRSA 2004 which applies to all types of FRA (as listed in Appendix A).
- The broad general powers are contained in section 5A(1)(a) – (d), these allow FRAs to undertake commercial activities that help fulfil their functional purposes, even activities that are incidental or indirectly incidental to their functional purposes.
- A "relevant" FRA can do anything for a commercial purpose as long as it is linked with statutory functions in line with section 5A(1)(e) FRSA 2004 and section 5B(3), FRSA 2004 and providing that this power is exercised through a company.

Where an FTC is established by a private individual or organisation, then the FTC is not constrained by any prohibition in the FRSA 2004 or the "proper purpose rule" and it need only act within the normal limits of the law applicable to companies.

Section 95 of the Local Government Act (LGA) 2003:

- an FRA as a "relevant authority" is allowed to carry out its statutory functions for a commercial purpose, provided this power is exercised through a company under section 95(4) LGA 2003. (Further details are provided in Appendix A.)

Police and Crime Commissioners currently have no express statutory powers to set up companies. This should be borne in mind with respect to the recent duty to collaborate with the police under the Policing and Crime Act 2017. If an FRA is considering establishing a joint company with a PCC, then specialist legal advice should be sought in order to ensure forming the company is within the PCC's legal powers so that it has a sound foundation and to prevent vulnerability to legal challenge.

A Police, Fire and Crime Commissioner (PFCC) takes on the separate duties of a Police and Crime Commissioner (PCC) for an area as well as the fire and rescue "authority" for that area, pursuant to section 4A FRSA 2004 and section 6 Policing and Crime Act 2017.

The legislation works in such a way so as to add the fire and rescue functions onto the PCC's role.

While there is a power for a fire and rescue authority created by virtue of section 4A of the FRSA 2004to trade pursuant to section 27 of the Fire and Rescue Authority (Police and Crime Commissioner) (Application of Local Policing Provisions, Inspection, Powers to Trade and Consequential Amendments) Order 2017, this power only covers the ability to trade for the purposes of carrying on any of an FRA's "ordinary functions". This legislation does not confer new trading powers on the police element of a PFCC's role.

We recommend that specialist legal advice is sought with regard to specific activities to be undertaken by an FTC to ensure that they fall within the prescribed statutory powers.

If the FTC's activities are intended to circumvent prohibitions on the FRA, there is a risk that the FRA could be challenged for being outside the FRA's powers, that is "ultra vires". It is best that a thorough check of the appropriate powers is undertaken by a lawyer experienced in public as well as company law before an FTC is incorporated by an FRA as to enable the company to establish firm foundations for its future operations that will withstand due diligence by future investors, suppliers or business partners.

Where an FTC is not set up by an FRA, it must ensure that it complies with company law and all other applicable laws.

6 As stated in the Parliamentary debate on the Localism Act pertaining to amendments to FRA powers. Localism Bill Deb 1 Feb 2011 cols 218-226

What are the possible legal structures?

We have covered the most commonly used legal structures – these are companies limited by shares or guarantee and CICs limited by shares or guarantee. Other legal structures are available, such as co-operative and community benefit societies, although there appear to be no examples of these within the public fire sector at the date of our report. A brief overview of some of the key features of these legal structures is set out below (however, this is not intended to replace the need for a detailed legal analysis to be carried out before selecting the right vehicle for your project):

Community interest company (CIC)

A CIC is a limited liability company, designed for social enterprises that want to use their profits and assets for the public good. CICs, which were introduced by the Companies (Audit, Investigations and Community Enterprise) Act 2004, as amended by the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, have the same fundamental structure as private limited companies (having limited liability status, a board of directors and the same shareholder/member structure), with a number of additional obligations/restrictions and a higher degree of regulation and control with oversight by the CIC Regulator.

A CIC cannot have a political link or purpose and it cannot be a charity. The purpose of a CIC must be one of community benefit, although it may generate profit. It must satisfy a 'community interest test' for so long as it is a CIC – that is, it must be able to show that a reasonable person might consider that its activities are carried on for the benefit of the community; however, the benefit cannot be too narrow. A higher degree of trading transparency is also required: a CIC must deliver an annual CIC report to the registrar with its accounts, detailing certain prescribed information for that year relating to its activities, transfer of any assets at an undervalue, payment of any dividends and the remuneration of directors. CICs are required by law to have provisions in their articles of association to enshrine their social purpose, specifically an asset lock, which restricts the transfer of the value of assets out of the CIC. This ensures that the assets (or the value that they contain) continue to be used for the benefit of the community in any eventuality. These must be referenced in the CIC's constitution.

CICs can be established as companies limited either by shares or by guarantee, but they cannot be charities. The majority of FTCs operating today, which are CICs, have been established as CICs limited by guarantee. Whereas with a company limited by shares the liability of the shareholders is limited to the amount paid for their shares, with a company limited by guarantee the members 'guarantee' that they will pay a nominal sum specified in the constitution (typically £1 each) if on dissolution the company is unable to meet its liabilities. A CIC limited by guarantee cannot return any profits or assets to its members, whereas a CIC limited by shares can distribute some of its profits by way of dividend to its shareholders and pay interest on loans, although there is a cap on the maximum dividend and interest payments it can make.

The process for setting up a CIC is relatively simple, and is essentially the same as that for any limited company, except those wishing to register a CIC must also submit a second form comprising a community interest statement, providing evidence that the CIC will meet the community interest test defined in law. This statement is passed by Companies House to the CIC Regulator prior to registration for review. The CIC Regulator must confirm that the company meets the eligibility criteria to be a CIC before the registrar will issue a certificate of incorporation (and for this reason same-day incorporation is not possible for a CIC).

We have identified five CICs out of the 15 FTCs operating in England. The FTCs are listed in Appendix C. A key reason for choosing a CIC is that the additional regulation and asset lock limits the risk to the FRA and facilitates a reduced level of FRA oversight. However, if generating additional income for the FRA remains important, this may be achieved through recharges for the provision of assets and/or services. The FTC utilises spare capacity within the FRS through staff secondments and using equipment and premises. The FRA should recharge for these at market rates in order to avoid state aid infringement and transfer pricing requirements (see Appendix A and B for further details). Our case studies include various examples where the CIC model has been used.

Case study 3

HFR Solutions CIC included within its articles of association that it would reduce the financial burden on Humberside Fire Authority for the provision of the delivery of its statutory duties and non-statutory objectives.

The following were identified:

- creating a general reserve for the continuation and development of the trading company
- reducing the financial burden on Humberside FA for the provision of the delivery of its statutory duties and non-statutory objectives
- making payments for social and charitable purposes in accordance with the objectives of the CIC.

Further details on this case study can be found on page 40.

Company limited by shares

The FTC has its own legal identity, with the shareholders' liability for the FTC's debts limited to the amount of their contribution. This structure is not subject to the additional regulatory requirements of a CIC (ie no asset lock) and has the ability to pay dividends. This structure is one that is also used by many local authority trading companies. This is the most popular form of incorporation for an FTC and is being used increasingly as it enables the entity to operate with commercial freedoms, passing dividends back on any profits made with no restrictions. There may also be a social as well as profit objective, but the FRA retains strategic control as the shareholder of the company.

Company limited by guarantee

Companies limited by guarantee are incorporated under the Companies Act 2006. A company limited by guarantee will typically be a 'not-for-profit' company with charitable/social objects and its articles of association will usually prevent the distribution of assets to its members, although unlike a CIC it is not subject to a regulatory asset lock. The company has its own legal identity and limited liability status, with each company member's liability limited to a nominal amount specified in the articles of association, usually £1 each, that the company member guarantees to pay on dissolution of the company should the company be unable to meet its liabilities (in the same way as a CIC limited by guarantee). The company has a board of directors who are responsible for the day-to-day decisions of the company, and members (rather than shareholders) who are the 'owners' of it. A member can be an individual, a body corporate or the FRA.

Other structures

Other legal structures are available, such as limited liability partnerships and co-operative and community benefit societies. Although sometimes used in the public sector, these do not currently exist within the fire sector.

Limited liability partnership (LLP) – an LLP is not a structure that can be used to trade commercially for profit. However, it is often used by public sector bodies where there is a regeneration or development project requiring a partnering arrangement. It is a corporate structure, having its own legal identity and limited liability status. However, each member is taxed as a 'partner' on the profit it derives from the projects. FTCs are not in the market as developers for capital gain; therefore, this structure is not suitable as an FTC vehicle.

Co-operative and community benefit societies – this structure is used when the sole objective is to benefit the community rather than to generate profits for the owner. They are common for the running of community-based services such as libraries and social housing. They usually have charitable status and although not incorporated, may issue community shares to the public, which can pay a return in the form of interest. The nature of this structure means that it is not usually considered suitable for the delivery of fire trading services.

Choosing the right structure

It is important to begin with the right legal structure to ensure the entity meets its intended objectives. Factors that will influence the entity's legal structure and require consideration include:

- the purpose of the company, the nature and scale of the proposed activity
- how profits should be treated
- community and social benefit – does it intend to make a profit and/or create a social benefit?
- how the organisation will be funded
- what governance arrangements will be required.

Be clear on the right legal structure - it is important to be clear on the ambitions and overall objectives for the FTC and the legal structure that will deliver these goals.

This table sets out the key features for the two most common legal structures for FTCs operating in England and Wales.

	CIC limited by guarantee	Company limited by shares
Purpose	Can be established for any lawful purpose, as long as its activities are carried on for the benefit of the community	Established for trading purposes – usually to return a dividend to the FRA shareholder(s)
Key features	Community interest test Asset lock No dividends payable	Wholly owned by the FRA Dividends payable to the shareholders (eg FRA)
Tax	Subject to corporation tax Will not receive tax breaks from the HM Revenue & Customs (HMRC) by virtue of its legal status	Subject to corporation tax Will not receive tax breaks from the HMRC by virtue of its legal status
Regulation	In addition to registration at Companies House, has an important additional obligation to file an annual CIC report with their accounts, showing that it still satisfies the community interest test FOIA applies if the CIC is owned by the FRA	Must register with Companies House and comply with Companies Act requirements FOIA applies
Benefits	Reassurance to stakeholders as asset lock and community purpose are regulated Limited liability Directors can be paid, but this is regulated Free to operate more commercially than charities If limited by guarantee, no dividend return to the FRA	No limits to dividends that can be paid to shareholders Ability to pay dividends makes it easier to attract investors Limited liability for shareholders/ members Directors can be paid but this is regulated
Disadvantages	If elected members and staff of the FRA become company directors, they have more responsibility Must comply with Companies Act and CIC Regulator requirements CIC restrictions may make it difficult to attract external investment Difficult to wind up	If elected members and staff of the FRA become company directors, they have more responsibility Assets not protected by an asset lock More difficult to raise philanthropic donations or grant aid. Hence need to be either self-financing or financed through private investment Must comply with Companies Act requirements
Distinguishing features	No dividends payable	Shareholders receive a dividend

Deciding to set up a fire trading company

Why set up a fire trading company?

The decision to set up an FTC will be made by the FRA, regardless of the type of legal structure selected. It is important to be clear as to why the FTC should be set up, the objectives of the FRA and how these can be met by the company and converted into the objectives of the trading company.

Our research indicates that the most common reasons for setting up an FTC are to:

- generate additional income and profit from trading with other fire authorities and commercial companies
- enable the possibility of issuing a dividend to shareholders if profits are made
- utilise spare capacity within the fire service, both assets and staff
- enhance productivity within the fire service
- create social benefit, being able to improve fire safety through not-for-profit organisations.

While FRAs have the powers to trade, these powers should not be taken lightly. Thorough preparation should be carried out before setting one up. Public money will be spent in this process and it is therefore particularly important that the government's guidance is followed. The HM Treasury Green Book guidance, which sets out how projects should be appraised and assessed, is used throughout the public sector. This ensures a robust approach, which is transparent to all stakeholders, with all relevant considerations taken into account.

The decision-making process should begin with an options appraisal that will identify the range of options, which are likely to be those noted above – that is, a wholly owned company limited by shares, by guarantee or a CIC. These should be compared to the current position – that is, trading directly within the FRA.

Then an outline business case (OBC) should be prepared. A full business case (FBC) should be produced following approval of the OBC by the FRA, which will expand on the OBC and should contain a full financial model.

Options appraisal – which solution is the right one?

The purpose of an options appraisal is to provide an objective analysis that will support decision-making. This stage allows FRA stakeholders to identify and compare the structural options using agreed scoring criteria. There are various structures through which services can be traded and it is important to know which ones are most relevant in each situation as they have different characteristics and benefits. The criteria for assessment will vary depending on the specific situation, but commonly used ones include:

- financial – is there a particular level of saving/income generation required?
- quality – would the option result in an improvement or deterioration in quality?
- risk – what degree of risk can the FRA bear?
- control – what level of control over the company is desired?
- social and community benefit – which would provide the most social benefits?
- notable practice and guidance – has this been considered, such as due consideration of the recommendations made in Dame Judith Hackitt's final report, Building a Safer Future – Independent Review of Building Regulations and Fire Safety[7] and the House of Commons Housing, Communities and Local Government Committee's Independent review of building regulations and fire safety: next steps? [8]

In order to select the most appropriate criteria for the options appraisal, the objectives of both the new company and those of the FRA should be considered. The criteria may be given weightings against these objectives and each option ranked against them. A score for each option should be calculated that enables a quantification to this objective analysis. It provides rigour to the process and should result in the identification of a preferred option from the perspective of the FRA.[9]

7 Building a Safer Future – Independent Review of Building Regulations and Fire Safety: Final Report, May 2018

8 Independent review of building regulations and fire safety: next steps, House of Commons Housing, Communities and Local Government Committee, 18 July 2018

9 Building a Safer Future – Independent Review of Building Regulations and Fire Safety: Final Report, May 2018

Our research identified that often a company structure is selected without this step and it can lead to implementation of an inappropriate structure, resulting in advice and costs being required at a later stage. For example, if an FTC is set up as a company limited by shares but does not receive a dividend, instead choosing to give funds to charity, a more suitable option might be a CIC limited by guarantee. Identifying the correct structure at the outset can save time and money.

Outline business case

When the decision to set up a company has been agreed in principle, the next stage is the preparation of an OBC. This will set out the outline purpose of the proposed activity and its justification. The OBC document is often detailed because it needs to contain sufficient information to inform decision-making, and as such may take some time to draft. If the OBC identifies that the project should proceed to the next stage, it will form the basis of the FBC, which is the final stage before approvals to implement the company.

It comprises the following five key components.

The strategic case

The strategic case sets out the purpose of the company, including a clear definition of what the expected outcome should be and the benefits of the company compared to keeping the service in-house. It should set out how the proposed company fits with the FRA's overall vision. It also requires the FRA to demonstrate how the proposal fits in relation to national, regional and local policies, strategies and plans and furthers the required outcomes.

The case for change must be based on a rigorous assessment of the issues associated with existing arrangements and the potential scope for change in relation to anticipated benefits, for example improved community safety, and potential risks such as a lack of market appetite.

We have identified examples of FRAs having effective business planning processes in place, as well as some examples of FRAs who have created a company without sufficient regard for these considerations, which has resulted in the FTC not producing the desired outcomes and having to be brought back in-house, or cease trading.

The economic case

The main purpose of the economic case is to demonstrate that the spending proposal optimises public value. It must focus on the financial benefit of the proposed company. It aims to identify the economically preferred solution when compared to continuing to trade directly.

It explains how this is achieved by identifying and appraising a wide range of realistic and achievable options ('long list') in terms of how well they meet spending objectives and critical success factors. A reduced number of options ('shortlist') is then subjected to cost benefit analysis. The preferred option from the shortlist is then subject to sensitivity analysis in order to test its robustness.

The management case

The management case demonstrates that the preferred option is capable of being delivered successfully, in accordance with recognised best practice. It will assess the achievability of the company on the basis of the preferred option and in the context of project management and governance arrangements needed.

The commercial case

This assesses the preferred method as determined in the economic case, compared to the alternatives including the business as usual, that is continued direct delivery of the service by the FRA. It determines the risks and benefits of the preferred option, and considers what involvement the FRA will need in the entity. At this stage it will need to be demonstrated that the proposed company is required in order for the economic gains to be realised.

The financial case

The financial case examines the costs and benefits of the proposed solution, supported by calculations including the internal rate of return, net present value and overall financial benefits, having conducted sensitivities to reflect different scenarios that may arise in the future. It demonstrates that the preferred option will result in a financially advantageous structure.

It should demonstrate that the company will be financially viable. FTCs generate a large proportion of their income from sales within the private sector market, so understanding this market is vital, both in terms of demand and supply, that is who will purchase these services and who else is in the market. Projections on expected income should be realistic, taking into account the level of income, how long it will take to achieve and an assessment of the demand side.

Income streams and market projections should form a key part of the business planning process when undertaking the options appraisal for the enterprise.

The FTC should also include realistic cost projections. Where back-office services, premises, equipment and staff are provided by the FRA, these costs need to be understood and appropriately charged at market rates and full cost basis for staff to the FTC.

> "It was not that we were unrealistic in the size of the market opportunity that existed, just how long it would take us to achieve it. It takes time to become established and build trust in the market."
>
> **CFB Risk Management Services CIC – Managing Director Case study 1**

The financial case requires the FRA to set out the capital and revenue requirement for the proposal over the expected lifespan of the service, together on how the deal will impact upon the balance sheet and income and expenditure account of the organisation.

How the company will be financed must be decided at the outset. We identified that in the majority of cases a working capital loan was provided by the FRA. Some companies have not had the level of backing that they could have had which has not necessarily resulted in failure but has hindered growth.

Legal considerations - Trowers & Hamlins LLP
Any financial support must comply with the Market Economy Operator Principle to avoid state aid infringements see Appendix A for further details.

The FRA needs to consider cash flow for the proposed FTC – previously this would not have been an issue within the FRA but as a stand-alone company, payments to suppliers need to be paid on a timely basis. There is also the matter of transfer pricing to be observed (see Appendix B for further details).

Legal considerations - Trowers & Hamlins LLP
The National Fire Framework for England advises that any financial assistance given by an FRA that establishes or participates in an FTC should be for a limited period, provided with a view to repayment and repaid within an established timescale.

Any financial assistance should be provided under a formal agreement between the FRA and the FTC and must be entered into for a commercial purpose. Prior to entering into any such agreement, the FRA should satisfy itself that it would achieve its objective as set out in its business plan.

The OBC, once approved, can then be used to create a more detailed FBC, which is required in order to achieve the necessary approvals for implementation.

Transfer and use of assets

In order to deliver a service, the FTC may require assets, equipment and premises to enable it to operate. When an FTC is first set up, it is common for assets to be leased or rented from the FRA (on an arm's-length basis). As FTCs become more established, this may change and they may look elsewhere because this can often be economically advantageous, but could adversely affect the FRA.

In most cases that we have seen, assets and property are not transferred to the FTC because equipment and premises are usually used by both the FRS and the FTC. The company must be charged at a market rate for the use of the assets, in line with state aid requirements (see Appendix A) and transfer pricing rules (set out in Appendix B).

Legal considerations - Trowers & Hamlins LLP

Property

Property can include operational and administrative premises which, may be held freehold, under a lease or a licence. We recommend the following practical steps to follow to identify the assets and to determine the most appropriate arrangements:

Step 1 – Carry out an internal review

What properties does the relevant FRA already have an interest in? Which of those properties will need to be occupied by the new entity to enable it to operate effectively?

Step 2 – Future operations

Do any further property arrangements need to be put in place for the benefit of the company? Purchasing a freehold, entering into a lease or licence all have their own pros and cons which can be explored to accommodate the specific needs of the FTC.

Step 3 – Collaboration

Do any ancillary documents or agreements enjoyed by the FRA need to be transferred to the company going forward, such as service contracts?

Step 4 – Delivery

The necessary legal documentation will need to be prepared in advance to ensure the FRA's intentions are delivered once the company has been established.

Intellectual property

Intellectual property can include trademarks, domain names, copyrights and patents and before setting up a company it is important to undertake an audit of all assets and not to forget intellectual property assets. An intellectual property audit involves looking at the following questions:

i. what does the FRA think it owns?
ii. what does the FRA own (brand and logo trademarks, domain names, copyrights, patents)?
iii. what are the rights of employees, terms in employees contracts regarding ownership of intellectual property rights?
iv. what does the FRA use?
v. what does the FRA licence to third parties and what are the terms of the licence?
vi. what does the FRA licence from third parties and what are the terms of the licence (eg service level agreements, software agreements)?
vii. what are the statutory requirements?
viii. what aspects of data protection are required?

It is a good practice to identify new or adaptive needs and transitional requirements by considering the following:

ix. is an assignment of rights required?
x. new licences to or from third parties (can these be granted?) or is sub-licensing permitted or are there transitional provisions?
xi. employee contracts and intellectual property rights
xii. what to do with 'redundant' rights
xiii. rights which were previously granted as part of old structure that are no longer available need to be licensed/separated
xiv. data protection.

It is also necessary to identify future right requirements by considering the following matters:

xv. new names and logos
xvi. new functions
xvii. rights of ownership
xviii. creation and use of new rights (copyright etc.) and existing rights (eg website content, literature prepared for each entity)
xix. data protection.

Branding

Branding is an important differentiator in the market, especially in the fire sector where particular value is placed on the reputation of the 'badge', that is the trust that is associated with FRAs. FTCs in turn have the advantage of this branding in the marketplace, by association. The FRA should value the benefit derived from the use of the brand (name and logo) and recover that value from the company. We have identified a range of examples of the use of the name and logo as identified below. See Chief Fire Officers' Association (CFOA) 'Guidance on the use of Fire and Rescue Authorities' names and logos' for more detailed guidance. Similar consideration should also be given to the use of branded equipment and uniforms.

Examples

1 The company does not have its own logo or uniforms – a percentage is charged for use
2 The company began using the FRA brand and now uses its own
3 The company never used the FRA logo and built its own corporate brand from the beginning
4 The company is represented at trade exhibitions wearing FRA branded uniforms

Legal considerations - Towers & Hamlins LLP
Use of branded FRA uniforms

FRAs and FTCs should take appropriate professional and legal advice if individuals within the FTC intend to wear uniforms or clothing within the FRAs' brand when delivering and promoting the FTC's activities. The FRA and the FTC should take into account the Guidance on the use of Fire and Rescue Authorities' names and logos and the following legal considerations:

- there is scope for misunderstanding by third parties, members of the public and customers as to which entity is providing the services, which may result in the FRA being deemed to be liable for the acts of the company under the principle of "ostensible authority"
- there is the potential that an individual in the FRA's uniform or branded clothing when engaged on company business may be in breach of internal staff and disciplinary protocols regarding the use of the wearing of uniform
- there may be state aid issues because the use of the uniform/branded clothing is a benefit conferred on an undertaking which may have value (see Appendix A for further details)
- if the brand is protected by intellectual property rights, the use of the uniform or branded clothing other than in accordance with the licence for those intellectual property rights could be a breach.

Back-office services

The company will require a range of back-office (support) services to be operational, such as payroll, finance, vehicle maintenance and HR. These can be provided by the FRA, be provided externally or delivered in-house by the company. If they are provided by the FRA, the company should be charged at a market rate to comply with state aid requirements and transfer pricing rules. State aid is considered in further detail in Appendix A and transfer pricing in Appendix B.

People

The FTC will require appropriately experienced and skilled people to manage and deliver the services it has set out in its business case. Our research has identified that FTCs employ people in a range of ways including direct employment (including both permanent, short-term and zero hours contracts), secondments from the FRA and engagement through an employment agency. Our research has identified that the majority of companies use more than one of these options. We have not identified any firefighters or support staff who have transferred to be directly employed by an FTC.

Those FTCs who employ people must comply with the requirements set out under the employment tax section, as set out in Appendix B.

We understand that firefighters remain employed by the FRA and are seconded to the FTC to maintain their pension rights within the Firefighters' Pension Scheme.

Although we have not identified any FTCs where services or functions have transferred from the FRA to the FTC, FTCs should be aware that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), as amended, may apply.

Legal considerations - Towers & Hamlins LLP

As part of the strategy, one of the issues to think about is the implications for staff and who will be needed to work on new services. If services or functions are moving from one organisation to another, TUPE may apply.

TUPE applies where there is a transfer of an undertaking, or a service provision change. Where functions, services or activities are transferring between organisations, TUPE can apply. For there to be a transfer of an undertaking or a service provision change, this usually requires there to be a dedicated group of resources, including employees, assigned to the service or function which is changing hands. Analysis of the activities transferring and the staff dedicated to those activities will be required.

TUPE protects employees from dismissal and protects their terms and conditions of employment including their continuity of service. It also imposes obligations on the two employers to inform and consult representatives of the affected employees.

Depending on the nature of the new undertaking, alternative staffing models might need to be considered. There might be some services or functions which have, as a matter of statute, to be performed by an officer or employee of a public authority, in which case, TUPE might apply in which case alternatives models such as secondment, joint employment or dual employment might be useful to explore.

A secondment is where an employee is employed by one employer, but seconded to another who manages the seconded employee and utilises their services on a day-to-day basis. It needs careful implementation to ensure it is not deemed to be TUPE transfer.

Joint employment involves two employers being jointly and severally liable for a single employment contract with one employee. In both a secondment and a joint employment situation, the two employers must agree their respective obligations to the individual.

Dual employment is another model that allows employees to work for more than one employer; the employee has two or more separate employment contracts each with a separate employer. Co-ordination is required over matters such as the Working Time Regulations.

People are frequently seconded from the FRA to the FTC, the costs must be recovered on a full cost basis, taking into account their salary and associated additional costs, including the FRA funding of National Insurance, any pension contributions and car subsidy schemes.

Legal considerations - Towers & Hamlins LLP
If a new employer is being set up, which is owned or controlled by an FRA it is likely to be an "associated employer" for the purposes of equal pay legislation. Thought will need to be given to the terms and conditions offered to transferred or new employees, who may be able to draw comparisons with employees of the FRA. Consideration will also need to be given to the working practices of the new organisation, including what HR policies and procedures it will apply.

TUPE protects the terms and conditions of employment, so limits the opportunity to make efficiencies. The FTC will need to offer terms and conditions that are commercial and competitive but also attractive to staff so that they elect to change to the new terms and conditions.

Pension considerations

As previously noted, in the companies that we have researched we found no examples of where employees transferred from the FRS to an FTC. The preferred option is for employees to remain employed by the FRS and to be seconded to the FTC (note section on seconded staff or engaged on secondary contracts). This enables staff to maintain their current employment status and remain within the Firefighters' Pension Scheme.

Legal considerations - Towers & Hamlins LLP
However, this scenario may occur for subsequent employees of an FTC. Those staff could be a member of the Local Government Pension Scheme. One of the issues to consider is how transferred staff's pension arrangements are protected. At an early stage in the process, discussions should be held with the administering authority, for either the Firefighters' Pension Scheme and/or the Local Government Pension Scheme. The administering authority is the "gatekeeper'" of the pension scheme and it will need to be satisfied that the FTC can be legally admitted as a scheme employer or provide broadly comparable scheme.

We understand that the Firefighters' Pension Scheme governing regulations do not enable employees, other than from an FRA to be admitted. Should an obstacle arise in respect of an FTC being accepted as a scheme employer, other solutions would need to be considered, one of which was the possibility of approaching the Secretary of State or legislative revision.

An FTC can also provide a broadly comparable scheme, using a private pension provider. These schemes are usually off the shelf and are expensive to fund.

As a general proposition, abatement of pension may apply in circumstances where certain staff with historic pension accrual under relevant public sector schemes obtain re-employment in a fire-fighter role. We would recommend that the abatement arrangements are checked with the administering authority. This is because, under the Firefighters Pension Scheme Regulations, the power to abate a pension would not appear to extend to a scenario where a firefighter is re-employed by an FTC.

Engaging with the administering authority to resolve any potential difficulties could take time, particularly if legal and actuarial advice is needed.

If the FRA has retained (on call) firefighters, it will have to assure the FTC that it has the legal power to allow staff to remain active members in their particular pension scheme following their transfer to the FTC.

As an employer, the FTC will need to consider all eligible staff (aged between 22 and state pension age, earning at least £10,000 a year) who should be enrolled onto a pension scheme under the requirements for auto enrolment. Our research indicates that FTCs do provide a pension scheme for their staff.

Tax considerations

All FTCs, regardless of the legal model selected, will need to pay corporation tax on any profits made. This should be taken into account at the outset when the business case is being developed, with tax impacts included in the financial modelling. Corporation tax is currently 19%, reducing to 17% in 2020.

Other key tax considerations include:

VAT

The FTC is subject to the normal VAT regime and so cannot benefit from the section 33 Refund Mechanism that applies to its parent FRA. It is important to establish whether the activities of the FTC would result in irrecoverable VAT and if so, to what extent could this be mitigated to ensure minimum impact on its commercial viability.

Employment tax

If the FTC directly employs staff, it will have all the usual employer responsibilities. These will include payroll, an employee pension scheme and expenses scheme. For seconded staff, there may be expense reporting considerations, particularly where more than one permanent workplace is created for some staff.

Stamp Duty Land Tax

Land-related transactions are within the scope of Stamp Duty Land Tax (SDLT). Although we have not identified any FRAs that have transferred land to an FTC, this could be a consideration for companies in the future. Where SDLT becomes due, this could be significant, subject to the consideration agreed for the land. SDLT will also be a real cost for the entity acquiring the land interest so it is important that any proposed land transactions are carefully considered for SDLT purposes with any potential reliefs and exemptions being explored before such transactions are concluded. However, while this needs to be borne in mind, it is unlikely to be a significant factor.

Detailed tax considerations are included in Appendix B.

Creating a fire trading company

Once the business case has been approved, the FTC may be set up. The process to establish an FTC is the same as for any other company and includes:

Company registration

Registering the company at Companies House in itself is straightforward and inexpensive. FTCs are registered under the Company's Act 2006 in the same way as any other commercial company and bound by the same rules.

The following documents need to be delivered to the Registrar of Companies for England and Wales, in accordance with section 36 of the Companies (Audit, Investigations and Community Enterprise) Act:

- memorandum of understanding, which is a legal agreement setting out how the company will be run. It is a high-level document that is supported by further detail usually contained in the shareholders agreement
- articles of association, which sets out the written rules regarding what the company will be doing and must be agreed by the shareholders/members and the directors. A printed copy is required that complies with the requirements of section 18 of the Companies Act 2006. A CIC will need to include in their articles certain specified provisions about the company's form, asset lock and governance. Standard articles may not be used in the case of CICs
- form IN01, which provides the details of the company, including proposed name, whether limited by shares or guarantee public or private, the first directors (and secretary if applicable), the location of the registered office and a statement of compliance
- form AP01, which allows for the appointment of a director as required by section 154 of the Companies Act 2006
- form AP03, which allows for the appointment of a company secretary and a decision as to who will be appointed
- for CICs, form CIC36, which is the community interest statement. This form confirms that the CIC will provide benefit to the community by describing its intended activities who they will help and how. This form is essentially the company's mission statement
- the registration fee.

If the company is set up as a CIC, an application must be made to the CIC Regulator. When it has confirmed eligibility, it will notify the Registrar of Companies of its decision. The proposed company will become a CIC as soon as the registrar issues a certificate of incorporation.

Legal considerations - Trowers & Hamlins LLP
Due authority to create a fire trading company

The FRA will need due authority according to its constitution and the FRA should take into account all relevant considerations, the relevant power (as discussed above) and should ensure that the power is used for a proper purpose (eg not to circumvent statutory restrictions).

To have a business case would be a "relevant consideration" even if not required by statute (eg when relying on Section 95 of the Local Government Act 2003, this is explained in Appendix A) for the purposes of making a "reasonable decision", as explained in Appendix A).

Furthermore, the FRA will need to pass a resolution. If there is more than one shareholder or there is a group of companies (eg a holding company with various subsidiaries) and/or if there are matters regarding the internal workings of the company it is a good practice to have a members' / shareholders' agreement. It is also beneficial for the FRA to pass a resolution to indemnify the directors of the company against non-fraudulent potential personal liability.

The FRA will need to decide what form of company to set up (eg company limited by shares, a company limited by guarantee, a CIC or a community benefit society).

It is also necessary to bear in mind whether the company is likely to need to comply with the propriety controls applicable to local authority companies.

Company board

All FTCs must have a board of directors and a chair. The primary role of the board is collectively to ensure the success and sustainability of the company, within a framework of controls that ensure risk is assessed and managed appropriately. In order to be an effective board, consideration should be given to the composition, roles and responsibilities including those of management.

Our research has established that board composition is similar for both CICs and companies where the FRA is the shareholder. We have found that senior operational staff of the FRA, such as the chief fire officer, deputy chief fire officer and senior management staff (such as the monitoring officer), are members of the board, regardless of the company structure. We have not identified any FTCs that do not have any fire service representation. Furthermore, for a significant number of companies, FRA members are also members of the board. The board may have executive directors, such as the managing director, but these are less common appointments.

Consideration should be given as to whether the FTC board might benefit from the appointment of additional non-executive directors. We have identified only two companies that have appointed independent non-executive directors that are not either FRA members or staff. Independent non-executive directors are chosen for their personal qualities, knowledge and specialist experience. They should be impartial and provide objective criticism on board matters. They are often remunerated and this has been cited as a limiting factor by FTCs.

In our experience, conflicts are more likely to occur if members of the FRA are on the board and our research indicates that they are often on the board in order for the FRA to exercise control over the FTC. This can be mitigated by introducing independent non-executives from the commercial sector.

Legal considerations - Trowers & Hamlins LLP

All directors have the same legal duties to act with reasonable skill and care to fully understand the operation and finance of the company and must act in the best interests of the company unless and until the company is in danger of potential insolvency, when their duties are owed to the company's creditors.

Do not underestimate the work involved to set up and become operational. Although registration may not take long, it is the decision processes leading up to incorporation that can be lengthy - on occasion taking up to 18 months.

Legal considerations - Towers & Hamlins LLP

All company directors will have personal, non-delegable legal duties which are statutory and set out in the Companies Act 2006 and occur as a result of case law. One of the most relevant duties is the duty to act in the best interests of the company (rather than in the best interests of the body that has appointed the director to the company).

There must be no conflict between the director's duty to the company and his or her duty to another body (eg the FRA for whom he or she works or is an elected member) or his or her personal interest in some other body. This principle extends to facts or circumstances in which a reasonable person would think that there is a "real sensible possibility of conflict". For example, if there is a contract between the company and the FRA, there is a conflict because the director has a duty to the company to get the best profit and a duty to his/her authority to get the best price. Legally, a conflict of interest could impose a personal legal liability on the director to pay resulting profits out of his or her personal resources to the company. From a public law point of view it can also lead to potential vulnerability to legal challenge on the grounds of conflict of interest or bias.

Conflicts can also arise in relation to confidential information, for example where a director is privy to information in one role where he or she will owe a duty of confidence (for example as a director of the company or as an employee/Member of the FRA) but where he or she will also have a duty in his or her other role to disclose relevant information. A practical example is where an individual is aware of information in his or her role as officer/member which is not in the public domain but which would give a business advantage to the company. He or she therefore has a conflict between the individual's duty of confidence as an employee/Member of the FRA and his or her duty to act in the best interests of the company.

If he or she breaches the duty of confidence then this could constitute gross misconduct under his/her employment contract, or a breach of members' code of conduct , leading to potential disciplinary action and may render his/her authority potentially vulnerable to legal challenge including by the parties who would be harmed by the disclosure. On the other hand, if he/she maintains the confidentiality but does not disclose it to the company of which he/she is a director and the company suffers loss as a result, there may be a potential personal liability of that individual to the company for its loss because he/she would be in breach of his/her duty to act in the best interests of the company.

These rules apply equally to executive and non-executive directors and also to officers who attend board meetings and in accordance with whose instructions the company acts because they may be deemed to be "shadow directors". A shadow director is someone who may not be registered formally as a director but, despite that, company law regards him or her as still fully personally legally responsible and liable in just the same way as if they had been formally appointed. However, a shadow director is unlikely to receive the protections of the FRA's indemnities of directors' and officers' liability insurance.

There are various solutions to these issues, such as conflict of interest protocols, clear directors' mandates and careful selection and training of potential company directors. It is vital that potential directors fully understand their legal duties and receive appropriate training

Example board composition

Example company limited by shares

- Two members of the FRA
- Deputy chief fire officer
- Non-executive director

HFR Solutions CIC limited by guarantee

- Member of the FRA
- Chief fire officer
- Director of CERT (who assisted in setting up the CIC)
- Chief finance officer for Hull Clinical Commissioning Group
- Managing director

Further details can be found in case study 3 on page 40.

Running a successful fire trading company

Once operating, the FTC should be commercially viable and deliver a return, whether the return is for the shareholder or for social/community benefit. This section sets out the key factors for making an FTC successful.

Cultural change

The culture of a successful commercial organisation is typically quite different from a public sector organisation and this must be taken into account by the FRA and the FTC. It is important to create a culture that will facilitate commercial success. Our research has identified that successful FTCs have a different culture to the FRS. Identifying and developing the right people, who have the fire technical skills and understand the need to develop commercial skills and mindset, is vital to ensure success.

Creating a more commercial culture can also have an impact on the FRS. When the secondees return to the FRS, they return having experienced a different culture, taking these changes with them.

Culture change can take years to happen, but there are things that can be done to lessen the time taken. Some ideas that have come from the local government sector include:

- promoting a commercial culture through changing behaviours – this could be by moving towards a performance-related reward structure
- different terms and conditions
- building commercial skills – introducing external senior leadership with a commercial background and providing training to those seconded from the fire service
- removing layers of management – as the public sector is a hierarchical system, there is usually an opportunity to rationalise and create a flatter structure that promotes change
- greater involvement of staff.

Case study 3

HFR Solutions CIC has created a more commercial culture and views this as a key factor in its success. This cultural change has an impact on the individuals who work with HFR Solutions. The Humberside FRS also benefits when secondees return; they return having experienced a different culture and take that experience with them.

Further details on this case study can be found on page 40.

Corporate structure and governance

The FTC should be able to operate in a commercial manner, without excessive interference by the fire service or the FRA. Striking the right balance between having oversight and allowing the company to be free in the commercial world is not always straightforward. Our research has found that this is even more of a challenge in the fire sector compared to local government, due to the association with the uniform, which is a key part of its branding. There also tends to be greater board representation by elected members and fire officers than other publicly owned companies, which may result in a greater degree of control than is necessary.

The governance arrangements will differ for a CIC or company limited by guarantee, where the FRA is not the guarantor, and for a CIC or company owned by the FRA and limited by shares. For those companies where the FRA is a shareholder, it is important to have sufficient strategic control to be able to exert influence at this level, but enable the company to run operationally. One way to facilitate this is to have a shareholder committee as part of the governance structure. This helps to ensure adequate safeguards that the company is carrying out work in line with the FRA's strategy. However, we did not identify any FRAs operating any shareholder committees during our research. However, some FTCs limited by shares report their performance to the FRA on a regular basis, such as quarterly, to allow it sufficient oversight without interference. In most cases, FTCs are providing services externally to third parties, rather than to the host FRA, which reduces the burden of monitoring performance.

Agreeing the following for those FTCs limited by shares should ensure that disagreements do not occur and prevent the company progressing:

- whether company profits will be issued as dividends to the FRA, invested in the company or somewhere in between
- what role the FRA will play in major commercial and strategic decisions
- what role the FRA should take in evaluating the effectiveness of the board and its delivery of strategic objectives
- what the company will report to the FRA and how frequently
- staff of the FRS and members of the FRA should manage their conflict of interest.

Board effectiveness

An effective board will contribute to the success of the company. Our research identified that FTC boards are not operating as effectively as they could. They are not providing the strategic direction and vision, are often too controlling, lack independent commercial input and are operating more in a scrutiny role, evaluating after the event rather than providing the strategic direction. Board evaluation is an essential way to understand the effectiveness of the board and something that will benefit all boards, regardless of their size.

Evaluating the fire trading company

If FTCs are to develop and remain successful, the board and/or shareholders should annually review them. From a legal viewpoint, this is necessary for the authority to satisfy its fiduciary duty to obtain value for money and compliance with best value legislation. It is also important so the directors can ensure they are acting in the best interests of the company.

The board and/or shareholders should consider:

- does the strategic fit remain valid?
- is it delivering on its strategic objectives and its business plan?
- is it delivering a return on its investment?

If it is not then the decision should be taken to change the articles of association, restructure or even wind up and cease trading.

Business planning

A business plan sets out how the strategy and vision will be achieved and provides the operational method by which it will be delivered. It provides the objectives against which progress can be measured. A robust business plan will provide financial projections for at least the first two years or until the company is projected to be profitable and it should be updated and reviewed annually.

The FRA should use the business plan to monitor and track performance of the FTC, in line with the common law fiduciary duty to obtain value for money and act in a businesslike manner.

Case study 4

EFA (Trading) Ltd is one of the original FRA trading companies to be established in 2005 and remains trading today. The company provides a wide range of accredited training, consultancy and engineering services, which includes the sale of fire appliances.

The governance arrangements under which it now operates have changed as the Police and Crime Commissioner for Essex took on his new role as the Police, Fire and Crime Commissioner (PFCC) for Essex on 1 October 2017 and is therefore now the FRA for the FRS. In the capacity of the FRA, the PFCC is the sole shareholder of EFA (Trading) Ltd.

Following the change of governance of Essex Fire Authority, the PFCC is evaluating the financial viability of the trading company. A review was conducted into the EFA trading early in 2018, the outcome is still being considered by the Police, Fire and Crime Commissioner. New directors have been appointed over the past 4 months, and this has led to the initiation of a fresh piece of work whereby the Board of Directors and the Police, Fire and Crime Commissioner can ensure that the trading company is operating effectively, and also reflect on further opportunities for EFA Trading Ltd.

Further details on this case study can be found on page 42.

Prepare for the future – exit strategy

All companies need to be able to adapt, grow and change as circumstances change. At the outset it is important to consider how the FTC could be ended should that become necessary. Dissolving a company requires time and cost, and this should be factored into the decision-making process. It is more difficult to dissolve a company limited by guarantee than a company limited by shares. This can be because of a number of reasons, such as the guarantors may be more difficult to trace and there may be issues in relation to the distribution of assets.

Having an appropriate exit strategy

Not all trading companies continue indefinitely. Both successful and unsuccessful companies can cease trading. Therefore, there may be a point at which the FRA or the company needs to have an appropriate exit strategy. What this exit strategy is will depend upon the structure of the FTC and the reason behind it ending. The exit strategy should be considered when the FTC is established and not left until the decision to cease trading is made.

If an incorporated FTC is solvent and the decision is made to cease trading then the easiest exit strategy is for the FTC to be struck off the register of companies. This is only possible if the following criteria are met. If the FTC:

- has not traded or sold off any stock in the last three months
- has not changed names in the last three months
- is not threatened with liquidation
- has no agreements with creditors (ie company voluntary arrangement).

Then the FTC must follow the voluntary liquidation process, which remains a relatively straightforward administrative process but does have more steps to get the FTC struck off the register.

If an incorporated FTC is deemed insolvent then it has to follow the creditors' voluntary liquidation process. A liquidator is appointed to:

- settle any legal disputes or outstanding contracts
- sell off the FTC's assets and use any money to pay off creditors
- meet deadlines for paperwork and keep authorities informed
- pay liquidation costs and the final VAT bill
- bring together the creditors and hold meetings where necessary
- decide which creditors should be paid first
- interview the directors and report on what went wrong in the business
- get the FTC removed from the register of companies.

If an FTC has been set up as a CIC then a key consideration when designing an exit strategy is the asset lock. Assets subject to this within a CIC cannot be sold for financial benefit. Therefore, if a CIC ceases to trade, the assets can usually be transferred back into the FRA for the continued benefit of the community but they cannot be sold.

Case study 1

Cleveland Fire Brigade Risk Management Services CIC is a CIC limited by guarantee established by Cleveland Fire Authority in March 2011. The liability of each member is limited to £1, being the amount that each member undertakes to contribute to the assets of the company in the event of its being wound up. The CIC is one of the larger trading companies with turnover in the region of £4 million in 2016/17. It has been successful and won large contracts with companies such as BP and Huntsman. The company provides a range of services, including consultancy, emergency planning, fire engineering and emergency response services to the oil, gas, petrochemical and nuclear industry.

The idea to set up the company initially came from the executive leadership team supported by Cleveland Fire Authority (CFA). Prior to setting up the company, market analysis was undertaken across the local area and an options appraisal was completed to consider all the possibilities. After selection of the right option for CFA, a five-year business plan was developed and presented to the fire authority.

Funding cuts and financial austerity were a key reason for setting up the company. The intention was to test the commercial success of the trading company as part of a bigger project to establish a social enterprise for all fire service operations. However, just the commercial trading elements are currently operational with the social enterprise project not taken forward.

A CIC business model is still considered fit for purpose and enables the company to:

- operate independently of the public sector FRS
- externally trade and generate a profit
- use profit gained to provide community benefit.

Setting up a CIC has allowed the company to have more autonomy from the fire service in meeting its objectives. Profits are ring-fenced, the majority being invested in community projects and local charities, and the remainder reinvested in the company. The company invests profits in an academy for young people. Through apprenticeships it has been able to train new firefighters, something that the local fire service has not been able to do in recent years. Twenty people have been trained and the academy has been successful in securing them permanent employment on completion of their training.

The company quickly developed its own brand and logo. Customer feedback suggests that operating in the private sector on a commercial basis it would be beneficial not to be associated with the public sector. Creating a more commercial culture has been a key part of the development and success of the company. The company has a different culture to the public sector fire service. Identifying the right people, who have the fire technical skills and understand the need to develop commercial skills and mindset, is vital to ensure success.

The company board of directors has five members and includes the chief fire officer, three senior management personnel from the fire service and the monitoring officer from Hartlepool Council. The technical director is not a member of the board and is required to report to the board on performance every six weeks.

The company directly employs the majority of its staff, in the region of 100 people, including its business development and sales team. A minority of staff is seconded from the fire service. The company is based in the fire service HQ and this space is rented at a commercial rate. Equipment is both owned and rented from the fire service. Back-office services, such as payroll, are commissioned from the fire service.

The company is evolving and continuing to grow. Through subcontracting arrangements, it is exploring working with local partners and companies to expand the services it is able to provide. Working outside the UK it has established two joint venture companies.

Responsibility for the content of this case study remains with the management team for this FTC, which provided the information. The content has not been verified or validated by Grant Thornton UK LLP or Trowers & Hamlins LLP as this is not within the scope of the engagement.

Case study 2

Norfolk Fire and Rescue Authority (Norfolk County Council) established **Norfolk Safety Community Interest Company** (the CIC) in January 2015. It is limited by guarantee and operates as the commercial trading arm of the FRS. The liability of each member is limited to £1, being the amount that each member undertakes to contribute to the assets of the company in the event of it being wound up. It is a small but growing trading company with turnover below £200,000 per annum (2017/18).

The company provides both standard and bespoke training packages to various groups, ranging from individual sole traders to multinational private sector, educational, third sector and government institutions. Courses are tailored to meet the requirements of the individual delegates and their employment or voluntary organisations' fire safety requirements.

Establishing the company as a CIC enables all profits to be ring-fenced and reinvested in community projects such as fire prevention for the vulnerable, youth engagement activities and developing safety awareness – with the main objectives for the CIC being reducing risk and improving safety.

The FRS did not provide any financial support to set up the company. The decision to establish the company as a CIC was taken to ensure that any surpluses would benefit the community. This has enabled the CIC to work with a certain amount of autonomy from the FRS in meeting its objectives; it has its own website and logo, alongside the use of its own equipment. The CIC directly employs the managing director and administrative and technical staff/trainers, some of whom remain employed by the fire service and are contracted through zero hours contracts. The CIC is currently exploring employing sales staff to support its business development.

The current managing director was recruited externally with a commercial and public sector background by the FRA to get the company fully operational and feels that the CIC "provides an important and valuable contribution to the delivery of safety training and awareness that far exceeds the abilities of the FRS alone, especially with current and expected future funding restrictions".

From April 2015 to March 2018 the CIC trained 5,440 delegates. Adding to this the consideration that each delegate will influence a minimum of five people, then the value they add can be far reaching. This contribution has also led to a reduction in accidents and incidents, which in turn shows the monetary value created by the CIC in reducing the strain on the public purse. Therefore, despite its current turnover of just under £200,000, the impact the company has in improving safety and reducing risk continues to be its focus and is successful for the CIC.

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Case study 3

HFR Solutions is a CIC limited by guarantee. It was established in January 2012 after an options appraisal by the Humberside Fire Authority (HFA) identified that the development of a free-standing social enterprise with no link (formal or otherwise) to either the HFA or Humberside Fire and Rescue Service was the preferred route in terms of protection for both organisations.

As such, HFR Solutions was set up by and operates exclusively under the control of its director board who were selected for the skill set they brought to the business rather than their individual membership of any other organisation. This means that as a stand-alone body HFR Solutions carries all risk associated with their activity (both financial and reputational) while the HFA is assured a proportion of any surplus generated as laid out in the company's articles of association.

The view of the HRA was that a trading company could utilise the skills that existed within the FRS to benefit from opportunities in the local commercial market, potentially charging for delivery of non-statutory services that the FRS were already providing and further expand upon preventative work within the commercial sector. It was, however, imperative to the HFA that there was clear demarcation between the organisations to prevent any potential transfer of risk.

The local commercial market was explored and a business case developed to assist HFA in making its decision as a part of the options appraisal. Prior to the trading company being established, the potential opportunity for the provision of a large contract was identified provided the company was established within a three-month time frame (April 2012), which required a significant amount of work to be completed not only in terms of company governance but also product development.

HFA considered a variety of differing governance models, including setting up a wholly owned company limited by shares in addition to a variety of social enterprise options. It was ultimately decided that a CIC limited by guarantee was preferable as it gave the company complete autonomy and flexibility while removing all risk from the HRA. Because the company was established as a CIC limited by guarantee, the HFA does not receive a dividend from the profits generated. But, due to the company articles of association it does receive support of both a financial and non-financial nature to reduce the financial burden on the FRA for the provision of the delivery of its statutory duties and non-statutory objectives.

HFR Solutions identified within the association how its financial surpluses would be applied:

- creating a general reserve for the continuation and development of the trading company
- reducing the financial burden on HFA for the provision of the delivery of its statutory duties and non-statutory objectives
- making payments for social and charitable purposes in accordance with the objectives of the CIC.

External advice was obtained to assist setting up the CIC, while the FRS itself provided other advice including financial, legal and tax matters on a full recharge basis.

From the outset HFR Solutions confirmed its own brand and logo as it was agreed that the company needed to build its own identity, reputation and brand. This meant use of the fire service logo and uniform was avoided, assisting in reinforcing its stand-alone status while still embedding the culture and values of the emergency services within the trading company.

HFR Solutions recognised that in order to be a successful company, a general reserve of appropriate value is fundamental to strengthening the company's resilience against fluctuations in the market. HFR Solutions currently has a number of high-value contracts and the general reserves are identified to mitigate the impact should it lose a large contract. HFR Solutions reported reserves in the region of £1.025 million in the 2016/17 annual accounts.

HFR Solutions is required to support the HFA in delivering its agreed non-statutory objectives, including the provision of first responder vehicles, e-learning programmes and training at no cost to the authority. In addition, HFR Solutions receives a financial return of full cost recovery for goods and services provided by the FRS, which includes seconded staff, premises and equipment. This equated to £379,000 in the financial year 2016/17. Donations are made to a wide variety of differing approved charitable and social organisations in addition to the provision and distribution of defibrillators and cabinets across the Humber region, combined with free medical training for parents and pupils at a number of schools within the region.

At the time of its formation, HFR Solutions was purely composed of seconded FRS staff. However, when the initial primary contract was delivered, it was necessary to do this with a composition of ex-retained duty system staff who had been made redundant by the recent closure of the BAE site at Brough together with TUPE transfers from those already employed by the previous service provider at the site. The number of staff seconded from the HRA to HFR Solutions has now reduced to three as the trading company now directly employs the majority of its staff. Retired FRS employees are directly employed by the trading company while existing FRS staff are seconded to protect their employment rights.

During its development, HFR Solutions has created a greater commercial culture and awareness that it views as fundamental to any successful organisation. This change has an impact on the seconded staff who work for HFR Solutions as the FRS also benefits when they return to the service, having experienced a different culture and more autonomous operating environment. The benefits of HFR Solutions being formed as a complete separate legal entity are far reaching and provide assurance not only to the HFA but also to the trading company with the 'clear blue-water' between the two organisations.

The board currently comprises five members, all of whom operate exclusively in the interests of HFR Solutions' interests when acting in the director role – the managing director, the chief finance officer of the Hull Clinical Commissioning Group, the director of CERT (the organisation that assisted with initial company governance/set-up), the chief fire officer and a single member of the HFA from a commercial business background. In the future the composition of the board is likely to change further as the trading company considers how it can continue to increase commercial skills and awareness while reflecting the differing sector demands from across the Humber region.

Responsibility for the content of this case study remains with the management team for this FTC, which provided the information. The content has not been verified or validated by Grant Thornton UK LLP or Trowers & Hamlins LLP as this is not within the scope of the engagement.

Case study 4

EFA (Trading) Ltd is one of the original FRA trading companies to be established in 2005 and remains trading today. The company provides a wide range of accredited training, consultancy and engineering services, which includes the sale of fire appliances.

EFA (Trading) was established as a company limited by shares by Essex Fire Authority as the sole shareholder. The governance arrangements under which it now operates have changed as the Police and Crime Commissioner for Essex took on his new role as the Police, Fire and Crime Commissioner (PFCC) for Essex on 1 October 2017 and is therefore now the FRA for the FRS. In the capacity of the FRA, the PFCC is the sole shareholder of EFA (Trading) Ltd.

A review was conducted into the EFA trading early in 2018, the outcome is still being considered by the PFCC. New directors have been appointed over the past 4 months, and this has led to the initiation of a fresh piece of work whereby the Board of Directors and the PFCC can ensure that the trading company is operating effectively, and also reflect on further opportunities for EFA Trading Ltd.

The company is a small FTC with a reported turnover of £655,000 in 2017. The company reported profits up to 2010, at which time it recorded a loss due to a reduction in the fire trading market. Following a restructuring of its workforce, the company has recorded profits since 2012. The sole shareholder, Essex Fire Authority, has not received a dividend as all surpluses have been used to fund agreed community safety projects in Essex, including a charitable trust, Essex Community Foundation.

EFA (Trading) Ltd does not directly employ any staff. Essex Fire Authority employs the staff who run the trading company and those delivering training. Essex County Fire and Rescue Service provides support services, including back-office services. The company has not established its own brand and continues to operate using the brand, logo and equipment of Essex County Fire and Rescue Service.

Essex County Fire and Rescue Service receives a financial payment for providing the services of staff and assets, with a markup of 2–5%.

Responsibility for the content of this case study remains with the management team for this FTC, which provided the information. The content has not been verified or validated by Grant Thornton UK LLP or Trowers & Hamlins LLP as this is not within the scope of the engagement.

Case study 5

Red One Ltd (the company) was set up in 2010 as a wholly owned company (limited by shares) of Devon and Somerset Fire and Rescue Authority (the FRA). It provides industrial firefighting services, standby rescue services, and fire and safety consultancy services in the UK. The company has also secured a small number of overseas contracts. It was one of the first FTCs to be created. Therefore, there were very few FRA-owned companies that could have been used as reference sites to inform its set-up.

Devon and Somerset Fire and Rescue Service (the FRS) previously carried out training for other fire services, having a well-established training capability. Demand for the training has always been relatively high and the FRS has a good reputation for training, which has been established over many years. Therefore, the FRS wanted to make the most of this opportunity and widen its market to include private sector customers, which would enable it to make a profit - previously, the FRS had operated on a cost recovery basis with a contribution to fixed overheads. It would also enable it to provide some resilience in the training function at a time of reducing government funding and diversify into other areas.

Red One has increased its revenue and has identified several opportunities to grow its market share. In preparation for market growth, the company and its shareholder, the FRA, reviewed the governance and management of the business to ensure it is well positioned to grow its share of the UK market. Their experiences and lessons learned are set out below.

Governance

It is important to pay attention to the governance structure from the very outset. This is particularly the case with a company owned by a public entity with a political as well as operational structure. There could be potential conflicts if both the political and operational structures are represented on the board. Care needs to be taken to ensure that this is managed, otherwise a company may be taken in the wrong strategic direction.

Initially, the FRA created a commercial committee to exercise oversight of the company. It met monthly and received reports from the company. On this committee were seven members of the FRA, with terms of reference from the FRA but no delegated powers. As such, it operated in more of a scrutiny role than active decision-making, which was limiting. However, it did have a role at looking at new business cases the company wanted to put forward, in relation to trading. The FRA felt that this was not serving the best interests of the company and time was spent restructuring, with the creation of an enhanced board of directors for the company in 2015/16 that saw the appointment of an independent non-executive chair of the board and the addition of other non-executive directors appointed from the membership of the FRA. Further changes later in 2016, as identified below, saw the removal of the FRS operational structure from the board. This process may have held back taking advantage of some commercial opportunities at that time.

During 2016 and 2017 further reviews of the management arrangements and governance framework were undertaken. This led to staff/consultants being recruited to work directly for the company, rather than providing management via staff on secondment from the FRS.

Having a range of expertise on the board is important, but care must also be taken to ensure the right mix of personalities who strike the right balance between having commercial skills and an understanding of the public sector, which has different responsibilities, objectives and constraints. During 2017 a further review of the governance structure/framework identified a number of further improvements that could be made to strengthen it. This included the appointment of an independent non-executive chair of the board and the addition of other non-executive directors, with specific specialist professional backgrounds from the commercial sector to bring a different perspective and challenge. As a result, further changes have been made and the board now includes two independent non-executives with commercial backgrounds. The FRA, as shareholder, has reserved the right to appoint up to three members of the FRA to represent its interests on the board.

Looking around at the wider sector can provide valuable learning. Since its inception, whilst FTCs were limited, the FRA has considered and continues to obtain advice from others who have already set up similar companies and identified ways of overcoming challenges. Red One received a range of advice from consultants and others. For example, in 2017 Cornwall Council, which owns a range of companies, gave useful insight into how trading companies should be run and governed. This helped the Company head in the right direction.

If a company is experiencing challenges, it can be a difficult decision when thinking about whether to continue trading. The FRA has to take into account political perspectives as well as the commercial factors; there can also be other factors.

“It is important to get the right commercial questions being asked by the right people”, Director of Corporate Services, Devon and Somerset Fire and Rescue Service.

Commercial

The Company should be clear on its objectives and, specifically, how it is expected to return benefits back to the FRA to avoid misalignment of goals. When Red One was set up, there was a trading company contract between the FRA and the Company that set out the terms under which the Company could seek to use FRA resources for the purposes of commercial activity and the areas it could trade in, subject to approval of business cases. The trading company contract helps to provide a basis for good governance, which ensures that the shareholder provides guidance, oversight and due diligence on the board’s performance. With any company, the right balance should be struck between having the necessary control as shareholder and being too closely involved in the running of the company.

It is important to have an effective management structure for any company from the outset. Individuals with commercial skills are not always to be found within a public authority as this has not been a required skill previously. Therefore, introducing people with a commercial background in senior management roles at the outset is a good idea. To rely on existing staff employed by the FRA could be a false economy as this will not enable a different culture that will promote commercial development and growth.

Likewise, it is important that any public authority takes advice on state aid and other UK regulations relating to wholly owned subsidiaries of public authorities from the outset – this can avoid any potential breaches of EU or UK regulations in this area. In Red One’s case, this area has been extensively reviewed to ensure that that any support provided to the Company by the FRA during its initial years has been compliant with legal requirements.

Ensuring that the market opportunity is well defined is key. In Red One’s case, the best opportunity has been identified as being close to home rather than further afield. Being clear on where the market is for the Company’s offering is essential. If there is a wider market to explore, this could be worth investing in and could require additional capacity for the required growth.

Responsibility for the content of this case study remains with the management team for this FTC, which provided the information. The content has not been verified or validated by Grant Thornton UK LLP or Trowers & Hamlins LLP as this is not within the scope of the engagement.

Case study 6

3SFire Limited was established in February 2013 by Hampshire Fire and Rescue Authority (HFRA) who is the sole shareholder of this trading company. It is a company limited by shares and provides specialist training, fire management consultancy, operational support services and business fire safety solutions.

The rationale for setting up 3SFire Ltd was to financially support the HFRA. The company was approved by the fire and rescue authority following a rigorous business case and challenge process, with the intention being to create a strong business that would be able to return sustainable revenue to HFRA. 3SFire Ltd has become a profitable company, having returned dividends to the fire authority, and in 2016/17 the Board of 3SFire Ltd decided to retain the profits for re-investment to develop the business through further investments.

Governance of the company is recognised as important, with the HFRA nominating two Board members as Directors of the Company, maintaining a sense of control over the fire authority's trading company by bringing an essential sense of direction, political support and scrutiny. There is a non-executive director on the Board who is a local Member of Parliament.

There is an accepted differential of risk in 3SFire than exists in the HFRA, which provides the impetus to be commercially focused. However de-risking as much as possible is important. One way to achieve this is through welcome challenge from stakeholders.

Recognition of the needs of the customer as a driving force for decisive action is a strong motivator to enable responsive decision making as an example 3SFire Ltd is currently considering Brazil as an overseas area to explore for potential contracts, due to a Department of Trade and Industry initiative to export the wider fire sector internationally.

Operationally, the company has been successful in winning contracts, and has been able to repay the working capital loan it originally received from HFRA. The loan was accepted on a fully commercial basis.

Until this year there have been no direct full time employees as all staff were either a contractor or temporary, however a stable performance and secure commercial pipeline has provided the ability to employ a small core team. As a result there has been little HR support needed and there has been no requirement to deal with TUPE transfer.

The core team were recruited specifically to work in 3SFire, on the basis of their relevant skill sets. This has been crucial to the success in the early days of 3SFire. The Chief Executive, comes from a business background rather than fire service to bring the required commercial competence and drive needed in a small business start up.

On an ongoing basis 3SFire leases premises and IT equipment from HFRA, for which it receives a commercial financial return. Finance and HR are provided by the HFRA.

3SFire is working with others to improve their marketability and to extend the services they deliver which has included working with private sector companies.

For fire trading companies, the quality of the products is perceived to be high, given reputation and skills demonstrated by the fire and rescue service workforce. However this fire and rescue skill comes at a high cost. This means that the cost base of the business will always be high relative to the rest of the market, and this provides challenges around the commercial viability of some products.

3SFire have worked hard to understand these challenges and identify markets where the skilled nature of the products are best suited, but this could remain a limiting factor to continued success of fire sector trading companies.

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Appendix A – Legal framework
Provided by Trowers & Hamlins LLP

All legislation within this section applies to England and Wales, unless stated otherwise

This appendix includes further information on:

- powers to charge, powers to make a profit and powers to act for a commercial purpose.
- trading outside of the local area and overseas.
- collaboration.
- common law fiduciary duty.
- public procurement.
- common law fiduciary duty.
- state aid.
- Freedom of Information Act.

Different legislation governs the different types of Fire and Rescue Authorities (FRAs) (listed below). However, effect of the legislation is the same, which is that:

- all FRAs must perform their statutory duties within their area for free, unless the legislation specifically allows them to charge.
- FRAs have a power to charge for their services in certain defined circumstances.
- FRAs have a broad General Power of Competence but this cannot be used to override prohibitions in other legislation.
- any FRA that wants to do things for a commercial purpose must use a company (FTC) to pursue these activities.
- case law (common law) applies when an FRA is establishing an FTC. This means that the FRA must act for a proper purpose and not an improper purpose. For example, a FRA cannot establish an FTC to circumvent existing legal prohibitions.

Some FRAs were given the General Power of Competence under section 1 of the Localism Act 2011 where they are a county council. Other FRAs were given "wide-ranging powers" enabling FRAs to do anything connected or incidental to their functions by amendments to existing legislation, namely the Fire and Rescue Services Act 2004 (FRSA 2004). The government's policy objective in doing this was to ensure that all FRAs broadly had the same powers. The government also wanted to ensure that FRAs were able to innovate by giving them the freedom necessary to do so.[11]

There are different types of FRAs:

- FRAs that are a part of a county council or a unitary authority i.e. one of the services provided by the county council
- combined standalone FRAs in non-metropolitan areas.
- combined standalone FRAs in metropolitan areas.
- the London Fire Commissioner is an FRA.
- the fire function vested in Police, Fire and Crime Commissioners (PFCC) makes them a FRA.

What are an FRA's statutory functions?

The statutory functions of an FRA are set out in Part 2 FRSA 2004:

- to make provision for the purpose of promoting fire safety in its area;
- to make provision for the purpose of extinguishing fires in its area and protecting life and property in the event of fires in its area;
- to make provision for the purpose of rescuing people in the event of road traffic accidents in its area;
- to make provision for the purpose of protecting people from serious harm, to the extent that it considers it reasonable to do so, in the event of road traffic accidents in its area;
- any functions conferred by order by The Secretary of State relating to emergencies, other than fires and road traffic accidents in relation to which the FRA has functions under section 7 or 8 of FRSA 2004;
- any direction given by The Secretary of State to take, or not to take, action specified in the direction in relation to a fire specified in the direction or an emergency of another kind specified in the direction;

11 As stated in the Parliamentary debate on the Localism Act pertaining to amendments to FRA powers. Localism Bill Deb 1 Feb 2011 cols 218-226

12 Fire and Rescue Services Act 2004, Part 2, sections 6–12

- the ability to take any action it considers appropriate in response to an event or situation where there is likely to be harm caused to individuals or the environment or for the purpose of enabling action to be taken in response to such an event or situation;
- the ability to provide the services of any persons employed by it or any equipment maintained by it to any person for any purpose that appears to the FRA to be appropriate.[12]

Powers to charge, powers to make a profit and powers to act for a commercial purpose

Although not of direct application to FTCs the Fire and Rescue National Framework for England, with which FRAs must comply,[13] produced by the Home Office sets out that FRAs must demonstrate and support commercial transformation programmes where appropriate[14]. It further outlines that FRAs should be able to demonstrate awareness of the need to standardise requirements, combine demand and manage suppliers of products and services within their various commercial arrangements[15].

The legislation governing FRAs' powers including their ability to charge, make a profit and to establish FTCs to act for a commercial purpose is complex and intricate. This is because the fire legislation has been amended by subsequent legislation and because the legislation seeks to maintain a balance between allowing FRAs to be enterprising and raise income, while ensuring they do not charge for their basic statutory duties in their local area.

Broad powers under section 5A of the FRSA 2004

FRAs have broad general powers and are able to act for a commercial purpose pursuant to section 5A, FRSA 2004 which applies to all types of FRA (as listed above).

The broad general powers are contained in section 5A(1)(a) – (d), and these allow FRAs to do:

a. anything it considers appropriate for the purposes of the carrying-out of any of its functions (its "functional purposes"),
b. anything it considers appropriate for purposes incidental to its functional purposes,
c. anything it considers appropriate for purposes indirectly incidental to its functional purposes through any number of removes,
d. anything it considers to be connected with—
    I. any of its functions, or
    II. anything it may do under paragraph (a), (b) or (c).

This means that FRAs can undertake commercial activities that help fulfil their functional purposes, the range of which is set out in legislation even activities that are incidental or indirectly incidental to their functional purposes.

Powers to trade / act for a commercial purpose

A "relevant" FRA can do anything for a commercial purpose provided there is a connection with statutory functions in line with section 5A(1) FRSA 2004 and section 5B(3), FRSA 2004 and providing that this power is exercised through a company. A company is defined as a company (within the meaning of section 1(1) of the Companies Act 2006) or a registered society (within the meaning of the Co-operative and Community Benefit Societies Act 2014). This would cover companies limited by shares and, companies limited by guarantee but would not currently extend to a limited liability partnership for example.

There are some limitations on FRAs acting for a commercial purpose under section 5A FRSA 2004. These are set out in section 5B, FRSA 2004 under which an FRA cannot do:

a. anything which the authority is unable to do by virtue of a pre-commencement limitation, or
b. anything which the authority is unable to do by virtue of a post-commencement limitation which is expressed to apply—
    I. to its power under section 5A(1),
    II. to all of the authority's powers, or
    III. to all of the authority's powers but with exceptions that do not include its power under section 5A(1).

(2) If exercise of a pre-commencement power of a relevant fire and rescue authority is subject to restrictions, those restrictions apply also to exercise of the power conferred on the authority by section 5A(1) so far as it is overlapped by the pre-commencement power.

This means that the broad section 5A power does not override previous prohibitions in legislation on FRAs (such as the prohibition on charging for fire prevention advice in their own area). Other limitations to section 5A.

An FRA cannot do things for a commercial purpose if there is a statutory provision that requires the FRA to carry out those services as part of its ordinary functions, in line with section 5B(4), FRSA 2004.

Where an FTC is established by a private individual or organisation, then the FTC is not constrained by any prohibition in the FRSA 2004 or the "proper purpose rule" and it need only act within the normal limits of the law applicable to companies.

13 FRAs have a duty to have regard to the framework: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705060/National_Framework_-_final_for_web.pdf

14 Fire and Rescue National Framework for England, Home Office, May 2018, para 5.11

15 Fire and Rescue National Framework for England, Home Office, May 2018, para 5.11

Section 95 of the Local Government Act 2003 (LGA 2003)

An FRA as a "relevant authority" is allowed to carry out its statutory functions for a commercial purpose, provided this power is exercised through a company under section 95(4) LGA 2003.

Which authorities does the section 95 LGA 2003 power apply to?

This power applies to "relevant authorities". A relevant authority is a "best value authority". This applies to all FRAs, other than FRAs that are the PFCC of an area (those created by an Order made under section 4A, FRSA 2004).

We note that the Local Government Association's Guide Enterprising Councils getting the most from trading and charging 2012 (the LGA Guide) promoted a liberal approach to FRA trading as follows:

The Act also introduces a general power for a single-purpose fire and rescue authorities (FRAs) and simplifies the existing charging regime for FRAs. This will allow them the freedom to do whatever they consider appropriate, where the outcome is intended to be beneficial to the delivery of their functions, integrate functions with other emergency services, and charge for non-core discretionary services.

However, it should be borne in mind that page 6 of the LGA Guide made clear that "this guidance is not intended to be a definitive statement of the law and, as ever, [authorities] need to take their own legal and financial advice".

Although the LGA Guide was helpful when it was issued, FRAs and FTCs should note that the legislation and any government guidance which has statutory force take precedence over any informal guide. The relevant legislation is section 5A(1)(a)-(d) FRSA 2004, which states that an FRA can do:

a. anything it considers appropriate for the purposes of the carrying-out of any of its functions (its "functional purposes"),
b. anything it considers appropriate for purposes incidental to its functional purposes,
c. anything it considers appropriate for purposes indirectly incidental to its functional purposes through any number of removes,
d. anything it considers to be connected with—
    I. any of its functions, or
    II. anything it may do under paragraph (a), (b) or (c).

It is also important to note that the Explanatory Memorandum to the Local Government Order 2009 (the **2009 Explanatory Memorandum**) at paragraph 7.11 stated:

The Secretary of State makes the 2009 Order, under the power in section 95 of the 2003 Act, to authorise all best value local authorities and FRAs in England to trade in function-related activities through a company, subject to the conditions in section 95.

Paragraph 8.15 of the 2009 Explanatory Memorandum concluded that:

FRAs are constrained in as much as any service provided on a commercial basis must be delivered through a company. It is up to FRAs to manage any potential conflict arising from giving advice and acting as an enforcing agent.

However, the above has been largely superseded and supplemented by more recent legislation, namely the amendments to the Fire and Rescue Services Act 2004 (sections 5A-5L) inserted by the Localism Act 2011.

More recently, it is noteworthy that the Chair of the House of Commons Housing, Communities and Local Government Select Committee on Building Regulations and Fire Safety made the following observation:

Fire and Rescue Authorities should not be able to pass judgement on the work of their own commercial trading arms.

The Select Committee report states:

Where Fire Rescue Authorities have established commercial trading arms to provide fire safety advice, there is a clear conflict of interest when they are also the enforcement authority. In any industry, it is clearly dangerous to allow an organisation to approve its own work. The Government should immediately prohibit this practice. As of the date of writing the government has yet to respond to the recommendations made within this report.

This serves to underline that interpretation of legislation can fluctuate according to context. FRAs and FTCs should therefore exercise caution and seek expert legal advice before embarking on new trading activities to check whether the activity will fit within the scope of the albeit wide powers of section 5A FRSA 2004 and would give rise to a potential conflict of interest for the FRA or FTC. Positive legal solutions to enable trading can be found but will depend on the specific circumstances.

Powers to charge and to make a profit

FRAs have the power to charge (or generate income) under section 18A (subject to limitations in section 18B) of the Fire and Rescue Services Act 2004 (FRSA 2004) (as amended by the Localism Act 2011), the Local Government Act 2003 and the Local Government Order 2009. FRAs can charge for the provision of persons employed by the FRA or its equipment to another person for any purpose that appears to the FRA to be appropriate under section 12(1). Section 12(2) enables this power to be exercised both within and outside of the FRA's area.

FRAs can charge for extinguishing fires, or protecting life and property in the event of fires that occur at or under the sea under section 18B(1) (this power can also be exercised beyond the territorial boundaries of the United Kingdom, pursuant to section 18A(7), FRSA 2004). This means that FRAs can charge for extinguishing fires at or under sea in foreign jurisdictions.

There are also some powers to act extraterritorially under The Local Government (Overseas Assistance) Act 1993.

FRAs can charge for providing advice to trade and business under section 18B(7) FRSA 2004. However, it would not be permissible for an FRA to charge for providing advice to trade and business which falls within section 6(2)(b) FRSA. The advice which an FRA must provide free of charge is described as follows:

(6)(2) In making provision under subsection (1) a fire and rescue authority must in particular, to the extent that it considers it reasonable to do so, make arrangements for–

b. the giving of advice, on request, about–

I. how to prevent fires and restrict their spread in buildings and other property;
II. the means of escape from buildings and other property in case of fire.

However, this does allow FRAs to charge businesses for advice outside the scope of section 6(2)(b) FRSA 2004. The borderline as to where the FRA's statutory duty is fulfilled is unclear. Hence, it is a moot point as to when advice becomes above and beyond section 6(2)(b) FRSA 2004. We would suggest that FTCs seek expert legal advice on any proposals to provide fire prevention and means of escape advice for which they intend to charge customers. This is to ensure that it does not impinge on their parent FRA's statutory duty to provide such advice under section 6(2)(b) FRSA 2004. The general measure of a statutory duty is that of reasonableness. This means that the duty must be reasonable with regard to relevant considerations such as financial resources, for example. Whether the advice being provided is beyond the FRA's reasonable duty will depend on the particular circumstances of the FRA concerned and the particular circumstances of the recipient of the advice.

An FRA can also charge for and make a profit on entering into various agreements with designated public bodies to supply goods or materials, administrative, professional or technical services, vehicle plant or apparatus and buildings, maintenance or works under section 1 of the Local Authorities (Goods and Services) Act 1970 (LAGSA) and the decision in R v *Yorkshire Purchasing Organisation* [1998] E.L.R. 195. This appears to apply only to FRAs that are constituted as PFCCs or the London Fire Commissioner. However, the Home Office has informally indicated that they do not differentiate between combined FRAs.

Which public bodies can FRAs trade with?

Under section 1(4) of the LAGSA, FRAs can trade with the following public bodies:

- any local authority
- any Police and Crime Commissioner
- any parish council and representative body of a rural parish
- certain housing action trusts
- the Minister of Housing, Community and Local Government and the Secretary of State acting jointly.

Local Government Order 2009

FRAs must prepare a business case which must be approved by the authority before deciding to establish an FTC to comply with article 2(2) of the Local Government Order 2009[16].

What must the business case contain?

The business case should include a comprehensive statement about:

- the objectives of the business
- the investment and other resources required to achieve those objectives
- any risks the business might face and how significant these risks are
- the expected financial results of the business and any other relevant outcomes that the business is expected to achieve.

This also applies to Welsh FRAs under the Local Government (Best Value Authorities) (Power to Trade) (Wales) Order 2006.

Considerations when acting for a commercial purpose

Not all FTCs are established by FRAs, that is those set up by private entities. However, if an FTC is set up by an FRA then it must be set up for a "proper purpose" this means that it must be compatible with the broad powers set out in section 5A FRSA 2004 and must not be established for an improper purpose. An example of an "improper purpose" would be for an FRA to set up an FTC in order to charge residents for extinguishing domestic fires in the FRA's own area, where there was no faulty alarm. This would be contrary to statutory prohibitions and accordingly would be "ultra vires".

We recommend that specialist legal advice is sought with regard to specific activities to be undertaken by an FTC to ensure that they fall within the prescribed statutory powers.

If the FTC's activities are intended to circumvent prohibitions on the FRA there is a risk that the FRA could be challenged for being outside the FRA's powers "ultra vires". It is best that a thorough check of the appropriate powers is undertaken by a lawyer experienced in public as well as company law before an FTC is incorporated by an FRA as to enable the company to establish firm foundations for its future operations that will withstand due diligence by future investors, suppliers or business partners.

Where an FTC is not set up by an FRA, it must ensure that it complies with company law and all other applicable laws.

16 Section 2(2) The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009

General legal considerations

FTCs will need to be compliant with the requirements of competition law and their other legal obligations, including but not limited to the PCR 2015 (if they are bodies governed by public law - see public procurement below), state aid law, the Modern Slavery Act 2015 and transparency commitments[17] .

Collaboration

The Policing and Crime Act 2017 imposes a statutory duty on FRAs in relation to collaboration.

Three things to be borne in mind in relation to this duty are as follows[18]:

- FRAs must keep collaboration opportunities under review
- FRAs must notify other emergency services of proposed collaborations that could increase efficiency and/or effectiveness
- FRAs must give effect to a proposed collaboration where the proposed parties agree that it would increase efficiency or effectiveness and that it does not have an adverse impact on public safety.

Common law fiduciary duty

FRAs are public authorities and under the general principles of administrative law must therefore carry out their functions and any exercise of trading powers in compliance with their common law fiduciary duty to obtain value for money and act in a business-like manner.[19]

To satisfy the value for money duty FRAs should actively require regular delivery of information from their trading companies, whether in relation to progress against business plans and strategic aims of the companies, ongoing performance, robust reporting requirements or ensure that the FRA is seeking a return on its investments if set up to distribute a profit. FRAs should also ensure they are charging the FTC for staff, premises, equipment, IPR, services, etc.

Public procurement

The National Fire Framework produced by the Home Office requires FRAs in England to look at ways to improve their commercial practices, including aggregating procurement with other fire and rescue authorities and other local services (eg police) to achieve efficiencies[20].

FRAs are "contracting authorities" and therefore have to comply with the public procurement rules, unless there is an exemption such as Teckal (see below).

FTCs formed by FRAs can also be "contracting authorities" themselves and thus obliged to follow the public procurement rules when buying in their goods and services if the FTC falls into the classification of a "body governed by public law". A "body governed by public law" is a body that is established to meet needs in the general interest, does not have a commercial character, has a legal personality and is either managed or primarily financed by the State, local authorities or other "bodies governed by public law"[21].

The FTC can be set up so that it does not have to tender to the authority or authorities which own it for its work under an exemption from the public procurement rules known as "Teckal" or "Joint Teckal" if two or more authorities are involved[22].

The Teckal exemption, which allows the authority to award contracts to the company without any procurement process, will apply where the following conditions are fulfilled:

- a "contracting authority"[23] (eg an FRA) controls the company in the same way that it controls its own departments
- more than 80% of the activities of the company are carried out for its authority shareholders/members
- there is no private shareholder or member of the company[24].

Public procurement rules are likely to continue to apply post-Brexit.

State aid

State aid will usually be unlawful unless there is an exemption. State aid is an issue when provided by public authorities to undertakings (eg an FTC) where it has the potential to distort competition on the relevant market (eg the fire services consultancy/services market).

The issue of state aid typically arises where the company enjoys a benefit which has been conferred by a public authority. Typical examples of benefits which may constitute state aid are low rent premises, staff cost recovery, seconded staff, low or subsidised back-office services, use of a brand[25], uniform, a low interest loan, use of appliances and/or equipment below market value, a funding grant or a transfer of assets below market value. Any IT, audit, accounting, HR and/or other central services provided by the public authority to the company at below market value could also constitute unlawful state aid.

The consequences for the company of being a recipient of unlawful state aid is that if a state aid complaint or challenge is brought, then the public authority which conferred the benefit would be ordered to clawback the value of the benefit from

17 Fire and Rescue National Framework for England, May 2018, para 5.11, 5.18.

18 Fire and Rescue National Framework for England, May 2018, para 2:12; Policing and Crime Act 2017, s2

19 Roberts v Hopwood [1925] A.C. 578; Prescott v Birmingham Corporation [1955] Ch.210

20 Fire and Rescue National Framework for England, May 2018, para 5.11

21 Regulation 2(1) PCR 2015

22 Regulation 12(4), (5) and (6) PCR 2015

23 "contracting authority" means local authorities (including district councils), regional authorities, the State, bodies governed by public law and central government authorities (Regulation 2 PCR 2015).

24 Regulation 12 PCR 2015

the FTC plus a mandatory interest rate. The clawback may lead to the FTC's insolvency as well as reputational damage for the company, the authority and the individual officers who authorised the state aid (whether knowingly or unknowingly).

State aid challenges are becoming more common in the UK and a state aid complaint is relatively inexpensive and easy to make. The existence of unlawful state aid may also be spotted by auditors or grant funders and lead to grants being clawed back or contracts terminated.

Following the UK leaving the EU, it is considered likely that the UK will retain some state aid law in order to ensure competitiveness and a level playing field between the public and private sectors on trading matters.

Financial assistance

The National Fire Framework advises that any financial assistance given by an authority that establishes or participates in a trading company should be for a limited period, provided with a view to repayment and repaid within an established timescale.

Any financial assistance should be provided under a formal agreement between the authority and the trading company and must be entered into for a commercial purpose. Prior to entering into any such agreement, the authority should satisfy itself that it will achieve its objective as set out in its business plan and that it will be compliant with state aid.

Employment

As part of the strategy, one of the issues to think about is the implications for staff and who will be needed to work on the new services. If services or functions are moving from one organisation to another, the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended, (TUPE) may apply.

TUPE applies where there is a transfer of an undertaking, or a service provision change. Where functions, services or activities are transferring between organisations, TUPE can apply. For there to be a transfer of an undertaking or a service provision change, this usually requires there to be a dedicated group of resources, including employees, assigned to the service or function which is changing hands. Analysis of the activities transferring and the staff dedicated to those activities will be required.

TUPE protects employees from dismissal and protects their terms and conditions of employment including their continuity of service. It also imposes obligations on the two employers to inform and consult representatives of the affected employees.

Depending on the nature of the new undertaking, alternative staffing models might need to be considered. There might be some services or functions which have, as a matter of statute, to be performed by an officer or employee of a public authority, in which case, TUPE could cause some problems. Alternatives models such as secondment or joint employment might be useful to explore.

A secondment is where an employee is employed by one employer, but seconded to another who manages the seconded employee and utilises their services on a day to day basis. It needs careful implementation to ensure it is not deemed to be TUPE transfer. Joint employment involves two employers being jointly and severally liable for a single employment contract with one employee. In both a secondment and a joint employment situation, the two employers must agree their respective obligations to the individual.

If a new employer is being set up which is owned or controlled by a public authority it is likely to be an "associated employer" for the purposes of equal pay legislation. Thought will need to be given to the terms and conditions offered to transferred or new employees, who may be able to draw comparisons with employees of the authority. Thought will also need to be given to the working practices of the new organisation, including what HR policies and procedures it will apply.

Pensions

As part of the overall strategy, one of the issues to think about is how transferred staff's pension arrangements are protected. We would strongly suggest that, at an early stage in the process, you liaise with the administering authority of the relevant public sector pension scheme. Why, because the authority is the "gatekeeper" of the pension fund and it will need to be satisfied that the trading company can be legally admitted as a scheme employer.

As a general proposition, abatement of pension may apply in circumstances where certain staff with historic pension accrual under relevant public sector schemes obtain re-employment in a firefighter role. We would recommend that the abatement arrangements are checked with the administering authority. We say this because under the Firefighters' Pension Scheme Regulations, the power to abate a pension would not appear to extend to a scenario where a firefighter is re-employed by a trading company.

Engaging with the administering authority to iron out any potential problems could take time, particularly if legal and actuarial advice is needed. If you have retained firefighters, the authority will have to assure you it has the legal power to allow them to remain in their particular pension scheme following their transfer to the trading company.

Where difficulties are encountered, lateral thinking may be required. This may include Secretary of State approval. Solutions can generally be found to overcome most hurdles, even where legislative change is needed.

25 See the alleged state aid complaint submitted by the Fire Industry Association (SA.38360 (2014/CP) where the European Representation to the EU Brussels (Competitiveness & Markets) stated that in their view based on their understanding of the circumstances the benefit from the use of the names and logos was unlikely to have exceeded the de minimis threshold of 200,000 Euros.

Property

Property can include operational and administrative premises which may be held freehold, under a lease or a licence. We recommend the following practical steps to follow to identify the assets and to determine the most appropriate arrangements:

Step 1 – Carry out an internal review

What properties does the relevant FRA already have an interest in? Which of those properties will need to be occupied by the new entity to enable it to operate effectively?

Step 2 – Future operations

Do any further property arrangements need to be put in place for the benefit of the company? Purchasing a freehold, entering into a lease or licence all have their own pros and cons which can be explored to accommodate the specific needs of the FTC.

Step 3 – Collaboration

Do any ancillary documents or agreements enjoyed by the FRA need to be transferred to the FTC going forward, such as service contracts?

Step 4 – Delivery

The necessary legal documentation will need to be prepared in advance to ensure the FRA's intentions are delivered once the company has been established.

Intellectual property

Intellectual property can include trademarks, domain names, copyrights and patents and before setting up a company it is important to undertake an audit of all assets and not to forget intellectual property assets. An intellectual property audit involves looking at the following questions:

i. what does the FRA think it owns?
ii. what does the FRA own (brand and logo trademarks, domain names, copyrights, patents)?
iii. what are the rights of employees and terms in employees contracts regarding ownership of intellectual property rights?
iv. what does the FRA use?

v. what does the FRA licence to third parties and what are the terms of the licence?
vi. what does the FRA licence from third parties and what are the terms of the licence (eg service level agreements, software agreements)?
vii. what are the statutory requirements?
viii. what aspects of data protection are required?

It is a good practice to identify new or adaptive needs and transitional requirements by considering the following:

- is an assignment of rights required?
- new licences to or from third parties (can these be granted?) or is sub-licensing permitted, or are there transitional provisions?
- employee contracts and IP rights
- what to do with 'redundant' rights
- rights which were previously granted as part of old structure that are no longer available need to be licensed/separated.
- data protection.

It is also necessary to identify future right requirements by considering the following matters:

- new names and logos.
- new functions.
- rights of ownership.
- creation and use of new rights (copyright etc.) and existing rights (e.g. website content, literature prepared for each entity).

Use of branded FRA uniforms

FRAs and FTCs should take appropriate professional and legal advice if individuals within the FTC intend to wear uniforms or clothing with the FRAs' brands when delivering and promoting the FTC's activities. The FRA and the FTC should take into account the Guidance on the use of Fire & Rescue Authorities' names and logos and the following legal considerations:

a. there is scope for misunderstanding by third parties, members of the public and customers as to which entity is providing the services, which may result in the FRA being deemed to be liable for the acts of the company under the principle of "ostensible authority".
b. there is the potential that an individual in the FRA's uniform or branded clothing when engaged on company business may be in breach of internal staff and disciplinary protocols regarding the use of the wearing of uniform.
c. there may be state aid issues because the use of the uniform/branded clothing is a benefit conferred on an undertaking which may have value (see state aid above).
d. if the brand is protected by intellectual property rights, the use of the uniform or branded clothing other than in accordance with the licence for those intellectual property rights could be a breach.

Data protection.

In relation to brands the Chief Fire Officers Association has submitted guidance with regards to the use of names and logos of FRA and suggests minimising the risk of state aid challenges by charging an appropriate market value for the use of names/logos.

Freedom of Information Act (FOIA)

While an FTC is a private limited company with separate legal personality, FOIA extends the definition of "public authority" to include companies that are wholly owned by public authorities under sections 3 and 6 of FOIA.

What if the requested information is not held by an FRA / FTC?

Subject to a valid FOIA request being made, public authorities are under an obligation to supply the information requested unless:

- it is a sensitive matter, in which case a "neither confirm nor deny" response can be given;
- the request is repeat / vexatious;
- the cost of determining whether the information is held, finding the requested information, retaining the information and extracting the information would exceed £450

If the above apply then an exclusion can be relied upon under FOIA – excessive cost is covered under section 12 FOIA, for example.

If the information is not held, and the FRA / FTC are not aware of another public authority holding that information, they can inform the requester that they do not hold that information.

If the FRA is aware that another public authority holds the information then there is a duty to transfer the request or advise the requester to write to the other public authority.

What are the time limits for responding to a request?

The Information Commissioner's Office (ICO) Guidance entitled "What should we do when we receive a request for information" in respect of FOIA advises that requests should be responded to in "reasonable time" or no later than 20 working days from the request receipt date.

Governance considerations

These considerations will be applicable whether it is an FTC where the FRA is the owner or to an FTC where it is not technically an owner, for example a CIC limited by guarantee.

At the outset the board composition and its terms of reference will be determined. From there, it is important to keep current the various documents that set the tone for the company eg strategy, operational plans, risk management processes and so on. It is important to understand how the FRA will ensure it has sufficient control over the company, if this is what it requires.

Striking the right balance between allowing the company to be free in the commercial world and compliance with public sector governance constraints (eg the Teckal exemption from public procurement rules) is not always straightforward. We understand that Grant Thornton's research has found that this is even more of a challenge in the fire sector compared to local government, as the association with the uniform and branding of the former is very important as a success factor for the company.

It is important to have sufficient strategic control to be able to exert influence at this level, but enable the company to run operationally. One way to facilitate this is to have a shareholder committee as part of the governance structure. This helps to ensure adequate safeguards that the company is carrying out work in line with the authority's strategy.

We are given to understand that the majority of these companies, both CICs limited by guarantee and companies limited by shares, have the Chief Fire Officer and other senior officers and/or the fire and rescue authority members as members of the board (see conflicts of interest below).

All company directors will have personal, non-delegable legal duties which are statutory and set out in the Companies Act 2006 and arise as a result of case law. One of the most relevant duties is the duty to act in the best interests of the company (rather than in the best interests of the body that has appointed the director to the company).

There must be no conflict between the director's duty to the company and his or her duty to another body (eg the FRA for whom he or she is employed or is a Member) or his or her personal interest in some other body. This principle extends to facts or circumstances in which a reasonable person would think that there is a "real sensible possibility of conflict"[26]. For example, if there is a contract between the company and the authority, there is a conflict because the director has a duty to the company to get the best profit and a duty to his/her authority to get the best price[27]. Legally, a conflict of interest could impose a personal legal liability on the director to pay resulting profits out of his or her personal resources to the company. From a public law point of view it can also lead to potential vulnerability to legal challenge on the grounds of conflict of interest or bias.

Conflicts can also arise in relation to confidential information, for example where a director is privy to information in one role where he or she will owe a duty of confidence (eg as a director of the company or as an employee of the authority) but where he or she will also have a duty in his or her other role to disclose relevant information. A practical example is where an individual comes across information in his or her role as officer which is not in the public domain but which would give a business advantage to the company. He or she therefore has a conflict between the individual's duty of confidence as an employee to the authority and his or her duty to act in the best interests of the company.

These rules apply equally to executive and non-executive directors and even to officers who attend board meetings and in accordance with whose instructions the company acts because they may be deemed to be "shadow directors". A shadow director is someone who may not be registered formally as a director but, despite that, company law regards him or her as still fully personally legally responsible and liable in just the same way as if they had been formally appointed.

26 Boardman v Phipps [1966] 3 All ER 721, 756

27 See for example Aberdeen Railway Company v Blaikie (1854) Macq 461

The disadvantage is that a shadow director is unlikely to receive the protections of the authority's indemnities or directors and officers' liability insurance.

There are various solutions to this dilemma, such as conflict of interest protocols, clear directors mandates and careful selection and training of potential company directors. It is vital that potential directors fully understand their legal duties and receive appropriate training before they take office.

The authority before setting up new arrangements to deliver services should consider legal consultation requirements, particularly if the authority is a best value authority. Other matters that should be considered are:

1 Is it delivering a return on its investment?
2 Is it delivering on its strategic objectives and its business plan?
3 If it is not then the decision should be taken to restructure or wind up and cease trading.[28]

All directors have the same legal duties to act with reasonable skill and care to fully understand the operation and finance of the company and must act in the best interests of the company unless and until the company is in danger of potential insolvency, when their duties are owed to the company's creditors.

Further potential conflict of interest between the FRA and FTC may occur where the FTC undertakes activities in the area where the FRA has statutory enforcement responsibilities ie the FRA taking enforcement action against the FTC.

Due authority

The FRA will need due authority according to its constitution and the FRA should take into account all relevant considerations, the relevant power (as discussed above) and should ensure that the power is used for a proper purpose (eg not to circumvent statutory restrictions).

Furthermore, the FRA will need to pass a resolution. If there is more than one shareholder or there is a group of companies (eg a holding company with various subsidiaries) and/or if there are matters regarding the internal workings of the company it is a good practice to have a members'/shareholders' agreement. It is also beneficial for the FRA to pass a resolution to indemnify the directors of the company against non-fraudulent potential personal liability.

The FRA will need to decide what form of company to set up (eg company limited by shares, a company limited by guarantee, a CIC or a community benefit society)

It is also necessary to bear in mind whether the company is likely to need to comply with the propriety controls applicable to local authority companies.

28 As this note is being issued early, further legal assurance is being progressed on the latest changes, hence the legal content may be subject to further change. This is general guidance and no specific actions should be undertaken without seeking appropriate specific legal advice.

Appendix B – Tax considerations

Our advice in respect of tax is limited to the high-level assessment of the tax implications of the various possible company structures. We recommend that specialist tax advice is sought as necessary to consider specific circumstances for individual FRAs and FTCs.

VAT principles – overview

Generally, VAT at the standard rate (currently 20%) is due on taxable supplies. In some cases, depending on the nature of the supply, the legal structure of the supplier and the recipient, the following VAT reliefs may apply:

- VAT at the reduced rate (currently 5%)
- VAT at the zero rate (0%)
- exemption.

There are schedules in VAT law that list those supplies that are exempt from VAT or subject to VAT at the zero or reduced rate, including the conditions thereof that must be met.

Where exempt supplies are made, although VAT is not due on the supplies made, any input tax incurred (termed 'exempt input tax') that is not de minimis would be irrecoverable. Exempt input tax is de minimis under the normal rules where, in a financial year, it is not more than £7,500 and 50% of total VAT incurred.

Public bodies must also apply the normal VAT rules to their business supplies. However, within UK VAT law, where public bodies undertake activities that are governed by public law, these are treated as non-business even if charges are made for those activities. This is on the basis that non-business treatment would not result in any significant distortion of competition.

VAT incurred by public bodies that are used for business activities can be claimed under the normal rules. For those activities that are carried out under a statutory basis and therefore non-business, any VAT incurred can be claimed under a special VAT refund scheme (the section 33 refund scheme). The section 33 refund scheme is applicable to certain public bodies such as fire authorities. This refund scheme does not extend to any FTC created and owned by FRAs.

The section 33 refund scheme also provides for the recovery of VAT that is used for both exempt and non-exempt activities providing that the total input tax that relates to the exempt activities (exempt input tax) is *de minimis*. Exempt input tax is considered de minimis if it is no more than 5% of the total VAT incurred in the year. There are additional rules that may apply that would allow full VAT recovery of exempt input tax following a breach of the 5% limit in a particular financial year.

Applications of VAT principles to the fire trading company

VAT liability of supplies

The VAT liability of the FTC's supplies is an important consideration and the legal form adopted may affect the VAT liability of its supplies. If the FTC's supplies are all exempt from VAT, it will not be able to register for VAT, it will not have to declare VAT on its services and it would not be able to claim any VAT incurred on purchases and expenditure. Where the FTC makes taxable supplies, it should consider registering for VAT.

Legal form

As a company limited by shares, the FTC supplies are likely to be all subject to VAT at the standard rate. This is because the conditions for exemption of training are unlikely to be met.

If the FTC is established as a company limited by guarantee or as a CIC, it is possible for some of its supplies of training to fall within the scope of the VAT exemption for education (see exempt supplies below). If the FTC is established to provide services back to its members, it is necessary to consider whether the cost sharing exemption is met (see exempt supplies below).

VAT registration

The FTC must register for VAT if its value of taxable supplies exceeds the VAT threshold (currently, this is £85,000). If the FTC's taxable supplies are below the VAT threshold, although there would be no obligation to register for VAT, it should still consider doing so on a voluntary basis. There are many benefits of registering for VAT. The key benefit of registering for VAT is the ability to claim VAT incurred (including import VAT) on purchases used for making taxable supplies. The FTC could also purchase goods VAT free from EU suppliers under the current EU arrangements.

If the FTC is registering for VAT, the incorporation date would ordinarily be set as the effective registration date. This would need to be shown clearly in the registration application. There may be some pressure to put the FTC and its owners in the same VAT group but this should be resisted due to the adverse and significant effect on the section 33 status of its owners.

Exempt supplies

Once registered, the FTC will need to identify any exempt supplies it makes so that it can consider if it can claim all the VAT it incurs in making such supplies.

The key services that the FTC provide consist of training (and this includes conferences and seminars), consultancy, advice and certain outsource services. It is possible for the FTC's supplies of training to fall within the education exemption. There may also be scope for the cost sharing exemption to apply.

The education exemption

The education exemption schedule in the VAT law (Group 6, Schedule 9, Value Added Tax Act 1994) provides for training to be exempt from VAT when supplied by an eligible body. The FTC will be an eligible body if the following conditions are met:

- the FTC's constitution must preclude it from distributing any profits it makes
- the FTC must not distribute any profit it makes
- the FTC must apply any profits made from supplies of education to the continuance or improvement of such supplies.

The FTC is unlikely to qualify as an eligible body if it sets itself up as a company limited by shares as this structure would enable it to distribute profits through the payment of dividends.

As a company limited by guarantee or a CIC, if there is a preclusion to distribute profits, it would be possible for the exemption to apply if the remaining conditions are met. In any event, the FTC could take the necessary steps to ensure that its supplies of training fall outside the education exemption.

Cost sharing exemption

Fire authorities are involved in making exempt and non-business supplies and so by establishing a wholly owned FTC to provide services at cost could bring the FTC's supplies within the scope of the cost sharing exemption. However, for the cost sharing exemption to apply, certain conditions must be met, in particular, the requirement for the services supplied by the FTC to be "directly necessary" for the FRA's exempt or non-business activity. If under a single contract the services from the FTC are attributable to the FRA's taxable, exempt and non-business activities, as the services will not be linked exclusively to the exempt and non-business activities of the FRA, the cost sharing exemption would not apply. Specifically, as the FTC in our example will be operating at a profit, the cost sharing exemption would not apply.

Inter-business services supplies

Inter-business supplies include supplies of services such as IT, accounts and HR. They also include supplies of staff (ie staff that are not employed by the FTC but are controlled and directed by the FTC). If any payments are received from the FTC for these inter-business supplies, VAT must be charged. The FTC should ensure that it receives VAT invoices for those supplies to support any claim for input tax. Journals are not appropriate for inter-business services supplies.

Inter-business asset supplies

The VAT treatment outlined for inter-business services supplies also applies here. However, where vehicles on which VAT was fully claimed are provided to the FTC, and these vehicles are made available for private use by the FTC to its workers, the VAT charged on the purchase of the vehicles by the FTC will not be recoverable. If the vehicles are provided to the FTC under a lease agreement, there will be a 50% restriction on the VAT that can be claimed by the FTC.

FTC premises

It is unlikely that there will be a freehold sale of land or buildings to the FTC. It is more likely that the FTC will rent/lease office space and training facilities from its owners or from third-party landlords. The rent or lease of premises would be exempt from VAT unless the landlord has opted to tax. Where an option to tax is in place, VAT will be due on the rents due. If VAT is incurred on the rent of premises, this VAT is recoverable by the FTC if used for making taxable supplies.

Employees – benefits

It is important for the FTC to consider the VAT implications of providing benefits to staff, whether or not under a salary sacrifice. For example, where under a salary sacrifice scheme an employee has the use of a bike, the FTC must declare VAT at the standard rate on the salary amount sacrificed for the use of the bike. Not all benefits are subject to VAT so each will need to be reviewed on a case-by-case basis. For example, any salary sacrificed for the provision of childcare vouchers should not attract VAT.

Employee travelling expenses

The FTC will be entitled to claim VAT incurred on travelling expenses incurred by its staff. This would include VAT incurred on hotel charges, subsistence, car parking and the fuel element of mileage allowances paid. The appropriate evidence (VAT invoices) will need to be held.

Employment tax principles – overview

Whatever structure the FTC takes, it is likely it will require staff in order to operate effectively. As a result, responsibilities for reporting payments to staff and withholding the correct PAYE tax and National Insurance will apply.

If making payments to staff, the FTC will incur Class 1 National Insurance costs, currently 13.8% on payments in excess of the secondary threshold of £702 per calendar month. In addition to the costs on earnings of the staff to the FTC, any provision of taxable benefits in kind will result in a Class1A charge of 13.8%. Finally, the FTC may also be liable to the 0.5% Apprenticeship Levy, if the total Class 1 Secondary pay bill exceeds £3 million.

If the use of workers is restricted to secondees, then the body who employs those workers is still responsible for the payment of salary, reporting the payments and withholding the appropriate tax. However, it is possible that the FTC will have 'office holders' such as directors or members of the board who would give rise to reporting responsibilities and the need to withhold PAYE tax and National Insurance if any payments are made to office holders.

If employing any workers, the FTC will need to consider all employment law statutory requirements.

Where the FTC is engaging with workers who are not considered staff, or are seconded from another employer, it must consider if the engagement should be treated as an employment or if it is caught by IR35. If the intermediaries are based overseas, there may be additional complexities.

Application of employment tax principles

Payroll

On the assumption the FTC will be an employer, it will need to register with HMRC as an employer before the first payday. Registration can be done online via https://www.gov.uk/register-employer, but cannot be more than two months before the first payday.

Once the FTC has registered as an employer with HMRC, a PAYE reference number will be issued and the FTC will also be issued with an HMRC accounts office reference, which will enable the FTC to make reports from the payroll under Real Time Information (RTI) and pay deductions from staff and employer payments.

Payments to staff should be made net of deductions based on the employee's current tax code or, where the employee has no code, under an appropriate emergency code.

The FTC should also ensure payments to its staff meet the requirements for National Minimum Wage and National Living Wage.

The FTC may also be required to make further deductions such as student loan deductions.

The FTC as an employer will also need to pay secondary Class 1 National Insurance Contributions on payments in excess of the secondary threshold (£157 per week 2017–18).

Employers can claim an 'employment allowance', which is currently £3,000 annually, in the form of a National Insurance rebate. However, we believe the FTC would not be eligible to claim this as it is a connected entity and as such we would assume the FRA is claiming the allowance.

Under RTI, Full Payment Submissions will need to be issued to HMRC either before or at the point of payment to staff detailing the gross payment being made to the employee, any deductions from the gross payment and the net payment made to the employee.

Staff will require a payslip to be issued detailing the payment and all deductions.

The FTC will need to have appropriate payroll software in order for the responsibilities associated with making payments to staff to be in place and operational or, alternatively, make arrangements for the payroll responsibilities to be outsourced effectively.

Auto enrolment

As an employer, the FTC will need to consider all eligible staff (aged between 22 and state pension age, earning at least £10,000 a year) who should be enrolled onto a pension scheme under the requirements for auto enrolment.

The minimum level of employer contributions is currently 2% of qualifying earnings, but this is set to rise to to 3% in April 2019.

The FTC should note that staff may opt out of the pension scheme in writing but they will need to be re-enrolled on the third anniversary of opting out. Staff can then opt out again in writing.

Secondment of staff from the FRA

Where staff from the FRA are being seconded to the FTC, they would need to consider the following:

- as staff of the FRA, the FTC will not put the seconded workers on their payroll
- expenses incurred by the seconded staff should be a matter for the FRA to deal with and reimburse where appropriate
- where the secondment is going to be for no more than 24 months, secondees will be entitled to claim travelling expenses from their employer on the basis of them travelling to a temporary workplace. Should the secondment go beyond 24 months, then the nature of the workplace will change from a temporary one to a permanent one. If it is known from the outset of the secondment or at a point before the 24 months are reached that it will go beyond 24 months, the workplace will be permanent from the start or the point it is known
- the FTC should also consider arrangements where a specific employee is seconded on multiple occasions as this can be interpreted as an overarching secondment and therefore could potentially give rise to each workplace being treated as permanent.

Benefits and salary sacrifice

Should any staff of the FTC be provided with taxable benefits or taxable expenses, these will need to be reported on forms

P11D, and the FTC will need to also complete a form P11D(b) detailing the amount of Class 1A National Insurance that arises on the provision of benefits in kind to its staff.

Forms P11D should be completed and submitted to HMRC no later than 6 July following the end of the tax year (5 April).

The FTC may wish to consider the opportunity to payroll benefits in kind, which would remove the requirement to complete Forms P11D (although a Form P11D(b) would still be required).

If the FTC is considering providing any benefits in kind through salary sacrifice arrangements, it will need to consider new legislation that came into place from April 2017 known as 'optional remuneration arrangements'.

Unless the salary sacrifice relates to ultra-low emission company cars, pension, childcare vouchers and cycle to work schemes, the FTC will need to consider the taxable benefit value against the cash foregone to determine the reportable value. If the taxable benefit value is less than the cash foregone, the FTC will need to report the cash foregone as the taxable benefit on the Form P11D, with income tax and NIC charged accordingly.

Expenses

The FTC will need to put an expenses policy in place that sets out clearly to staff what can be claimed by staff and when.

If the FTC is going to reimburse staff for travelling, subsistence and overnight accommodation, it will need to set out what rates/amounts can be claimed and under what circumstance.

An appropriate claim form and procedure including checks and controls will need to be put in place to ensure both the policies of the FTC are implemented and the appropriate reporting and charging requirements for tax and National Insurance are met.

Status issues and IR35

If the FTC is contracting self-employed individuals, it will need to consider if the status of the engagement is correct. Should the status of the worker be incorrect, the FTC could become liable for backdated tax, staff and employer's National Insurance together with interest and penalties.

If contracting with self-employed individuals, the FTC should be putting in place a contract for services rather than a contract of service that applies to its staff. However, the contractual arrangements are only relevant if they match the reality of what services they provide and how these are arranged.

Indicators of a self-employed individual would be:

- they are responsible for any profits or losses they make
- they maintain control, not under direct supervision, and decide what they do, when, where and how
- they buy their own assets, and provide their own equipment and tools
- they have a right to substitution
- any unsatisfactory work will be fixed in their own time and at their own costs
- they can work for more than one client at any one time.

To help engagers determine the correct status of a worker, HMRC has provided an employment status indicator tool, which can be found at the following link: https://www.tax.service.gov.uk/check-employment-status-for-tax/setup. Please note that this should only be used as a guide to the status of the worker and it is only as accurate as the answers provided to it. HMRC would, if conducting its own status review, consider the facts independently and may come to an alternative opinion.

As the FTC will be a subsidiary of a public sector body, it is likely the FTC will have to apply the IR35 rules that came into place from April 2017. Public sector bodies for IR35 purposes are those that have to abide by the Freedom of Information Act 2000 (FOIA) and Freedom of Information (Scotland) Act 2002. Most subsidiaries of public sector bodies are caught by both acts and therefore it is highly likely the new rules will apply to the FTC.

Where the FTC is considered to be caught by the FOIA, it will be responsible for determining if IR35 legislation applies to the engagement of the worker. If the FTC is the fee payer and IR35 applies, it will be required to withhold tax and National Insurance from the payments to the worker's intermediary. If the worker is provided to the FTC through an agency, it will need to provide the agency with a decision in respect of IR35 so that the agency can withhold income tax and NIC.

If the FTC is not caught by the FOIA, the rule changes will not apply to the FTC and the worker's intermediary will be responsible for determining if IR35 legislation applies to the engagement with the FTC. However, there has recently been a consultation on extending the IR35 changes to the private sector and we are awaiting the outcomes of this consultation. Should this happen, the FTC if not caught by the FOIA will then be responsible for determining IR35 status and where required withhold tax and National Insurance.

Legal form

Regardless of the legal nature of the FTC, the responsibilities that are placed upon them as employers or engagers of workers are the same.

Stamp Duty Land Tax (SDLT) considerations

SDLT principles – overview

Although we have not identified any examples of land being transferred to an FTC, we have included this guidance as it could occur in the future.

Stamp Duty Land Tax (SDLT) is a tax paid by the purchaser for transactions in land. Most interests in land are included, including leases, and land includes the buildings on the land. For commercial property, tax is payable on the consideration paid on a sliding scale as follows:

	%
£ 0– £150,000	0
£150,001–£250,000	2
Over £250,000	5

Application of SDLT principles

The FTCs would therefore expect to pay SDLT on purchases or grants of leases from third parties.

SDLT would not normally apply if the purchase was from the parent or a fellow subsidiary as group relief for SDLT is available for purchases within a 75% group. A 75% group comprises a parent entity and subsidiaries in which it holds, directly or indirectly, at least 75% of the ordinary share capital. It should be noted that group relief could not therefore apply if the FTC was a guarantee company.

Corporation tax and transfer pricing considerations

Corporation tax principles – overview

Our understanding is that the FTC will be a company. A company is taxed independently from its owners, so although the parent organisation may be exempt from taxation, this will not apply for any subsidiary companies.

Company owners are only taxable on the profits of the company if they are subsequently distributed to them, for example via a dividend, although it should be noted that FRAs are exempt from tax on such income. HMRC will typically treat a company as being within the charge to corporation tax unless they are advised otherwise.

Companies within the charge to corporation tax are liable to pay corporation tax on their chargeable profits, currently at a rate of 19%, reducing to 17% in 2020.

In respect of trading profits, deductions should be available for any expenses incurred wholly and exclusively in respect of the trade. Trading profits can also be reduced by capital allowances – tax relief for qualifying capital expenditure that is used in the trade of the entity.

Deductions from trading profits are also available in respect of management charges payable to connected entities, for the use of assets or resources in the trade of the entity. These charges would be subject to the relevant transfer pricing considerations (see below).

If the FTC is funded via a loan from a parent authority, a deduction should be available for interest on this loan subject to transfer pricing and other rules governing deductibility of interest.

Any losses arising in respect of trading activities can be utilised in a number of ways. Firstly, they can be offset against other categories of income chargeable to corporation tax in the same period. They can also be carried back for set-off against profits chargeable to corporation tax in the previous 12 months or carried forward for offset against profits arising in future periods. In addition, for companies that are in a 75% group, losses can be allocated between the group companies (including brought forward losses created after 1 April 2017). The definition of group only includes a parent entity and subsidiaries in which it controls, directly or indirectly, at least 75% of the ordinary share capital. This means that if any of the subsidiary entities were a guarantee company, they could not be included in the group.

Legal form – corporation tax

Corporation tax applies to all companies, including those limited by shares, those limited by guarantee and CICs.

If a company is set up with share capital, it is able to pay dividends to its shareholders in proportion to the number of shares held. Dividends are a form of distribution, and in order for a dividend to be legal, it can only be paid out if a company has sufficient distributable reserves.

A company's articles of association will typically set out the rules regarding the authorisation and payment of dividends.

CICs limited by shares typically have a restriction on the level of dividends that may be paid, which should be factored in when choosing the form of company.

If a company is set up without share capital (ie as a guarantee company), it will not be able to repatriate profits via a dividend. Costs for services/assets provided by members/guarantors can be reimbursed via management charges and interest charges. However, these must be in line with transfer pricing principles.

Transfer pricing considerations

Transfer pricing describes the process by which related parties set the prices at which they pass goods, services, finance and intangibles between one another. The UK tax legislation sets out rules for how these prices should be reflected in tax returns. The essence of the transfer pricing rules is to ensure that profits are not artificially 'shifted' from one related entity to another by ensuring that transactions with connected parties are reflected at arm's length for tax purposes.

Connected parties within the transfer pricing rules will be expected to transact at an arm's-length price – the price that unconnected third parties would pay. The definition of connected parties includes when parties are in common control or when one party controls the other, so our expectation is that the Fire Industry Association and the FTC would be connected parties for these purposes.

The transfer pricing rules will not generally apply to wholly UK-based small and medium-sized enterprises (SMEs), unless the board of HMRC gives a medium-sized (not a small) enterprise a transfer pricing notice requiring the basic transfer pricing rules to be applied in the computation of their profits and losses for the chargeable period.

An entity qualifies as either small or medium sized if it meets the staff headcount ceiling for that class and one (or both) of the financial conditions as set out in the following table:

	Maximum number of staff	And not exceeding at least one of the following limits:	
		Annual turnover	Balance sheet total
Small enterprise	<50	€10 million	€10 million
Medium enterprise	<250	€50 million	€43 million

Where the entity is a member of a group, or has an associated entity, these limits apply to the whole group and not just the specific entity and thus will include the data for the Fire Industry Association even though it is exempt from tax.

Should transfer pricing apply, this will clearly affect the amounts charged by the parent for facilities and rent. For example, rent of premises would need to be at a market value rent. In addition, documentation would need to be maintained that sets out the policy and supports the prices adopted.

Appendix C –
Fire trading companies

Below is a list of FTCs currently operating.

Fire and rescue authority	Fire trading company
Cleveland	Cleveland Fire Brigade Risk Management Services CIC
County Durham and Darlington	Vital Fire Solutions Ltd
Devon and Somerset	Red One Ltd
Essex	EFA (Trading) Ltd
Hampshire	3SFire Ltd
Humberside	HFR Solutions CIC
London Fire Commissioner	London Fire Brigade Enterprises Ltd
Mid and West Wales	Rescue 365 CIC
Norfolk County Council	Norfolk Safety CIC
Nottinghamshire	Nottinghamshire Fire Safety Ltd
Royal Berkshire	Royal Berkshire Fire & Rescue (Training) Ltd
Shropshire and Wrekin	Shropshire Fire Risk Management Services Ltd
South Yorkshire	South Yorkshire Fire and Rescue Safety Solutions UK Ltd
Stoke-on-Trent and Staffordshire	Safer Communities CIC
Tyne and Wear	Impeller Assurance and Resilience Ltd

About us

Grant Thornton UK LLP

Dynamic organisations know they need to apply both reason and instinct to decision-making. At Grant Thornton, this is how we advise our clients every day. We combine award-winning technical expertise with the intuition, insight and confidence gained from our extensive sector experience and a deep understanding of our clients.

Grant Thornton have a well-established market in the public sector and has been working with FRAs for over 30 years. We are the largest employer of the Chartered Institute of Public Finance and Accountancy (CIPFA) members and students in the UK. Our national team of experienced public sector specialists, including those who have held senior positions within the sector, provide the growing range of assurance, tax and advisory services that our clients require. We are the leading firm in the public sector audit market and provide a range of advisory services. We are currently working with over 20 FRAs across England.

FRSs play a vital role in local communities in terms of both protecting life and property, contributing to public health initiatives and supporting businesses and economic growth. We have contributed to the debate in the sector about the future role of the FRS, the need for greater collaboration and joint working, how procurement can be improved and the introduction of new ways of working.

We have also encouraged and supported the sharing of learning across the wider sector and with key partners. Our three fire summits have all included representation from the Scottish Fire and Rescue Service and we have supported the sharing of learning from the establishment of the new national service in Scotland.

Trowers & Hamlins LLP

Trowers & Hamlins is an international city law firm, rated for over a decade in the Chambers and Partners and Legal 500 independent guides as the number one law firm for local government law and a leading law firm for procurement and public and administrative law. We are a member of Interlaw, the elite global network of independent law firms with lawyers in more than 125 cities worldwide.

We have one of the largest and longest established teams in the country, and many of our lawyers have worked in senior in-house roles in the public sector. Our team are specialists in public sector employment, pensions, company law, corporate governance, taxation, state aid, real estate and intellectual property law and advise both the public and private sectors.

We have set up hundreds of public sector spin-out vehicles, including companies limited by shares and guarantee, community benefit societies, community interest companies, charities, social enterprises and employee mutuals. We have specific experience of advising clients in the blue light sector, particularly in innovative projects.

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Fire Industry Association (FIA)

The Fire Industry Association (FIA) is over 100 years old and is the largest fire protection trade association in Europe with 800+ members. We restrict our membership to those that have (or are on a path to achieve) third party certification to ensure we only represent professional companies.

We are a not-for-profit organisation and reinvest extensively into research projects that benefit the world of Life Safety. We also raise the bar on professionalism by defining competency by offering, through our Awarding Organisation, Level 3 qualifications following successful completion and examination in a number of fire safety courses. The training we provide is recognised as the industry benchmark and we educate over 4,500 students per year.

Our principal objective is to promote, improve and perfect fire protection methods, devices, services and apparatus. We achieve this through the representation of our members, providing technical support, guidance and opportunities for professional advancement through education and appropriate regulation.

We promote and shape legislation and the professional standards of the fire industry through close liaison with government and official bodies, as well as other key stakeholders. The technical support we offer our members (and others as requested) is unparalleled through a team of highly experienced and knowledgeable fire safety experts. More information on our organisation can be found on our website www.fia.uk.com.

National Fire Chiefs Council (NFCC)

The National Fire Chiefs Council (NFCC) is the professional voice of the UK fire and rescue service. We are committed to supporting the development of the 50 fire and rescue services across the UK to ensure that they deliver the best possible outcomes for their communities.

We provide professional advice to governments and the Local Government Association and work with a range of partners drawn from across the fire sector including trade unions and fire –related trade bodies. Her Majesty's Inspectorate of Constabulary, Fire and Rescue Services now inspects fire and rescue services and we have built a close working relationship with them in pursuit of continued improvement in all areas of fire and rescue service work. A new Fire Standards Board is now taking shape and we are part of its strategic leadership group.

With a full time indendent Chair and two vice chairs that are current Chief Fire Officers, our leadership is enhanced by the contribution of eight committee chairs that cover the wide spectrum of fire and rescue service business. Supported by three 'hubs' based in Merseyside (Resilience), West Midlands (Support) and London (Programmes), we have a very solid foundation on which to deliver our ambitious strategy.

More information on our organisation can be found on our website www.nationalfirechiefs.org.uk

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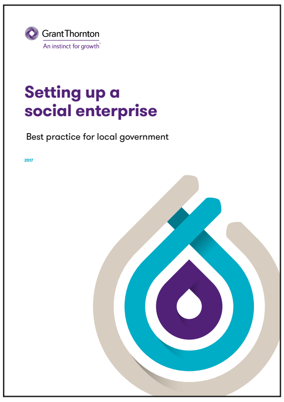
Further reading

Grant Thornton have been researching and publishing reports on alternative delivery models since 2014. Reports in our public sector series are:

In good company
Latest trends in local authority trading companies



How to set up a social enterprise
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NHS companies
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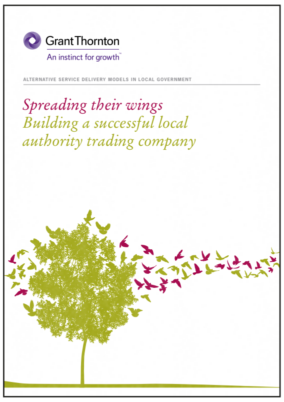
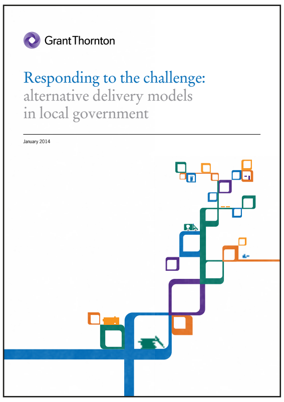


Spreading their wings
Building a successful local authority trading company

Better together
Building a successful joint venture company



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