

**Meeting: Combined Fire Authority****Date: 9<sup>th</sup> December 2015****Subject: State Aid Challenge****Report by: The Chief Fire and Rescue Officer****Author: Adam Stretton (Area Manager – Finance)****For: Decision / Discussion****1. Purpose**

- 1.1 The purpose of this report is for the Combined Fire Authority (CFA) to note the latest guidance on the State Aid Challenge and to agree a level of charge for the 'Fire and Rescue Service 'brand' for our trading subsidiary Forge Health Limited.

**2. Recommendations**

CFA is asked to agree an annual recharge of £100 for the use of the CFA name and logo to Forge Health Limited.

**3. Executive Summary**

- 3.1. A complaint from the Fire Industry Association (FIA) was lodged with the European Commission on the use of the fire service logo by trading subsidiaries owned by fire and rescue authorities. Guidance to mitigate future legal challenge has been produced by the Chief Fire Officers Association (CFOA) on behalf of the UK fire and rescue service and in consultation with the Department of Communities and Local Government (DCLG).
- 3.2. The CFA operates a Trading Company; Forge Health Limited. Forge Health Limited (the Company) is a private limited company wholly owned by the CFA, trading in Occupational Health services. The Company was incorporated on 12<sup>th</sup> March 2009 and started trading on the 1<sup>st</sup> April 2010. In 2014/15 the Company turnover was £188,166 resulting in a profit after tax of £37,730.

**4. Report Detail**

- 4.1. A complaint from the FIA was lodged with the European Commission on the use of the fire service logo by trading subsidiaries owned by fire and rescue authorities. It was alleged that the use of the fire service logo by these bodies gives them an unfair advantage in the market place, and the use of that logo free of charge constitutes a form of unlawful state aid.
- 4.2. Guidance on the use of Fire and Rescue Authorities' names and logos has been produced by CFOA on behalf of the UK Fire and Rescue Service and in consultation with DCLG. It identifies that in some circumstances there is the

potential for legal challenge by a business or trade body which is in competition with a business or fire authority trading company which may be perceived to be receiving an unfair advantage from a fire and rescue authority if such rights are provided for no or below market consideration. In effect such a challenge could be made on the basis that such an arrangement distorts competition and could contravene European Commission rules relating to aid by the State. The guidance sets out advice about the use of the name and / or logo to obviate the risk of legal challenge for the unlawful provision of state aid.

- 4.3. A fire and rescue authority has the power to trade i.e. to make a profit on the services that are indirectly and ancillary to its statutory functions (pursuant to Local Government Act 2003, Fire and Rescue Services Act 2004 as amended by the Localism Act 2011 and the Local Government Order 2009. However, in order to exercise this particular power, the authority is required to do so via a prescribed corporate vehicle.
- 4.4. The CFA operates a Trading Company; Forge Health Limited. Forge Health Limited (the Company) is a private limited company wholly owned by the CFA, trading in Occupational Health Services (OHS).
- 4.5. The CFOA advice relates to the use of the fire and rescue authority name or the logo used by the authority. In the commercial market the perceived 'distinction and recognition' of the name and / or logo may be considered to confer an economic advantage over other competitors usually based upon the strength of customer loyalty to or recognition of the name and / or logo in question. If a fire and rescue authority allows a company (without charge or low value) to use its name and / or logo then this might be claimed to be providing preferential treatment to that company. The CFOA guidance is aimed at reducing the possibility of a state aid challenge and putting in place adequate measures to be able to refute a challenge.
- 4.6. The CFOA guidance identifies two things a fire and rescue authority can do which will help to minimise the risk of a legal state aid challenge:
  - a) The CFA does not allow its logo to be used at all or
  - b) The CFA allows the name and / or logo to be used, values the benefit derived from this use and recovers that value from the company.
- 4.7. A number of different approaches to value the use of the name / logo are identified:
  - a) An agreed percentage of the company's annual turnover (studies suggest between 2% to 5%).
  - b) Regard the use of the CFA name and / or logo as an asset. In this case the CFA could decide to put a 'market value' to the use of the asset with the valuation as an assessment of how much the company will pay for the benefits it would expect to receive (probably as increased turnover).
  - c) By applying an on cost percentage to the cost of support services recharged by the CFA to the company (i.e. staff, travel, running costs). The Company might be perceived to gain the benefit for the CFA name and / or logo as a consequence of these uses. It may be concluded that

the benefit derives from the scale of these services. In 2014/15 service recharges to the Company totalled £56,135. This method requires an assessment to be made of the benefit to the company of being linked to the authority name and / or logo when using the fire and rescue authority's services.

- 4.8. In assessing the benefit to the Company it is noted that due to the nature of the market the CFA is trading in (Occupational Health Services), it is arguable that any 'FRS brand' has a much reduced impact compared to the FIA's market. In terms of the OHS sector, the CFA is a tiny player in a market dominated by some very large corporates. It is considered that the derived benefit to the Company of using the CFA name and logo is at a minimal level and it is unlikely that any challenge will be made on this issue. A nominal charge for the use of the authority name and logo to Forge Health Limited should be sufficient. It is proposed that a recharge of £100 pa is made to the Company to mitigate the risk of any challenge.

## **5. Report Implications / Impact**

### **5.1. *Legal (including crime and disorder)***

- a) These are contained within the body of the report.

### **5.2. *Financial (including value for money, benefits and efficiencies)***

- a) These are contained within the body of the report.

### **5.3. *Risk (including corporate and operational, health and safety and any impact on the continuity of service delivery)***

- a) If no action is taken there is the possibility that a state aid challenge could prove successful.

### **5.4. *Staff, Service Users and Stakeholders (including the Equality Impact Assessment)***

- a) None.

### **5.5. *Environmental***

- a) None.

### **5.6. *Impact upon Our Plan Objectives***

- a) The activities of the Company contribute towards objective 4 (Efficiency and the provision of a value for money service) by generating income for the CFA which can be reinvested in other services.

## **6. Background Papers**

- a) None.

**7. Appendices**

1. None