



Purpose: Approval

Date: **5 JUNE 2019**

Title: **REVIEW OF TRADING COMPANY GOVERNANCE**

Report of Chief Fire Officer

SUMMARY

1. The purpose of this report is to inform and provide recommendations to the Hampshire Fire and Rescue Authority (HFRA) in relation to the governance arrangements of the HFRA trading company.
2. This report follows the paper considered by the HFRA in April 2019 in relation to the Grant Thornton Report entitled "*creating and operating a successful fire trading company*" which was published in September 2018.
3. The Grant Thornton guidance highlighted an area of risk associated with the governance of Fire and Rescue Authority (FRA) trading companies. The recommendations within this report seek to mitigate this risk.

BACKGROUND

4. FRAs have the power to trade and make a profit, but they must ensure that their commercial activities are performed in accordance with the requirements of the Local Government Act 2003, the Fire and Rescue Services Act 2004 (as amended by the Localism Act 2011) and the Local Authorities (Goods and Services) Act 1970, as well as all laws pertaining to a limited company, for instance the Companies Act 2006.
5. FRAs must ensure that such commercial activities are exercised through a company (a separate legal entity) within the meaning of Part 5 of the Local Government and Housing Act 1989.
6. At the time of establishing the HFRA trading company, a full options appraisal, including identifying specific legal structures was considered.
7. The main rationale for establishing the HFRA trading company, was for the company to be sustainable and generate a financial return for the HFRA and/or deliver wider community benefits. The continued requirement for trading activities are monitored through business as usual governance

arrangements of both the trading entity and HFRA. HFRA review this at the trading company Shareholder AGM.

8. The Grant Thornton guidance states that a fire trading company must do everything in its power to control conflict situations, such as adopting clear conflict of interest protocols and director's mandates, ensuring careful selection processes are followed for the appointment of the board and that appropriate regular and ongoing training is provided (both for the protection of the fire trading company and the directors themselves).
9. The composition of the board and clear terms of reference should enable representation of relevant stakeholders with sufficient independence to allow the board to make robust decisions on behalf of the trading company. 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.

CURRENT HFRA TRADING COMPANY GOVERNANCE

10. HFRA have sound protocols in place to manage any potential conflicts of interest between elected Members and officers, however following the Grant Thornton guidance, HFRA sought that the HFRS Chief Fire Officer led a review into the governance arrangements.
11. The HFRA trading company board of directors is correctly constituted, however, there remains a risk associated with conflict of interest in relation to HFRA Members and officers being Directors of the trading company.
12. This conflict of interest relates to the ability of the board to be able to vote in the best interests of the company on all matters without the conflict of their interests as HFRA members or HFRS officers.
13. To ensure the appropriate experience and scrutiny is provided to the activities of the trading company, it is proposed to make a number of changes to the trading arm Board.

PROPOSED GOVERNANCE STRUCTURE

14. The Grant Thornton guidance recommends that the shareholder FRA should not be involved in the day to day running of the trading company, in order to allow it the necessary freedoms to operate at arm's length. It is important to be clear of the role of the FRA, to provide sufficient strategic control to exert influence, but enable the company to run operationally.
15. The guidance states that one way to facilitate this separation is to establish a Shareholder Committee as part of the governance structure, in lieu of Members as Directors. This model helps to ensure adequate safeguards that the company is carrying out work in line the FRA's strategy while

removing the conflict of interest for Members. It is proposed that the HFRA trading arm adopts this model, thereby removing the conflict of interest for HFRA Members and also improving the governance arrangements in respect of the company.

16. The board of directors have strategic and legal responsibility for the company. The company should ensure their board of directors have between them a sufficiently broad mix of commercial skills and sector knowledge, to support the objectives and enable the business to compete effectively within this specialised commercial marketplace.
17. To ensure that the board provides the correct level of experience and scrutiny it is proposed, that once established the Shareholder Committee can oversee a selection process and further review of board members. In the interim it is proposed to change the Directors appointed to the board to ensure stability, legal compliance and oversight while the permanent governance is put in place.

SUPPORTING OUR SERVICE PLAN AND PRIORITIES

18. The information contained within this report supports the Service Plan and making life safer in Hampshire. Remaining informed of national research and good practice guidance, to maintain robust and transparent operations, in delivery and the reputation of public safety and services.

CONSULTATION

19. Engagement has taken place with relevant parties including the HFRA trading company and Legal advice.

RESOURCE IMPLICATIONS

20. The recommendations contained within this report do not impose resource or finance implications to HFRS. The impacts to the HFRA trading company are outlined within the Risk Analysis section of this report.

ENVIRONMENTAL AND SUSTAINABILITY IMPACT ASSESSMENT

21. The information contained within this report does not impose environmental and sustainability implications.

LEGAL IMPLICATIONS

22. The information within this report are considered compatible with legal provisions.

EQUALITY IMPACT ASSESSMENT

23. There are no adverse equalities impacts in respect of the proposals in this report. The proposals are considered compatible with the provisions of the equality and human rights legislation and do not change any policies.

OPTIONS

24. In relation to managing the governance of the HFRA trading arm there are two options:

Option 1:

- (a) That HFRA put in place a Shareholder Committee and do not appoint Members as Directors of the trading company Board. The Shareholder Committee would discharge all functions of the Authority as shareholder of 3SFire Ltd and would review the Articles of Association and pass resolutions to update the Articles as necessary. The Shareholder Committee would be established with immediate effect, be politically proportional to the Authority and comprise five members of HFRA. Should this option be agreed, then appointments to the Shareholder Committee will be made as part of the normal appointments process which is dealt with under a separate item on the agenda.
- (b) That HFRA approve the appointment of new Directors to the trading company Board as outlined in **Appendix A** as an interim measure while a further review, overseen by the Shareholder Committee is conducted. Should this option be agreed, appointments to the Board will also be made as part of the normal appointments process which is dealt with under a separate item on the agenda.

Option 2:

- (c) That HFRA do not establish a Shareholder Committee and instead retain Members as Directors of the trading company Board, accepting that this is not in line with best practice guidance.
- (d) That HFRA re-appoint the existing Directors to the trading company Board, accepting that this will not mitigate the current conflict of interest posed.

RISK ANALYSIS

25. As outlined within this report, there remains an organisational risk in relation to the conflict of interest posed by the current HFRA trading arm governance structure. There is also a personal risk to Members who are appointed to

the company board, as a result of possible conflicts of interest, in the event that the governance structure is not changed.

26. Should HFRA approve the recommendations within this report, a minimal risk is posed to HFRA on the continued viability of the Authority trading arm to operate since a new governance structure would be established and a new board of Directors put in place. This risk is considered to be manageable.

EVALUATION

27. It is important that on-going evaluation and review takes place to ensure that the recommendations within the report remain the most appropriate course of action for the Authority.
28. It is recommended that the decision made through this report to reviewed should internal or external factors and/or opportunities change.

CONCLUSION

29. This report informs and provides awareness to the HFRA of the guidance and advice contained within the Grant Thornton Report, *“creating and operating a successful fire trading company”*.
30. This report provides the Authority with relevant information to scrutinise governance arrangements it has put in place in relation to its trading arm.

RECOMMENDATIONS

31. That Option 1 of paragraph 24 be approved by the Hampshire Fire and Rescue Authority, namely that:
 - (a) The Authority establishes a Shareholder Committee and delegates to it the functions of shareholder of 3SFire Ltd;
 - (b) New Directors are appointed to the trading company Board as outlined in Appendix A as an interim measure while a further review, overseen by the Shareholder Committee is conducted. (Formal appointment of the Shareholder Committee and Directors of 3SFire Ltd will be dealt with as part of the normal appointments process which is dealt with under a separate item on the agenda).

APPENDICES ATTACHED

32. **Appendix A** – Proposed Changes to Board of Directors

BACKGROUND PAPERS

- 33. Grant Thornton Report, creating and operating a successful fire trading company
<https://www.grantthornton.co.uk/globalassets/1.-member-firms/united-kingdom/pdf/creating-and-operating-a-successful-fire-trading-company.pdf>
- 34. Fire and Rescue National Framework
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705060/National_Framework_-_final_for_web.pdf
- 35. Companies Act 2006
<http://www.legislation.gov.uk/ukpga/2006/46/contents>

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Appendix A – Proposed Changes to Board of Directors

It is proposed to make the interim changes to the existing Directors of the HFRA trading company Board as detailed below:

Existing Director	Reason for Change	Interim Appointment
Cllr Chris Carter	Shareholder Committee established	ACFO Stew Adamson
Cllr Roger Price	Shareholder Committee established	Chief of Staff Matt Robertson
DCFO Andy Bowers	Retirement from HFRS	DCFO Steve Apter
Royston Smith MP	Resignation	No Interim Appointment