

New Dimension Assets Transfer

Report of the Chief Fire Officer

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1 Purpose of Report

This report summarises the Authority's current position over the transfer of New Dimension (ND) assets from the Department for Communities and Local Government (CLG) to local Fire and Rescue Services, including assets to this Authority.

2 Recommendations

That the Authority:

- i) Informs DCLG that it is willing to enter into the Transfer of Assets Agreement, as drafted; **or**
- ii) Informs DCLG that it is not willing to enter into the Transfer of Assets Agreement, and requests DCLG to reassign those Assets to one or more other FRAs and make local provision for civilian and staff protection; **or**
- iii) Awaits the publication of the new Framework Document and assesses the impact of any decision at that point.

3 Background

DCLG has procured a large number and range of vehicles and equipment as part of a national capability to respond to major disruptive events involving Chemical, Biological, Radiological and Nuclear (CBRN) materials, collapsed or unstable structures, and to move large volumes of water. DCLG has allocated the vehicles and equipment to fire and rescue authorities throughout the country on the basis that the Fire and Rescue Authorities (FRAs) will staff those vehicles and keep them ready for use in the event of an incident, whether within their own FRA area, or outside that area.

DCLG has also provided specific grant funding for staffing of the vehicles in some authorities for Urban Search and Rescue (USAR) crewing (not our own). Under the above arrangements, this Authority has been allocated the following vehicles and equipment for use (the assets):

High Volume Pumping Vehicle located at Prees
Incident Response Unit and associated equipment located at Shrewsbury
Re-Robe Unit also located at Prees

The Authority has been allocated specific grant funding of £37,000 for the year 2010/11 to meet the costs of training for the Incident Response Unit (IRU) but this is not ring fenced. DCLG has also confirmed that the Authority is entitled to use the vehicles and equipment referred to above for its normal fire and rescue functions, (subject to the Authority meeting any repair or replacement costs caused by its negligence).

The above assets remain in the legal ownership of DCLG, and in order to ensure that they are fully maintained in appropriate working order has set up a contract between (1) DCLG and (2) Babcock (the Contractor) and the Contractor is now maintaining the assets, the costs of which are currently being paid by DCLG.

DCLG now wishes the remaining authorities, which have assets allocated to them, to agree to the legal title in those assets being transferred to the respective FRA, under terms that will also require the FRA to enter into an access agreement in respect of the National Maintenance Agreement. This will result in the Contractor continuing to have responsibility to maintain and replace the assets, but will also then require the FRA to pay the Contractor the maintenance costs for any issues relating to our own use of the asset. Any wear and tear from national use will be funded by DCLG.

The routine maintenance costs to the Authority are unknown at this stage. However, under the terms of the National Maintenance Contract, if an asset is destroyed or damaged beyond repair, the Contractor will replace the asset and the Authority would be responsible for the costs of such replacement. This would need to be claimed against our insurance. If the asset is repairable, the Authority will be responsible for the cost of repair, if this damage was caused by non-national use of the asset.

We will have to take the assets onto our balance sheet. This should not lead to any direct cost, as there is no requirement to set aside minimum revenue provision (MRP). This is because the assets would not have been funded from loan by the Authority. However, it is our practice to provide for the replacement of assets over their life and a decision will need to be made whether we ought to make such a provision in the light of the following:

“we (DCLG) recognise that some vehicles and equipment over time will reach the end of its life and there are two ways that we intend to deal with this. ...the CFA-led Assurance Body has been provided with an annual sum of money, around £1.5m, to deal with routine upgrades and changes to the new dimensions fleet.

Secondly we envisage that every five to six years there will be a need for a major refresh.” “While a decision on this will always be a decision for the government of the day we would expect such major refreshes to be tied to a spending review so as to be able to identify resources to take forward the work. Where vehicles have been used extensively by the FRS on local incidents and their life-spans are unduly shortened, we would wish to discuss with the FRA concerned, and the Assurance Body how the replacement costs should be fairly apportioned.”

In other words, we may face equipment and vehicle replacement costs, depending on how much we utilise the assets for our own service needs or, if we are unable to argue effectively that we have not so used them. Alternatively, Government may point to a requirement to provide National Resilience under a future Framework and require us to factor this into our Integrated Risk Management Plan (IRMP) and thereby ensure we fund any replacement costs from the Grant that would include New Dimension assets.

Whilst it is true that (as indicated in the Fire Service Circular 36/2008) the Fire Lawyers Network has provided comments on the proposed agreement, not all comments have been taken on board. In this respect, the main outstanding issue is:

The draft agreement provides that, on transfer of the legal title in the Assets to the Authority, the Authority is required to enter into an access agreement in relation to the National Maintenance Contract. However, the draft agreement provides no corresponding obligation on DCLG to meet the costs incurred by the Authority in the maintenance and replacement of the Assets, which could be substantial.

DCLG has instead indicated, in Circular FSC 36/2008, that it will fund maintenance costs in line with New Burdens principles, subject to Treasury and Ministerial approval. In the Circular, DCLG also confirms that, whilst funding will currently be through specific grants, DCLG intends to mainstream grants into the Revenue Support Grant (RSG).

If funding is provided through the above grant mechanism, rather than a direct contractual obligation to meet all of the maintenance costs, then there is a risk that some or all of the maintenance costs under the National Maintenance Contract will have to be met by the Authority.

This is because:

- (a) “New Burdens” policy may change;
- (b) Due to funding pressures Government may not wish to commit to continued grant funding;
- (c) The actual level of grant funding is subject to Treasury and Ministerial approval, and full funding may not be approved, particularly in the current economic climate;

- (d) If grant funding is moved from specific grant funding to mainstream funding through the Revenue Support Grant (RSG), then, if grant funding is further reduced, the Authority will need to make efficiencies elsewhere in its budget to continue funding the maintenance of these assets.

At its meeting in June 2010, the Fire Authority agreed that, although it wished to take ownership of the assets, it would only do so, if there was an exit clause included within the contract, which enabled the Authority to withdraw from the contract, should funding from Government for the assets reduce significantly. The Authority did not receive any further correspondence on this issue at that time.

4 Most Recent Situation

In September 2011, the Chief Fire Officer was approached by the Chief Fire Officers Association (CFOA), asking if the Authority was willing to accept the contract. The CFO reiterated the Authority's position. A copy of a letter from DCLG, purported to be from December 2010 was provided. This letter stated that the Government was unwilling to accept any changes to the contract.

Most recently DCLG has, through CFOA, asked the few remaining Authorities, who have not signed the contract, to accept the transfer of ND assets without any changes to the contract.

The issues are summarised below:

- 1 FRAs will have no control over the level of costs apportioned to them and, if there is a dispute on the level of charges, will have no right to claim directly against the Contractor. We are not clear what mechanisms will be in place to protect FRAs against these risks.
- 2 FRAs have no rights to terminate the National Contract or its application to the specific FRA. Again we are not clear what mechanism will be in place to hold the Contractor properly to account.
- 3 National risks will inevitably change over time and these assets will continue, first and foremost, to provide national resilience. CFOA maintains that the financial costs of mitigating national risks should not fall to local Services.
- 4 The Transfer Agreement is, as stated, a Transfer of Function not a Transfer of Assets. This confers specific duties on those FRAs that are currently hosting New Dimension assets designated for use in the event of widespread flooding, which are currently not covered by any Statutory Instrument. This is not the case for the USAR and CBRN assets, which are covered by the Emergencies Order 2007 (SI 2007 No 735). As no similar Statutory Instrument is to be put in place in relation to flood response and rescue, there is no limit to the liability for FRAs in this respect.

- 5 We are awaiting the publication of the new Framework Document for the Fire Service. This is expected to contain significant references to National Resilience and Integrated Risk Management Planning. The requirements in the Framework may well clarify the Authority's legal position on the provision and use of New Dimension Assets.
- 6 This Authority is working hard to reduce its budget by 20% by 2015/16. If we accept the assets and the legal requirement of Function that goes with this, the Authority could not cut this provision. It might, therefore, be faced with reducing local assets, whilst maintaining national assets, the funding for which has shrunk.

5 Implications

Apart from the legal and financial implications contained in this report, Members will wish to reflect on the national security and political implications of their decision as well as impact for local civilian protection.

National Security

The country still faces a significant threat from terrorist acts. With people and VIPs from around the world travelling to the UK in 2012 the increased number of possible high profile 'targets' places greater emphasis on preparations for such atrocities. Members would wish their Fire and Rescue Service (FRS) to be a part of National Resilience. If the Authority refuses to sign the contract, the ND Assets will be removed.

Local Civilian Protection

We already provide two Large Pumping Units and water carriers at Bridgnorth and Oswestry and dealt with widespread flooding before the arrival of the DCLG provided pumping unit. There should, therefore, be limited impact on our local population, if this asset was removed.

The provision of the IRU and re-robe units does improve the time to deployment to any CBRN attack in the County thus ensuring rapid decontamination of citizens. The teams also provide decontamination for our own staff at large-scale chemical incidents. If we were to lose this asset, we would need to carry out a detailed risk management assessment and provide suitable staff decontamination equipment.

Political Implications

If Members accept the assets, they will clearly be supporting the Government in the provision of civil protection assets. If in future Government reduces funding for these assets, then might be the time to put pressure on Government, along with other Fire Authorities, to fund this vital equipment.

If Members decide to refuse the risk of acceptance, they may be seen to be distancing themselves from the need to provide this national risk management asset.

This Authority would then be only one a few Authorities not to take an active part in New Dimension / civil resilience provision.

There may be an option for Members to await the new Fire Framework document to see if the retention of these assets would assist the Service to deliver national requirements. However, DCLG may not give the Authority time to wait for the publication of the document. Indications are that the new Framework will contain requirements to collaborate on New Dimension / civil resilience activities, with which this Authority may not be able to comply fully, if we do not have these assets.

6 Financial Implications

The Authority would, on transfer of the assets become liable for the maintenance. Should funding not be forthcoming from DCLG or another Government Department in future, then local tax payers may be liable for paying for national assets.

The costs for repair or replacement of the assets are unknown at present. Replacement of the assets is said to be scheduled for 2025, although there is no written confirmation of this.

If the decision was not to accept the assets, then the Authority would need to fund suitable small-scale decontamination equipment for staff and, depending on any time delay in the national asset reaching us, some limited public decontamination facility. This may cost in the region of £50,000.

7 Legal Comment

Local and National legal opinion is that the contract places a number of risks on FRAs, as outlined in this report.

If the new National Framework places requirements on Authorities to provide a response to National events, it may need to fund equipment to replace the ND Assets.

Members need to assess the risks and benefits of the options before them in light of the information contained in this report.

8 Equality Impact Assessment

Officers have considered the Service's Brigade Order on Equality Impact Assessments (Personnel 5 Part 2) and have determined that there are no discriminatory practices or differential impacts upon specific groups arising from this paper. An Initial Equality Impact Assessment has not, therefore, been completed.

9 Appendices

There are no appendices attached to this report.

10 Background Papers

Shropshire and Wrekin Fire and Rescue Authority, 16 June 2010
Agenda Item 12 – New Dimension Asset Transfer

Fire and Rescue Service Circular 16/2009 – Transfer of Ownership of New
Dimension Assets

Fire and Rescue Service Circular 36/2008 – Update on ND LTCM Project and
Three Year Funding Allocation