



**Agenda
for the Meeting
of the
Management Committee**

Tuesday, 7th December 2021

At

6.30 pm

RBFRS Headquarters
Lynda Kenyon Suite
Newsham Court
Pincents Kiln
Calcot
Reading
Berkshire
RG31 7SD

For further information regarding this meeting, please contact:

Committee Team

0118 938 4611

E-Mail at committeeteam@rbfrs.co.uk

Headquarters, Newsham Court, Pincents Kiln, Calcot, Reading, Berkshire RG31 7SD



MEETING: Management Committee Meeting

DATE AND TIME: Tuesday, 7th December 2021, at 6.30 pm

VENUE: Lynda Kenyon Suite
RBFRS Headquarters
Newsham Court
Pincents Kiln
Calcot
Reading, Berkshire RG31 7SD

S U M M O N S

You are hereby summoned to attend the meeting of the Royal Berkshire Fire Authority at the time, date and venue indicated above, when it is proposed to deal with the business set out in the enclosed Agenda.

A handwritten signature in black ink, appearing to read 'Graham Britten'.

GRAHAM BRITTEN
Monitoring Officer

To: Members of the Management Committee:

Councillor Dennis Benneyworth	Councillor Angus Ross
Councillor Jeff Brooks	Councillor David Cannon
Councillor Tricia Brown	Councillor Jo Lovelock
Councillor Colin Dudley	Councillor Dexter Smith
Councillor Paul Gittings	Councillor Rachelle Shepherd- DuBey
Councillor Pauline Helliard-Symons	

Copy to: Senior Leadership Team (SLT), Royal Berkshire Fire and Rescue Service

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Newsham Court
Pincent's Kiln
Calcot
Reading, Berkshire RG31 7SD

AGENDA

1. Representative Bodies

Purpose:

The Chairman may, at his discretion, invite the Representative Bodies present to address the Management Committee once on any Part I item, on the prerequisite that the Representative Bodies advise the Chairman at the commencement of the meeting of those Agenda items they wish to speak to.

2. Apologies for Absence

3. Declarations of Interest

Purpose:

To receive Declarations of Interest from Members relating to items to be considered at the meeting, in accordance with the provisions of the Fire Authority's Local Code of Conduct, and any from Officers.

4. Minutes of the meeting held on 12 October 2021 (Pages 7 - 16)

Purpose:

That the Minutes of the meeting and any recorded actions held on 12 October 2021, be confirmed as a correct record and signed by the Chairman.

5. Receipt of Announcements

Recommendation:

To receive announcements from the Chairman and / or Chief Fire Officer.

6. Issues arising from the Audit and Governance Committee

Recommendation:

That it be noted that no reports have been referred by the Audit and Governance Committee.

7. Capita Contract Novation *(Pages 17 - 44)*

Purpose:

To approve the Deed or Novation outlined in the report between Oxfordshire County Council, Royal Berkshire Fire Authority, Capita Secure Information Solutions Limited ("CSIS") and Capita (SSS) Limited, and to approve retrospectively the Integrated Communication Control System (ICCS) maintenance and support contract that was put in place between January 2021 and April 2022.

8. Immediate Detriment Framework *(Pages 45 - 86)*

Purpose:

To note the report and agree that the Immediate Detriment Framework be adopted on behalf of the Authority.

9. Budget Monitoring *(Pages 87 - 96)*

Purpose:

To receive for note the estimate revenue outturn and an update on capital projects at the end of Quarter Two 2021/22.

10. Appliance Availability by Crewing to Meet Corporate Measures 16 and 17 *(Pages 97 - 102)*

Purpose:

To receive a presentation, and to note the performance of Appliance Availability in Quarter Two 2021/22 (July – September).

11. Forward Plan *(Pages 103 - 104)*

Recommendation:

To note the Forward Plan.

12. Date of next meeting

Thursday, 3 February 2022, 6.30pm at RBFRS Headquarters, Newsham Court, Pincents Kiln, Calcot, Reading RG31 7SD.

13. Exclusion of the Public *(Pages 105 - 106)*

Recommendation:

To Resolve that under Section 100(A)(4) of the Local Government Act 1972

(as amended), the public be excluded from the meeting for the following Agenda Items on the grounds that they involve the likely disclosure of exempt information, as defined in the Paragraph 3 of Part I of Schedule 12A of the said Act indicated and is exempt information if, and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Categories of 'Exempt Information' under Schedule 12A of the Local Government Act 1972.

14. Part II Minutes of the meeting held on 12 October 2021 (Pages 107 - 112)

Purpose:

That the Part II Minutes of the meeting and any recorded actions held on 12 October 2021 be confirmed as a correct record and signed by the Chairman.

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MINUTES OF THE MEETING OF THE MANAGEMENT COMMITTEE



Held on Tuesday, 12th October 2021, at 6.30 pm
Lynda Kenyon Suite, RBFRS Headquarters, Newsham Court,
Pincents Kiln, Calcot, Reading RG31 7SD

Members: * Councillor Dennis Benneyworth Councillor Angus Ross
(*present) * Councillor Jeff Brooks * Councillor David Cannon
* Councillor Tricia Brown Councillor Jo Lovelock
* Councillor Colin Dudley * Councillor Dexter Smith
* Councillor Paul Gittings Councillor Rachelle Shepherd-DuBey
* Councillor Pauline Helliars-Symons

In Attendance: Wayne Bowcock (Chief Fire Officer, CFO)
Alex Brown (Head of Capital Projects and Estates, HCP&E)
Conor Byrne (Head of Finance and Procurement, HF&P)
Doug Buchanan (Assistant Chief Fire Officer, ACFO)
Jess James (Area Manager, Resource and Resilience, AM R&R)
Becci Jefferies (Head of Human Resources and Learning and Development, HHR&L&D)
Andrew Mclenahan (Head of Facilities, Fleet and Equipment, HFF&E)
Katie Mills (Director of Corporate Services, DCS)
Fayth Rowe (Democratic Support Lead, DSL)
Tregear Thomas (Area Manager, Prevention and Protection)
Tony Vincent (Head of Business Information Systems, HBIS)

Action

21. REPRESENTATIVE BODIES

There were no questions received from Representative Bodies on any of the agenda items.

22. APOLOGIES FOR ABSENCE

Apologies of absence were received from Councillors Shepherd-DuBey, Lovelock and Ross.

23. DECLARATIONS OF INTEREST

There were no declarations of interest made by Members in accordance with the provisions of the Fire Authority's Local Code of Conduct.

Due to the nature of Part II Item 14 (Senior Leadership Team – Restructure and Senior Staff Pay), the Senior Leadership Team (SLT) advised they will withdraw from the meeting excluding Wayne Bowcock; Chief Fire Officer, Conor Byrne; Head of Finance and Procurement and Becci Jefferies; Head of Human Resources and Learning and Development.

24. MINUTES OF THE MEETING HELD ON 29 JULY 2021

The Chairman confirmed the action on page 14 had been completed.

RESOLVED that the action and the Part I and Part II Minutes of the meeting held on 29 July 2021, be approved as a true and correct record to be signed by the Chairman.

25. RECEIPT OF ANNOUNCEMENTS

The Chairman made the following announcements:

Theale Community Fire Station Now Operational

I am delighted to say that firefighters are now serving the community from Theale Community Fire Station, after successfully relocating from Dee Road Fire Station.

The relocation has been made possible thanks to a team effort involving staff from across the Service, led by the Capital Projects Team.

Contractors Knights Brown began the build in January 2020, and despite the challenges of working during a global pandemic, successfully completed the build and handed over the site this month.

Although our crews have moved into the new facility, several other teams will relocate in the coming weeks, including our partners from Thames Valley Police.

An official opening ceremony is also being planned for 18 March 2022, which should have been held in your diaries.

This new station supports our ongoing commitment to work collaboratively with our emergency service partners, offering a shared location for our Service, Thames Valley Police (TVP) and South Central Ambulance Service (SCAS). As well as improvements for all Services in the efficient use of public funds, the relationships and opportunities of working more closely together is expected to support greater collective effectiveness for the services we provide to the public.

The next Fire Authority meeting on 2 November, will be held at Theale Fire Station, where Members will get an opportunity to view the Station. Democratic Support will be in touch with the logistics.

Celebration Event

On Saturday, 2 October, we held an event to celebrate the outstanding achievements of staff and volunteers in responding during a challenging 18 months.

The event recognised the work of those that have taken on additional responsibilities during the pandemic, and included a Graduation Ceremony to formally welcome a number of firefighters that completed their training at the start of 2020 and went straight to work, serving their local communities on fire stations.

Staff that have received their Long Service Award and Long Service and Good Conduct Medals, the 2020 Virtual Awards Ceremony winners and Fire Cadets who were unable to attend a Graduation Ceremony that took place in July, were also recognised.

The heavy rain on Saturday did not dampen spirits and staff and volunteers from across the Service enjoyed a fun filled day with their families, friends and colleagues.

The event was held at Welford Park, after Her Majesty's Lord- Lieutenant of the Royal County of Berkshire, Mr James Puxley, generously offered to host the event at his family home.

This event was made possible thanks to the generous donations of a number of sponsors, who kindly agreed to support the event. Local businesses also donated items for a raffle which was held on the day, with £347 raised for The Fire Fighters Charity.

I was so proud of the team effort by all involved to make the event such an outstanding success and delighted that at long last, we had the opportunity as Fire Authority Members to say thank you in person for the work that has been completed over the last 18 months.

Engagement with Berkshire MPs

On behalf of the Fire Authority, myself and Chief Fire Officer, Wayne Bowcock, have been engaging with MPs that represent Berkshire constituencies.

The aim of these meetings has been to continue to build positive working relationships and talk to our MPs about the challenges of funding a modern fire and rescue service.

Royal Berkshire Fire Authority remains one of the lowest precepting authorities in the country and, if we are to continue to provide excellent services for our communities, it is essential that we have flexibility in our funding arrangements.

As part of these engagement sessions, last week Wayne and I met with Theresa May, MP for Maidenhead, to discuss the progress made by the Authority and

Service in recent years, as well as the challenges we face moving forward.

I would like to place on record my thanks to the crew at Maidenhead for providing an excellent tour of one of our new fire appliance as part of this session.

We will continue to engage our local MPs and keep Members informed of our progress.

Opening of Crowthorne Community Fire Station

On Friday, 15 October, we will be officially opening Crowthorne Community Fire Station.

Although the station began serving the community in April 2020, the official opening ceremony of the station was delayed due to COVID-19 measures in place at the time.

The event on Friday will give attendees the opportunity to see the new community fire station and take a tour of the building, as well as speak to our on-call firefighters and find out more about the build process and its subsequent place at the heart of the Crowthorne community.

All Members are invited to join the event which begins from 3pm and I hope to see many of you there.

Emergency Services Day

Thursday, 9 September, was Emergency Services Day, a national event which celebrates the selfless hard work and commitment of the millions of people who work and volunteer in the emergency services and NHS to keep us safe.

Staff across the Service showed their support by taking part in the national two minutes' silence, remembering the more than 7,500 NHS and emergency services staff who have sadly died as a result of their duties.

Staff on stations held parades and other members of staff were encouraged to stand at the front of their buildings or take part at their workstations.

Stations also flew 999 Day flags, at full-mast throughout the day.

20th Anniversary of 9/11

Two days later, on Saturday, 11 September was the 20th anniversary of the devastating 9/11 attacks.

To mark the anniversary, we joined fire and rescue services across the Country in observing a minute's silence to reflect and remember the 3,000 people, including 346 firefighters, who lost their lives during these terror attacks.

The minute's silence took place at 1:46pm to coincide with the time the first tower was hit.

Thank you to everyone who marked the anniversary of 9/11 and Emergency Services Day with us.

Built Environment Progress Report

Our first Built Environment progress report is now available. This provides an update on the Service's progress against the Grenfell Tower Inquiry Phase 1 recommendations and protection activity within our High Rise Residential Building (HRRB) Project.

The intention is to provide further formal progress reports every 6 months until completion of the programme.

This report and all subsequent reports, will be available to the public using our new 'High Rise Guidance' webpage.

Urgent Late Item

By virtue of section 100B (4) (b) of the Local Government Act 1972. I have accepted an Urgent Late Item in Part II on Capital Projects – Asset Release Strategy for the Wargrave Fire Station Site, which was sent as a separate report from the main agenda pack as Urgent Late Item. The order of the agenda will change as I would like this item to follow Item 12 when the press and public leave the meeting.

26. ISSUES ARISING FROM THE AUDIT AND GOVERNANCE COMMITTEE

There were no issues arising from the Audit and Governance Committee.

27. FIREWATCH STRATEGIC WAIVER

Tony Vincent, Head of Business and Information Systems (HBIS), presented the report and outlined that Firewatch software sat at the heart of many critical areas within Service Delivery and Support Services, including Human Resource (HR) functions such as time and attendance, sickness management, holiday management, and input into payroll; crewing, duty rotas, ICT Assets, equipment and facilities defecting, and real-time availability updates to Vision mobilising system.

Royal Berkshire Fire and Rescue Service (RBFRS) has maintained a positive and productive relationship with Infographics (developers) and as a result, has included many features and elements of functionality that have greatly enhanced RBFRS. An upcoming update to version 7.0 will bring features that will save

hundreds of person-hours per year across the Service, ensuring Watches are adequately crewed, and will remove significant effort from station based staff in making sure appliances stay on the run.

The Firewatch support contract is due for renewal in 2022. Normal procurement rules would call for a full competitive tender for a contract of this size, however, Infographics are the sole viable provider.

RBFRS has entered into and completed a voluntary ex-ante transparency notice exercise, by inviting all participants in associated procurement frameworks to challenge the intention to extend the contract with Infographics. No such challenge was received as part of this process, rendering a full tender exercise unnecessary.

Proposed contract timelines align with the strategic planning horizon for ICT, allowing up to three years to plan and execute a migration to any alternative products or services identified at the next ICT strategy refresh due in 2024.

Tony Vincent stated that a contract extension of this size would not require Management Committee approval, however the use of the VEAT exercise in lieu of a full tender obliges officers to seek approval of a waiver before progressing to contract signature. The contract does not present any additional cost to the Fire Authority as it was an extension of an existing support contract.

The Chairman sought clarification by asking whether the VEAT exercise meant that any organisation could inform RBFRS whether they had any objections to the waiver. Tony Vincent confirmed the process was designed to allow companies to challenge.

In response to questions from Councillor Brooks on possible competitors, a onetime licence fee and whether the figure in 2.2.of the recommendation (£786k) included the total spend of the contract to date which was £460,038.12.

Tony Vincent stated that RBFRS had been a user of Firewatch for many years and the software was used as part of resource planning. He stated that there were competitive products, however no other product encompassed the range of activities currently used on Firewatch. In addition, Tony Vincent confirmed the total cost of the contract identified in paragraph 2.2 (£786k) included the total spend to date under the current contract which was £460,038.12 outlined in paragraph 3.5 of the report. He reported the current license 7.0 was a major release, however it had not incurred any additional costs.

In answer to a supplementary question from Councillor Brooks on whether a user survey had been carried out, Tony Vincent reported that users had identified 'pain points' which had been worked through with Infographics.

Councillor Ross suggested an amendment to the recommendation to clarify the Service was not avoiding a full tender process, it was unnecessary in the circumstances.

The Chairman proposed Councillor Ross's amendment and a additional amendment to include the current cost of the contract which was approximately £326k and moved the recommendation. This was seconded by Councillor Smith.

RESOLVED that:

- The strategic intent for use of Firewatch within RBFRS as detailed in section 3.14 of the report be noted.
- The extension of the existing Firewatch support contract for a period of 5 years from the current renewal date in March 2022 approximately £326k, at a total contract cost of £786k, the result of the VEAT exercise making the normal tendering process unnecessary be agreed.

28. 2021/22 BUDGET MONITORING - QUARTER ONE

Conor Byrne, Head of Finance and Procurement (HF&P), stated that when the Fire Authority set the budget in February 2021, it was based on Central Government's position of a public sector pay freeze. He reported the National Joint Council (NJC) had subsequently agreed a Grey Book award of 1.5% effective from 1 July 2021, which will cost an estimated additional £240,000. He added that pay negotiations for Green Book staff were ongoing, and stated the pay pressures have been partially off-set by increased funding.

Conor Byrne confirmed the Authority will be receiving an additional £251,000 in Business Rates and Section 31 grants.

The forecast year-end outturn shows a deficit of £290,000 to be funded from reserves, an increase of £261,000 from the budget setting position. He reported the Authority's Phase One of the Strategic Asset Investment Framework (SAIF) was coming to the end and there would be an increase to the financing charge on the revenue budget. He added that the Audit and Governance Committee will look at the SAIF.

In response to the Chairman's query around the unbudgeted 1.5% pay rise for Grey Book staff and the uncertainty around the settlement of Green Book staff pay increase, Conor Byrne reported that the budget pressure to the Authority would cost an additional £132,000 in the event of a pay award of 1.75% increase to Green Book staff pay was confirmed.

Conor Byrne responded to Councillor Brown's query on Grey Book staff pay awards by confirming that the increase commenced at the beginning of Quarter Two (1 July 2021) however the Quarter One report included the forecast for the whole year.

The Vice-Chairman queried the cost pressure in paragraph 3.5 in relation to legal fees. Katie Mills, Director of Corporate Services (DCS) reported they were in relation to a recent inquest.

Councillor Gittings asked whether petrol / fuel inflation costs would be included in Quarter Two assumptions. Conor Byrne reported that it was an emerging picture which will be built into the budget and added that the settlement, precept and inflation will feed into next year's budget.

In response to a supplementary question from Councillor Gittings on whether the Authority bulk buy fuel, the Chairman confirmed that the Authority do not benefit from the domestic price cap on fuel. The Chairman moved the recommendation which was seconded by Councillor Benneyworth.

RESOLVED that the report be noted.

29. APPLIANCE AVAILABILITY BY CREWING TO MEET CORPORATE MEASURES 16 AND 17

Jess James, Area Manager Response and Resilience (AM, R&R), reported the achievement of Wholetime appliance availability averaged 98.9% and On-Call averaged 59.8% across the Service against the target of 60%.

In referring to the Wholetime appliance availability he reported there were only two shifts that had inadequate crewing which fell outside Corporate Measure 16 detailed in paragraph 3.8 of the report.

He stated the On-Call appliance availability in Quarter One was an increase from the previous quarter (Quarter Four 2020/21).

In response to a comment from the Chairman commending the positive figures in the report, Jess James reported that it had been challenging in Quarter One.

In referring to page 37 of the report, Councillor Brooks queried why attention was drawn to Mortimer Fire Station and not Pangbourne Fire Station. Jess James explained that Pangbourne had been discounted due to the fact the station was due to close.

The Chairman reminded Members that Quarter One was at the height of the '*pingdemic*' and stated that 98.8% for Wholetime availability, losing just two shifts, was a pleasing result which was a testament to the flexibility of our Firefighters. He acknowledged that Lamborne had challenges, however, despite these, had kept the appliance on the run. He stated that he wished to thank those Firefighters at all stations across the County for their flexibility.

The Chairman moved the recommendation and it was seconded by Councillor Smith.

RESOLVED that:

- The 2021/22 Quarter One performance of 98.9% appliance availability of the Service's 14 Whole-time appliances in line with Corporate Measure 16 be noted.

- The 2021/22 Quarter One performance of the overall On-Call appliance availability of 59.8% against the Service target of 60% in Corporate Measure 17 be noted.

30. FORWARD PLAN

An amendment was made to the Forward Plan to include the Community Risk Management Plan (CRMP) Consultation to the Fire Authority agenda on 2 November 2021.

RESOLVED that the Forward Plan be noted.

31. DATE OF NEXT MEETING

Tuesday 7 December 2021, 6.30pm at RBFRS Headquarters, Newsham Court, Pincents Kiln, Calcot, Reading RG31 7SD.

32. EXCLUSION OF THE PUBLIC

RESOLVED that under Section 100(A)(4) of the Local Government Act 1972 (as amended), the public be excluded from the meeting for the following Agenda Items on the grounds that they involve the likely disclosure of exempt information, as defined in the Paragraph 3 of Part I of Schedule 12A of the said Act indicated and is exempt information if, and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(The meeting concluded at 20:24)

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ROYAL BERKSHIRE FIRE AUTHORITY REPORT

COMMITTEE	MANAGEMENT COMMITTEE
DATE OF MEETING	7 DECEMBER 2021
SUBJECT	CAPITA CONTRACT NOVATION
LEAD OFFICER	JIM POWELL, AREA MANAGER COLLABORATION AND POLICY
LEAD MEMBER	COUNCILLORS ANGUS ROSS AND DAVID CANNON
EXEMPT INFORMATION	NONE
ACTION	DECISION

1. EXECUTIVE SUMMARY

- 1.1 Thames Valley Fire Control Service (TVFCS) currently requires provision of two key contracts for the provision of maintenance and support to critical systems. These contracts are provided by Capita plc through a wholly owned subsidiary - Capita Secure Information Solutions Limited (“CSIS”).
- 1.2 As a result of a corporate restructure, Capita are seeking to novate these contracts to a new Capita company in order to facilitate the onward sale of that part of their business.
- 1.3 The primary purpose of this paper is to provide the details of the novation and the underlying contracts to support an Authority decision to novate existing contracts pursuant to the TVFCS Inter Authority Agreement (IAA).

2. RECOMMENDATION

That Management Committee:

- 2.1 **APPROVE** that the Deed or Novation between Oxfordshire County Council, Royal Berkshire Fire Authority, Capita Secure Information Solutions Limited (“CSIS”) and Capita (SSS) Limited (in relation to the ‘Mobilising System Contract’) be completed.
- 2.2 **APPROVE** that the Deed of Novation between Royal Berkshire Fire Authority Capita Secure Information Solutions Limited (“CSIS”), and Capita (SSS) Limited, in relation to the contract for the provision, maintenance and support

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of the DS3000 Integrated Communication Control System (ICCS) be completed.

- 2.3 **APPROVE** retrospectively the ICCS maintenance and support contract that was put in place between January 2021 and April 2022 as this decision was not put before the Authority at the time.

3. **REPORT**

- 3.1 Thames Valley Fire Control Service (TVFCS) utilises the 'Vision 4' mobilising system and the DS3000 Integrated Communication Control System (ICCS) supplied by the Secure Solutions and Services business ("SSS") that currently sits within Capita Secure Information Solutions Limited ("CSIS") a subsidiary wholly owned by Capita plc.
- 3.2 Earlier this year Capita plc undertook an extensive review of its portfolio, which has led to a decision to restructure some areas of its business with the intention to transfer the entire SSS business to a new company within the Capita group, namely Capita (SSS) Limited. This is set out in the letters and deeds of novation in the appendices.
- 3.3 This transfer and restructure will enable Capita to further rationalise their business model resulting in the sale of Capita SSS. NEC Software Solutions UK Limited has been identified as a potential purchaser of Capita SSS.
- 3.4 The contracts in question provide the maintenance and support elements for both the Vision and ICCS systems. At the point of transfer, both contracts would become the responsibility of Capita SSS for all the obligations and liabilities under those agreements. This would ensure TVFCS experience no break in service continuity.
- 3.5 At the meeting of the Management Committee held on the 29 July 2021, there was approval given following the recommendation from the Thames Valley Fire Control Service (TVFCS) Joint Committee on 12 July 2021, pursuant to the inter authority agreement (IAA) relating to the steady state operation of the TVFCS, to extend the contract of the 'Vision 4' mobilising system of one year from April 2022 – March 2023.
- 3.6 The agreement to extend the contract of the 'Vision 4' mobilising system of one year from April 2022 – March 2023 ensured the necessary technical support arrangements between TVFCS and Capita SSS could be maintained.
- 3.7 Furthermore, in evaluating the optimum extension period, consideration was given toward the announcement made by Capita plc in March 2021, relating to a restructuring programme that would result in the sale of Capita SSS. By agreeing to the one year extension, this will allow RBFRS to monitor and react to the outcome of the sale and consider how to proceed beyond the extended contract end date.
- 3.8 Officers will bring forward recommendations to the TVFCS Joint Committee in July 2022 setting out whether to further extend the contract in line with the agreement or seek to commence a full replacement.

- 3.9 When TVFCS 'went live' in 2015 there were two ICCS contracts, which were owned by Oxfordshire County Council (OCC) and RBFA respectively. Following a recommendation from the TVFCS 'steady state transition plan in 2016, these contracts were brought into a single ICCS contract which ran from April 2017 until January 2021.
- 3.10 This necessitated a further extension to this agreement to cover the period from January 2021 until April 2022. This end date would align the ICCS contract to the break in the Vision contract. However, due to complicating factors at the time, predominantly arising from resource and capacity issues due to the services response to Covid-19, this decision was not brought before the Authority as set out in clause 17.3 of the IAA.
- 3.11 The award was made from a compliant framework and budget provision was reported through the existing maintenance and support line in the budget papers that came before the Authority in February 2021. Members are asked to note this retrospectively.
- 3.12 The ICCS contract will require review and an additional contract term put in place to further align provision to the Vision contract as described in 3.5, that is until April 2023 and this will come through Authority in February 2022
- 3.13 Officers are currently seeking clarity on the best route to market to achieve this against a backdrop of uncertainty around available frameworks, the ongoing sale of Capita SSS and a collapsing timeframe. It is the intention provide this clarity and a recommended decision to the Management Committee in February 2022.

4. CONTRIBUTION TO STRATEGIC COMMITMENTS

- 4.1 Commitment 2 – We will ensure a swift and appropriate response when called to emergencies.
- 4.2 Commitment 5 – We will ensure that Royal Berkshire Fire and Rescue Service provides good value for money.

5. FINANCIAL IMPLICATIONS

- 5.1 The maintenance and support aspects of both contracts are paid from the TVFCS Revenue Account and the current contract value will remain the same.

6. LEGAL IMPLICATIONS

- 6.1 Both contracts are detailed within the TVFCS Inter Authority Agreement (IAA), "Clause 17.5. No material variation shall be made to a TVFCS Contract without the prior agreement of the Fire Authorities (not to be unreasonably withheld or delayed) [...]"
- 6.2 The IAA also states "Clause 17.3. [...] A Fire Authority, on its own account or jointly with another, shall not enter into a new TVFCS Contract without the

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agreement of the Fire Authorities (not to be unreasonably withheld or delayed) [...].”

- 6.3 RBFA and OCC are parties to the ‘Mobilising System Contract’. RBFA is sole lead on the contract for the provision, maintenance and support of DS3000 (ICCS). The legal implications of terminating or extending the contract are set out in the contract and procurement teams of RBFA and OCC have been engaged to ensure that the contracting authorities comply with the relevant legislation.

7. EQUALITY DIVERSITY AND INCLUSION IMPLICATIONS

- 7.1 There are no equality and diversity implications identified at this time.

8. RISK IMPLICATIONS

- 8.1 The sale of Capita was captured as a high risk in the TVFCS risk register: “If Capita SSS is sold and the purchaser makes unfavourable decisions on software development and provision of support, which is likely given commercial uncertainties around the sale, then we can expect TVFCS to experience substantial impacts on their ability to deliver an efficient, effective and resilient service which is significant in respect of delivering our statutory fire and rescue functions.”
- 8.2 The mitigation for this is set out in 3.5-3.8 and resulted in a one year extension of the Vision contract with a review and decision point planned for July 2022.
- 8.3 Securing provision of an extended ICCS contract aligned to the above will enable flexibility of decision making in respect of the potential options that will be presented in July 2022.

9. CONSISTENCY WITH DUTY TO COLLABORATE

- 9.1 TVFCS is a collaborative shared service between BFRS, Oxfordshire Fire and Rescue Service (OFRS) and Royal Berkshire Fire and Rescue Service (RBFRS).

10. PRINCIPAL CONSULTATION

- 10.1 Chief Fire Officer
10.2 Chief Finance Officer
10.3 Clerk and Monitoring Officer

11. BACKGROUND PAPERS

- 11.1 Management Committee 29 July 2021, agenda item 9 – Thames Valley Fire Control Mobilising Requirements.

12. APPENDICES

- 12.1 Appendix A – Capita letter dated 30 September 2021 and deed of novation between Oxfordshire County Council, RBFA and Capita SSS
- 12.2 Appendix B - Capita letter dated 12 October 2021 and deed of novation between RBFA and Capita SSS.

13. CONTACT DETAILS

- 13.1 Jim Powell, Area Manager Collaboration and Policy (AM C&P)
powellj@rbfrs.co.uk 07774215664

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Email: HarrisS@tvfcs.org.uk

FAO: Simon Harris
Royal Berkshire Fire Authority
Thames Valley Fire Control Service
Newsham Court
Pincents Kiln
Calcott, Reading
RG31 7SD

30 September 2021

(Sent by post and email)

Dear Simon

Transfer of the Secure Solutions and Services (“SSS”) business to Capita (SSS) Limited (“Capita SSS”) and subsequent sale of Capita SSS**1. Capita plc restructure**

As you are already aware, Capita plc has recently conducted an extensive review of its portfolio with a view to consolidating its activities into consulting, transformation and digital services. As a result of this, we are proposing to restructure some areas of our business. A number of businesses within the Capita family are being affected by the restructure. The Secure Solutions and Services business (“SSS”) that currently provides services to your organisation has been identified as one such business.

The SSS business currently sits in Capita Secure Information Solutions Limited (“CSIS”) which is a wholly owned subsidiary of Capita plc. CSIS also houses other Capita businesses. As part of the restructure, we are intending to transfer the entire SSS business to a new company within the Capita group which has been set up for this purpose. This company is called Capita (SSS) Limited (Company Number: 13052116) (“Capita SSS”). At this point we do not have a precise date for the proposed transfer.

The transfer of the SSS business to Capita SSS would, in order to be fully effective, involve all customer contracts, supplier contracts, licences and employees transferring to Capita SSS. The contract between your organisation and CSIS (the “Agreement”) is one such customer contract that would transfer for that purpose. At the point of transfer all Capita’s rights under your Agreement would transfer to Capita SSS, and Capita SSS would become responsible for all of the obligations and liabilities under your Agreement as though it had always been a party to the Agreement. As under the proposal all supplier contracts, resources and employees transfer to Capita SSS at the same point, your organisation would experience no break in service continuity whatsoever.

2. Proposed share sale of Capita SSS

Against the backdrop of our restructure (as outlined above), we also wanted to inform you NEC Software Solutions UK Limited has been identified as a potential purchaser of Capita SSS. Capita plc has therefore entered into negotiations with NEC Software Solutions UK Limited in relation to the purchase of Capita SSS.

It goes without saying that Capita plc want to protect the interests of its employees and, importantly, its customers and suppliers. Following extensive considerations and due diligence, we are confident that NEC Software Solutions UK Limited is ideally placed to take Capita SSS forward during 2021 and beyond.

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Appendix A

3. Next steps

We are therefore writing to you as one of the customers of SSS (and in similar terms to other customers) to ask for your co-operation in transferring the Agreement. For that purpose we have enclosed with this letter a formal Deed of Novation and Consent. This document serves two purposes:

1. Firstly, it sets out the basis on which your Agreement will be novated from CSIS to Capita SSS, and provides you with comfort that your rights and obligations under your Agreement remain unchanged following the transfer. The actual date of the business transfer (which will also be the “effective date” of the novation) will be notified to you separately in writing once known;
2. Secondly, it provides your consent to the subsequent sale of Capita SSS NEC Software Solutions UK Limited and confirmation that you would not as a result wish to exercise any right of termination that you may have under the Agreement in relation to changes in control of the contractor. This consent will remain in place for 6 months from the novation of the contract to Capita SSS, and applies only to a sale to NEC Software Solutions UK Limited.

Please note that no other changes to your Agreement are anticipated by this Deed of Novation and Consent. Following signature, it will continue in all other respects as currently drafted.

In anticipation of your agreement, this Deed of Novation and Consent has already been executed by both CSIS (as the outgoing supplier) and Capita SSS (as the new supplier). Assuming that you are comfortable we would ask that you arrange signature on behalf of your organisation and return the document to us as soon as possible. This could be by hard copy (addressed to Capita SSS at Methuen Park, Bath Rd, Corsham, Chippenham SN14 0TW) or by email to SSS.Transfer@capita.com.

We are mindful that the Agreement may have been originally awarded to CSIS following a public procurement exercise conducted in accordance with the Public Contracts Regulations (“PCR 2015”) or equivalent Regulation in force at the time. We fully appreciate that as a contracting authority required to comply with PCR 2015, you will need to be confident that the corporate restructuring (to transfer the SSS business to Capita SSS) and any subsequent share sale of Capita SSS to NEC Software Solutions UK Limited will not undermine your ongoing compliance obligations. For the reasons outlined above, we are confident that notwithstanding the restructure and any subsequent share sale to NEC Software Solutions UK Limited, at all times Capita SSS will have the same technical ability and financial standing required to continue supplying the high quality services you are used to receiving from CSIS. Should you require any further information in relation to the proposed corporate restructuring and/or proposed share sale in the context of procurement law (or other) considerations, then please do not hesitate to contact us as we would be pleased to assist and provide any evidence that may be required.

Once you have received notification that the business transfer has taken place, all payments relating to your Agreement should be made to Capita SSS. We would therefore ask that you make the necessary internal arrangements to set Capita SSS up on your system as a supplier now. Payment details for Capita SSS are set out in full in the Appendix to this letter. If you currently pay by Direct Debit, Capita SSS will be in touch separately regarding the transfer of your Direct Debit mandate.

Your key contact, their telephone number and email address remain the same. However, we request that any future correspondence and notices relating to your Agreement are sent to Capita SSS at Methuen Park, Bath Rd, Corsham, Chippenham SN14 0TW marked for the attention of your key contact. All correspondence and notices in relation to the transfer of SSS should be sent by email to SSS.Transfer@capita.com.

We will of course keep you updated on the progress of the sale. Should you have any questions or concerns at this point please do not hesitate to get in touch with me.



This letter and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

Yours faithfully

A handwritten signature in black ink, appearing to read 'P. Eggleton', with a long horizontal flourish extending to the right.

Paul Eggleton

Managing Director – Secure Solutions and Services

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Appendix A

Appendix

Payment Details

Bank details	Payee	Capita (SSS) Limited
	Bank name	Barclays Bank
	Account number	13837386
	Sort code	206759
	IBAN number	GB98BARC20675913837386
	SWIFT number	BARCGB22
Remittance advices	To be emailed to	CBSremittances@capita.com
	To be sent to	PO Box 212 Faverdale Industrial Estate Darlington. GB DL1 9HN Telephone:+44 (0)208 535 8221



THIS DEED OF NOVATION is made on

2021

BETWEEN

- (1) **OXFORDSHIRE COUNTY COUNCIL** whose office is at County Hall, New Road, Oxford, OX1 1ND (“**Client A**”);
- (2) **ROYAL BERKSHIRE FIRE AUTHORITY** whose office is at Thames Valley Fire Control Service, Newsham Court, Pincents Kiln, Calcott, Reading, Berkshire, RG31 7SD (“**Client B**” and together with Client A, the “**Clients**”);
- (3) **CAPITA SECURE INFORMATION SOLUTIONS LIMITED** incorporated and registered in England and Wales with company number 01593831 whose registered office is at 65 Gresham Street, London, EC2V 7NQ (the “**Transferor**”); and
- (4) **CAPITA (SSS) LIMITED** incorporated and registered in England and Wales with company number 13052116 whose registered office is at 65 Gresham Street, London, EC2V 7NQ (the “**Transferee**”).

RECITALS

- (A) The Clients and the Transferor are party to a contract for the provision of a Mobilising System and Related Services for the Thames Valley Fire Control Service dated 21 January 2014 as may have been varied from time to time (the “**Contract**”).
- (B) The Transferor and Transferee are parties to a business transfer agreement dated 30 September 2021 whereby the Transferor has agreed to transfer its Secure Solutions and Services business to the Transferee (the “**Business Transfer Agreement**”) at a future date, which will be notified by e-mail to the Clients and the Transferee by the Transferor (the “**Effective Date**”).
- (C) Notwithstanding that the Transferor is an original party to the Contract, due to the Business Transfer Agreement, the parties have agreed to novate the Transferor’s rights, obligations and liabilities under the Contract to the Transferee on the terms of this Deed with effect from the Effective Date.
- (D) The Clients have further provided consent for a limited period to the proposed change of control of the Transferee as set out in this Deed.

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Appendix A

IT IS AGREED AS FOLLOWS

1 NOVATION

1.1 With effect from the Effective Date:

1.1.1 the Transferor transfers all its rights and obligations under the Contract to the Transferee;

1.1.2 the Transferee shall enjoy all the rights and benefits of the Transferor under the Contract. The Transferee agrees to perform the Contract and be bound by its terms in every way as if it were the original party to it in place of the Transferor;

1.1.3 the Clients agree to perform the Contract and be bound by its terms in every way as if the Transferee were the original party to it in place of the Transferor; and

1.1.4 all references to the Transferor in the Contract shall be read and construed as references to the Transferee.

1.2 If there is a conflict between this Deed and the Contract, this Deed shall take precedence.

2 RELEASE OF OBLIGATIONS AND LIABILITIES

2.1 With effect from the Effective Date:

2.1.1 the Clients and the Transferor release and discharge each other from all claims, obligations and demands whatsoever in respect of the Contract, whether arising before, on or after the Effective Date, and in each case whether known or unknown to the releasing party;

2.1.2 each of the Clients and the Transferee shall have the right to enforce the Contract and pursue any claims and demands under the Contract against the other with respect to matters arising before, on or after the Effective Date as though the Transferee were the original party to the Contract instead of the Transferor; and

2.1.3 each of the Clients and the Transferor agree to the ownership, right and interest of the Transferee in and to any unpaid billings, fees, reimbursable payable to or accrued by the Transferor in or under the terms of the Contract for the period prior to the Effective Date and the Clients agree to pay any such unpaid or accrued amounts to the Transferee.

3 CONSENT TO CHANGE OF CONTROL

3.1 In executing this Deed the Clients also provides the necessary consent to any subsequent change of control of the Transferee generated by the sale of the Transferee from Capita plc to NEC Software Solutions UK Limited within a period of 6 months from the Effective Date and confirms that it will not exercise and waives any right of termination under the Contract in relation to a change of control of the Transferee to NEC Software Solutions UK Limited within a period of 6 months from the Effective Date.

3.2 The parties agree that such consent and waiver shall satisfy:



3.2.1 any requirements set out in the Contract on the Transferee or any other entity in the Capita group of companies to notify the Clients in relation to the proposed change of control of the Transferee as set out in Clause 3.1 above; and

3.2.2 any requirements set out in the Contract on the Clients to provide any further consent or waiver (written or otherwise) to the proposed change of control of the Transferee as set out in Clause 3.1 above.

4 TERMINATION

In the event that the Effective Date does not occur within 6 months of the date of this Deed it will automatically terminate and all obligations and rights of the Parties under this Deed of Novation shall lapse (except for Clauses 7 to 14 (inclusive)) and no party shall have any claim against another, save in respect of any prior breach of the underlying Contract.

5 PERIOD FOR BRINGING CLAIMS CAUSED BY BREACH OF THE CONTRACT

The period of time permitted for bringing a claim for breach of this Deed, where that breach is caused by a party's alleged failure to perform its duties and/or discharge its obligations under the Contract, shall be the same period of time permitted for bringing a claim solely for breach of the Contract in respect of such alleged failure.

6 FURTHER ASSURANCES

Each of the parties to this Deed agrees to perform (or procure the performance of) all further acts and things and execute and deliver (or procure the execution and delivery of) such further documents as may be required by law or as any party may reasonably require to effect the novation referred to in Clause 1, the release and discharge of the obligations referred to in Clause 2, and the consent to change of control referred to in Clause 3 to give any party the full benefit of this Deed.

7 NOTICES

7.1 Subject to Clause 7.3, any notice or other communication given under or in connection with this Deed will be in writing (which shall include email) in the English language and may be delivered by hand, first class post (or air mail if overseas) or e-mail and addressed to the recipient using the details below (and each party will promptly notify the other in writing of any change to its details for service):

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Appendix A

Client A

For the attention of: Sarah Hayes

Address: County Hall, New Road, Oxford, OX1 1ND

Email: sarah.hayes@oxfordshire.gov.uk

Copy to: N/A

Client B

For the attention of: Simon Harris

Address: Thames Valley Fire Control Service, Newsham Court, Pincents Kiln, Calcott, Reading, Berkshire, RG31 7SD

Email: HarrisS@tvfcs.org.uk

Copy to: N/A

Transferee

For the attention of: Paul Eggleton

Address: Methuen Park, Chippenham, SN14 0TW

Email: SSS.Transfer@capita.com

Copy to: richard.green2@capita.com

Transferor

For the attention of: James Cowan

Address: 65 Gresham Street, London, England, EC2V 7NQ

Email: SSS.Transfer@capita.com

Copy to: sarah.millington@capita.com

- 7.2 Any such notice or communication given in accordance with Clause 7.1 will be deemed to have been served if delivered by:
- 7.2.1 hand, at the time the demand, notice or communication is left at that party's proper address for service;
 - 7.2.2 prepaid first class post, on the second Business Day after posting it or in the case of airmail on the fifth Business Day after posting it; and
 - 7.2.3 email, at the time of transmission
- provided that if a notice or communication is deemed to be served before 9.00am on a Business Day it will be deemed to be served at 9.00am on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00pm on a Business Day it will be deemed to be served at 9.00am on the immediately following Business Day.
- 7.3 To prove service of a notice or communication it will be sufficient to prove that the provisions of Clause 7 were complied with.
- 7.4 This Clause 7 will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.



7.5 For the purposes of this Clause 7, "Business Day" shall mean any day (other than a Saturday or Sunday) on which banks are open in London for normal banking business.

8 INVALIDITY

If any provision in this Deed shall be held to be illegal, invalid or unenforceable, in whole or in part, such provision or part shall to that extent be deemed not to form part of this Deed but the legality, validity or enforceability of the remainder of this Deed shall not be affected.

9 COUNTERPARTS

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one deed.

10 VARIATION

No variation of this Deed shall be effective unless it is in writing and signed by the parties, or their authorised representatives.

11 ASSIGNMENT

Neither party shall assign any of its rights and/or obligations under this Deed without the prior written consent of the other party.

12 THIRD PARTY RIGHTS

The parties do not intend that any term of this Deed of Novation will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

13 GOVERNING LAW

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

14 JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation.

This document has been entered into as a deed and is delivered and takes effect on the day and the year first stated above.

Agenda Item 7

Appendix A

Executed as a **DEED** by **OXFORDSHIRE COUNTY COUNCIL**

acting by two directors or a director and a secretary:

.....

Director

.....

Director / Secretary

Executed as a **DEED** by **ROYAL BERKSHIRE FIRE AUTHORITY**

acting by two directors or a director and a secretary:

.....

Director

.....

Director / Secretary

Executed as a **DEED** by **CAPITA SECURE INFORMATION SOLUTIONS LIMITED**

acting by two directors or a director and a secretary:



.....

Director



.....

Secretary



Executed as a **DEED** by **CAPITA (SSS) LIMITED**

acting by two directors or a director and a secretary:

.....
Director

.....
Secretary

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Email: HarrisS@tvfcs.org.uk

(Sent by post and email)

FAO: Simon Harris
 Royal Berkshire Fire Authority
 Pincents Kiln Industrial Park,
 Newsham Court, Calcot, Reading
 RG31 7SD

FAO: Simon Harris

12th October 2021

Dear Sirs,

Transfer of the Secure Solutions and Services (“SSS”) business to Capita (SSS) Limited (“Capita SSS”) and subsequent sale of Capita SSS

1. Capita plc restructure

As you are already aware, Capita plc has recently conducted an extensive review of its portfolio with a view to consolidating its activities into consulting, transformation and digital services. As a result of this, we are proposing to restructure some areas of our business. A number of businesses within the Capita family are being affected by the restructure. The Secure Solutions and Services business (“**SSS**”) that currently provides services to your organisation has been identified as one such business.

The SSS business currently sits in Capita Secure Information Solutions Limited (“**CSIS**”) which is a wholly owned subsidiary of Capita plc. CSIS also houses other Capita businesses. As part of the restructure, we are intending to transfer the entire SSS business to a new company within the Capita group which has been set up for this purpose. This company is called Capita (SSS) Limited (Company Number: 13052116) (“**Capita SSS**”). At this point we do not have a precise date for the proposed transfer.

The transfer of the SSS business to Capita SSS would, in order to be fully effective, involve all customer contracts, supplier contracts, licences and employees transferring to Capita SSS. The contract between your organisation and Capita Business Services Limited for the provision of DS3000 support and maintenance dated 27th April 2021 (the “**Call-off Agreement**”), which was awarded pursuant to the framework agreement between KCS Professional Services and Capita Business Services Ltd for the provision of KCS Framework Y16018 (the “**Framework Agreement**”), is one such customer contract that would transfer for that purpose. At the point of transfer the Framework Agreement would remain with Capita and all Capita’s rights under your Call-off Agreement would transfer to Capita SSS, and Capita SSS would become responsible for all of the obligations and liabilities under your Call-off Agreement as though it had always been a party to the Call-off Agreement. As under the proposal all supplier contracts, resources and employees transfer to Capita SSS at the same point, your organisation would experience no break in service continuity whatsoever.

2. Proposed share sale of Capita SSS

Against the backdrop of our restructure (as outlined above), we also wanted to inform you that NEC Software Solutions UK Limited has been identified as a potential purchaser of Capita SSS. Capita plc has therefore entered into negotiations with NEC Software Solutions UK Limited in relation to the purchase of Capita SSS.

It goes without saying that Capita plc want to protect the interests of its employees and, importantly, its customers and suppliers.

Capita Business Services Ltd.
 65 Gresham Street
 London
 EC2V 7NQ

www.capita.com

Registered Office: 65 Gresham Street, London, EC2V 7NQ. Registered in England No. 02299747.

Royal Berkshire Fire Authority 10465

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Appendix B

Following extensive considerations and due diligence, we are confident that NEC Software Solutions UK Limited is ideally placed to take Capita SSS forward during 2021 and beyond.

3. Next steps

We are therefore writing to you as one of the customers of SSS (and in similar terms to other customers) to ask for your co-operation in transferring the Call-off Agreement. For that purpose we have enclosed with this letter a formal Deed of Novation and Consent. This document serves two purposes:

1. Firstly, it sets out the basis on which your Call-off Agreement will be novated from Capita Business Services Limited to Capita SSS, and provides you with comfort that your rights and obligations under your Call-off Agreement remain unchanged following the transfer. The actual date of the business transfer (which will also be the “effective date” of the novation) will be notified to you separately in writing once known;
2. Secondly, it provides your consent to the subsequent sale of Capita SSS to NEC Software Solutions UK Limited and confirmation that you would not as a result wish to exercise any right of termination that you may have under the Call-off Agreement in relation to changes in control of the contractor. This consent will remain in place for 6 months from the novation of the contract to Capita SSS, and applies only to a sale NEC Software Solutions UK Limited.

Please note that no other changes to your Call-off Agreement are anticipated by this Deed of Novation and Consent. Following signature it will continue in all other respects as currently drafted.

In anticipation of your agreement, this Deed of Novation and Consent has already been executed by both Capita Business Services Limited (as the outgoing supplier) and Capita SSS (as the new supplier). Assuming that you are comfortable we would ask that you arrange signature on behalf of your organisation and return the document to us as soon as possible. This could be by hard copy (addressed to Capita SSS at Methuen Park, Bath Rd, Corsham, Chippenham SN14 0TW) or by email to SSS.Transfer@capita.com.

We are mindful that the Framework Agreement and Call-off Agreement may have been originally awarded to CSIS following a public procurement exercise conducted in accordance with the Public Contracts Regulations (“**PCR 2015**”) or equivalent Regulation in force at the time. We fully appreciate that as a contracting authority required to comply with PCR 2015, you will need to be confident that the corporate restructuring (to transfer the SSS business to Capita SSS) and any subsequent share sale of Capita SSS to NEC Software Solutions UK Limited will not undermine your ongoing compliance obligations. For the reasons outlined above, we are confident that notwithstanding the restructure and any subsequent share sale to NEC Software Solutions UK Limited, at all times Capita SSS will have the same technical ability and financial standing required to continue supplying the high quality services you are used to receiving from Capita Business Services Limited. Should you require any further information in relation to the proposed corporate restructuring and/or proposed share sale in the context of procurement law (or other) considerations, then please do not hesitate to contact us as we would be pleased to assist and provide any evidence that may be required.

Once you have received notification that the business transfer has taken place, all payments relating to your Call-off Agreement should be made to Capita SSS. We would therefore ask that you make the necessary internal arrangements to set Capita SSS up on your system as a supplier now. Payment details for Capita SSS are set out in full in the Appendix to this letter. If you currently pay by Direct Debit, Capita SSS will be in touch separately regarding the transfer of your Direct Debit mandate.

Your key contact, their telephone number and email address remain the same. However, we request that any future correspondence and notices relating to your Call-off Agreement are sent to Capita SSS at Methuen Park, Bath Rd, Corsham, Chippenham SN14 0TW marked for the attention of your key contact. All correspondence and notices in relation to the transfer of SSS should be sent by email to SSS.Transfer@capita.com.



We will of course keep you updated on the progress of the sale. Should you have any questions or concerns at this point please do not hesitate to get in touch with me.

This letter and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

Yours faithfully

A handwritten signature in black ink, appearing to read 'P. Eggleton', written over a light grey horizontal line.

Paul Eggleton

Managing Director – Secure Solutions and Services

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Appendix B

Appendix

Payment Details

Bank details	Payee	Capita (SSS) Limited
	Bank name	Barclays Bank
	Account number	13837386
	Sort code	206759
	IBAN number	GB98BARC20675913837386
	SWIFT number	BARCGB22
Remittance advices	To be emailed to	CBSremittances@capita.com
	To be sent to	PO Box 212 Faverdale Industrial Estate Darlington. GB DL1 9HN Telephone:+44 (0)208 535 8221



THIS DEED OF NOVATION is made on

2021

BETWEEN

- (1) **ROYAL BERKSHIRE FIRE AUTHORITY** of Pincent's Kiln Industrial Park, Newsham Court, Calcot, Reading, RG31 7SD (the "**Client**");
- (2) **CAPITA BUSINESS SERVICES LIMITED** incorporated and registered in England and Wales with company number 02299747 whose registered office is at 65 Gresham Street, London, EC2V 7NQ (the "**Transferor**"); and
- (3) **CAPITA (SSS) LIMITED** incorporated and registered in England and Wales with company number 13052116 whose registered office is at 65 Gresham Street, London, EC2V 7NQ (the "**Transferee**").

RECITALS

- (A) The Client and the Transferor are party to an agreement for the provision of DS3000 support and maintenance dated 27th April 2021 which was awarded pursuant to KCS Framework Y16018 as may have been varied from time to time (the "**Contract**").
- (B) The Transferor and Transferee are parties to a business transfer agreement dated 30th September 2021 whereby the Transferor has agreed to transfer its Secure Solutions and Services business to the Transferee (the "**Business Transfer Agreement**") at a future date, which will be notified by e-mail to the Client and the Transferee by the Transferor (the "**Effective Date**").
- (C) Notwithstanding that the Transferor is an original party to the Contract, due to the Business Transfer Agreement, the parties have agreed to novate the Transferor's rights, obligations and liabilities under the Contract to the Transferee on the terms of this Deed with effect from the Effective Date.
- (D) The Client has further provided consent for a limited period to the proposed change of control of the Transferee as set out in this Deed.

IT IS AGREED AS FOLLOWS

1 NOVATION

1.1 With effect from the Effective Date:

- 1.1.1 the Transferor transfers all its rights and obligations under the Contract to the Transferee;
- 1.1.2 the Transferee shall enjoy all the rights and benefits of the Transferor under the Contract. The Transferee agrees to perform the Contract and be bound by its terms in every way as if it were the original party to it in place of the Transferor;

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- 1.1.3 the Client agrees to perform the Contract and be bound by its terms in every way as if the Transferee were the original party to it in place of the Transferor; and
 - 1.1.4 all references to the Transferor in the Contract shall be read and construed as references to the Transferee.
- 1.2 If there is a conflict between this Deed and the Contract, this Deed shall take precedence.

2 RELEASE OF OBLIGATIONS AND LIABILITIES

- 2.1 With effect from the Effective Date:
- 2.1.1 the Client and the Transferor release and discharge each other from all claims, obligations and demands whatsoever in respect of the Contract, whether arising before, on or after the Effective Date, and in each case whether known or unknown to the releasing party;
 - 2.1.2 each of the Client and the Transferee shall have the right to enforce the Contract and pursue any claims and demands under the Contract against the other with respect to matters arising before, on or after the Effective Date as though the Transferee were the original party to the Contract instead of the Transferor; and
 - 2.1.3 each of the Client and the Transferor agree to the ownership, right and interest of the Transferee in and to any unpaid billings, fees, reimbursable payable to or accrued by the Transferor in or under the terms of the Contract for the period prior to the Effective Date and the Client agrees to pay any such unpaid or accrued amounts to the Transferee.

3 CONSENT TO CHANGE OF CONTROL

- 3.1 In executing this Deed the Client also provides the necessary consent to any subsequent change of control of the Transferee generated by the sale of the Transferee from Capita plc to NEC Software Solutions UK Limited within a period of 6 months from the Effective Date and confirms that it will not exercise and waives any right of termination under the Contract in relation to a change of control of the Transferee to NEC Software Solutions UK Limited within a period of 6 months from the Effective Date.
- 3.2 The parties agree that such consent and waiver shall satisfy:
- 3.2.1 any requirements set out in the Contract on the Transferee or any other entity in the Capita group of companies to notify the Client in relation to the proposed change of control of the Transferee as set out in Clause 3.1 above; and
 - 3.2.2 any requirements set out in the Contract on the Client to provide any further consent or waiver (written or otherwise) to the proposed change of control of the Transferee as set out in Clause 3.1 above.



4 TERMINATION

In the event that the Effective Date does not occur within 6 months of the date of this Deed it will automatically terminate and all obligations and rights of the Parties under this Deed of Novation shall lapse (except for Clauses 7 to 14 (inclusive)) and no party shall have any claim against another, save in respect of any prior breach of the underlying Contract.

5 PERIOD FOR BRINGING CLAIMS CAUSED BY BREACH OF THE CONTRACT

The period of time permitted for bringing a claim for breach of this Deed, where that breach is caused by a party's alleged failure to perform its duties and/or discharge its obligations under the Contract, shall be the same period of time permitted for bringing a claim solely for breach of the Contract in respect of such alleged failure.

6 FURTHER ASSURANCES

Each of the parties to this Deed agrees to perform (or procure the performance of) all further acts and things and execute and deliver (or procure the execution and delivery of) such further documents as may be required by law or as any party may reasonably require to effect the novation referred to in Clause 1, the release and discharge of the obligations referred to in Clause 2, and the consent to change of control referred to in Clause 3 to give any party the full benefit of this Deed.

7 NOTICES

7.1 Subject to Clause 7.3, any notice or other communication given under or in connection with this Deed will be in writing (which shall include email) in the English language and may be delivered by hand, first class post (or air mail if overseas) or e-mail and addressed to the recipient using the details below (and each party will promptly notify the other in writing of any change to its details for service):

Client

For the attention of: Simon Harris

Address: Royal Berkshire Fire Authority, Pincents Kiln Industrial Park, Newsham Court, Calcot, Reading, RG31 7SD

Email: HarrisS@tvfcs.org.uk

Copy to: N/A

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Appendix B

Transferee

For the attention of: Paul Eggleton

Address: 65 Gresham Street, London, England, EC2V 7NQ

Email: SSS.Transfer@capita.com

Copy to: richard.green2@capita.com

Transferor

For the attention of: James Cowan

Address: 65 Gresham Street, London, England, EC2V 7NQ

Email: SSS.Transfer@capita.com

Copy to: sarah.millington@capita.com

- 7.2 Any such notice or communication given in accordance with Clause 7.1 will be deemed to have been served if delivered by:
- 7.2.1 hand, at the time the demand, notice or communication is left at that party's proper address for service;
 - 7.2.2 prepaid first class post, on the second Business Day after posting it or in the case of airmail on the fifth Business Day after posting it; and
 - 7.2.3 email, at the time of transmission
- provided that if a notice or communication is deemed to be served before 9.00am on a Business Day it will be deemed to be served at 9.00am on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00pm on a Business Day it will be deemed to be served at 9.00am on the immediately following Business Day.
- 7.3 To prove service of a notice or communication it will be sufficient to prove that the provisions of Clause 7 were complied with.
- 7.4 This Clause 7 will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.
- 7.5 For the purposes of this Clause 7, "Business Day" shall mean any day (other than a Saturday or Sunday) on which banks are open in London for normal banking business.

8 INVALIDITY

If any provision in this Deed shall be held to be illegal, invalid or unenforceable, in whole or in part, such provision or part shall to that extent be deemed not to form part of this Deed but the legality, validity or enforceability of the remainder of this Deed shall not be affected.



9 COUNTERPARTS

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one deed.

10 VARIATION

No variation of this Deed shall be effective unless it is in writing and signed by the parties, or their authorised representatives.

11 ASSIGNMENT

Neither party shall assign any of its rights and/or obligations under this Deed without the prior written consent of the other party.

12 THIRD PARTY RIGHTS

The parties do not intend that any term of this Deed of Novation will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

13 GOVERNING LAW

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

14 JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation.

This document has been entered into as a deed and is delivered and takes effect on the day and the year first stated above.

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Appendix B

Executed as a **DEED** by **ROYAL BERKSHIRE
FIRE AUTHORITY**

acting by two directors or a director and a
secretary:

.....
Director

.....
Director / Secretary

Executed as a **DEED** by **CAPITA BUSINESS
SERVICES LIMITED**

acting by two directors or a director and a
secretary:



.....
Director



.....
Secretary

Executed as a **DEED** by **CAPITA (SSS)
LIMITED**

acting by two directors or a director and a
secretary:



.....
Director



.....
Secretary



ROYAL BERKSHIRE FIRE AUTHORITY REPORT

COMMITTEE	MANAGEMENT COMMITTEE
DATE OF MEETING	7 DECEMBER 2021
SUBJECT	IMMEDIATE DETRIMENT FRAMEWORK
LEAD OFFICER	BECCI JEFFERIES, HEAD OF HUMAN RESOURCES AND LEARNING AND DEVELOPMENT
LEAD MEMBER	N/A
EXEMPT INFORMATION	NONE
ACTION	FOR DECISION

1. **EXECUTIVE SUMMARY**

- 1.1 This report outlines the latest position in relation to immediate detriment cases under the McCloud/ Sargeant ruling.
- 1.2 On 8 October 2021, the Local Government Association (LGA) and Fire Brigades Union announced that they had reached agreement on a Memorandum of Understanding and Framework for addressing such cases. Each Fire and Rescue Authority (FRA) is asked to consider adoption of the Framework.
- 1.3 The Management Committee are invited to consider this report and agree the adoption of the Framework, providing for members who have had benefits brought into payment to be covered as well as members who have not yet had benefits brought into payment. The latter in accordance with the Authority's decision of 17 February 2021.

2. **RECOMMENDATION**

That the Management Committee:

- 2.1 **NOTE** the contents of the report;
- 2.2 **AGREE** that the Immediate Detriment Framework be adopted on behalf of the Authority;

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2.3 **AGREE** that the Head of Finance and Procurement be:

- a) the authorised signatory for any 'Record of Agreed Compensation and Remedy' ('Compensation Record') on behalf of the Authority; and
- b) authorised to agree with Scheme members variations to the timescales for dates of payments when in the interests of the Scheme Manager and the Scheme member to do so;

2.4 **AGREE** that the Chief Fire Officer/ Chief Executive reviews and agrees on behalf of the Authority, the response to the current consultation on the amendments to the pension scheme regulations (3.14) being prepared by the LGA on behalf of FRAs.

3. **REPORT**

Background

- 3.1 In advance of any changes to legislation, the Home Office had previously issued informal guidance in relation to immediate detriment cases. Legal advice was then sought on whether it was lawful and appropriate for the Authority to apply this guidance in the circumstances indicated. At its meeting on 17 February 2021, the Authority resolved that all firefighters who were members of the Firefighters' Pension Scheme 1992 or New Firefighters' Pension Scheme 2006 ("their old schemes"), subject to the criteria detailed in that report, were to be treated as if in their old scheme. That resolution applied to those due to retire and those due to taper from the date of the resolution, where the calculation of benefits under legacy scheme for the remedy period is possible. It did not apply to members who had already retired.
- 3.2 Since then legal cases were brought in the High Court against the London Fire Commissioner and Nottinghamshire and City of Nottingham Fire and Rescue Authority. The cases concerned Immediate Detriment issues in relation to the McCloud/Sargeant judgment and the claimants were supported by the Fire Brigades Union (FBU). The FBU was clear that matters for affected individuals needed to be resolved sooner rather than later and it would, if necessary, support further legal cases.
- 3.3 Many Fire and Rescue Authorities (FRAs) across the UK on an individual basis had indicated that they wished to be able to deal with Immediate Detriment issues as soon as possible. The problem was not an unwillingness to do so but rather the need to identify and develop a suitable mechanism to be able to do so in a way which minimised the risks while the Government is putting in place the McCloud/Sargeant remedying legislation.

Immediate Detriment Framework

- 3.4 The Local Government Association (LGA) and the FBU have been in discussions to identify a mutually acceptable Framework, setting out a mechanism for handling Immediate Detriment cases, to assist all parties prior to completion and implementation of the McCloud/Sargeant remedying

legislation. This will help in resolving the genuine difficulties that have arisen for FRAs in making payments to those affected and in removing the potential for further court claims.

3.5 On 8 October 2021, the LGA and FBU announced that they had reached agreement on the Memorandum of Understanding (MoU) and Framework (see Appendices A and B). Each FRA is asked to consider adoption of the Framework. The FBU are of course party to the MoU which contains the Framework agreement, and in that MoU they agree that where a member receives a remedy/compensation under the Framework they will not provide any financial or other support to the member to bring legal action relating to such remedy/compensation.

3.6 The MoU (para. 4.1) makes a distinction between Category 1 and Category 2 cases:

- Category 1 - members who have not yet had benefits brought into payment
- Category 2 - members who have had benefits brought into payment.

The exception to the above is members who did not qualify for ill-health retirement under the FPS 2015 and are not currently in receipt of benefits and are applying for FPS 1992 ill-health benefits, who are treated as Category 2.

3.7 The key elements of the process outlined within Annex 2 of the MoU are that:

- Any Member who believes they fall within either Category 1 or 2 may give notice to the FRA which last employed the Member concerned requiring the FRA to investigate their case
- Within **14 days** of receipt, the FRA shall acknowledge receipt of any such notice in writing
- If the FRA accepts that the Member is entitled to a remedy under the Framework, as soon as reasonably practicable and in any event within **62 days** after receiving an application, the FRA shall send to the Member all the information they require to decide whether to receive benefits under their legacy scheme or the 2015 Scheme.

3.8 The LGA has produced guidance for FRAs on the Framework in their role as scheme managers (see Appendix C) (the Authority is the 'scheme manager' of the firefighter pension schemes). This sets out (pages. 2-3) the following steps FRAs should undertake when considering adoption of the Framework:

1. Obtain the necessary agreement to adopt the Framework
2. Notify their administrator of their intention to make use of the Framework and the timescales contained.
3. Discuss with the administrator the necessary resourcing and/or re-prioritising or work.
4. If the decision is that the Framework will not be adopted, it will be for the FRA to make their own arrangements with regard to any claims and payments made by/to members in this area. In this case, the Service would continue to treat Category 1 cases in accordance with the decision

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taken at the meeting of the Fire Authority on 17 February 2021. A further paper would need to be brought to the Authority on how to treat Category 2 cases.

5. If the Framework is adopted, scheme members should be made aware of their right to apply under the Framework and the local process for doing so.
6. This step provides further detail on what to include in the communication noted in step 5.

The LGA guidance also covers the detailed steps to be taken when undertaking remedy calculations if the Framework is adopted.

- 3.9 As noted earlier, the Fire Authority has already made the decision to treat members who have not yet had benefits brought into payment as if they were in their old scheme. The MoU and Framework will help to ensure consistency of treatment of members in Category 1 across all FRAs that adopt the Framework. If the Authority adopts the Framework, it will need to revisit the benefits of those subject to immediate detriment who have already retired (Category 2).
- 3.10 It is estimated that there are 12 category 2 cases in RBFRS. Discussion with the pension administrator, West Yorkshire Pension Fund, has commenced and the necessary actions required by the HR department, the payroll provider Dataplan and the administrator identified.
- 3.11 West Yorkshire Pension Fund have confirmed that they will work as efficiently and effectively as they can and are setting up systems to make processes as simply as possible. They are however the administrator to 28 FRAs and as such cannot guarantee that the timelines set out in the Framework and MOU can be met on every occasion.

Legislation

- 3.12 On 19 July 2021 HM Treasury's introduced the Public Services Pensions and Judicial Offices Bill (PSPJO) which sets out in law HMT's solution to the age discrimination. The Bill indicates the impact to public sector schemes, sets out the commencement of the regulations and what timings can be enforced. It provides for the closing of legacy schemes effective from 1 April 2022 amending primary legislation and repealing the protections that were found to be discriminatory.
- 3.13 Whilst the Bill provides some clarity on the technical detail associated with different circumstances for the different types of scheme members, it does not provide for how it is done. The MoU and Framework supported by the LGA guidance provide some agreement to the treatment of Immediate Detriment cases in the interim. The wider effect of the Bill will come into place on 1 October 2023.
- 3.14 On 8 November, the Home Office launched a consultation on the amendments to the pension scheme regulations to deliver the first set of changes to remove the transitional protections from the FPS 2015. A consultation response will be made on behalf of FRAs by the LGA and it is recommended the Chief Fire Officer/ Chief Executive agrees the response on behalf of the Authority. A second phase will address the issue of giving members a retrospective choice

of benefits for the remedy period and will be consulted on this separately next year.

4. CONTRIBUTION TO STRATEGIC COMMITMENTS

- 4.1 Commitment 6 – We will work with Central Government and key stakeholders in the interests of the people of Royal Berkshire.

5. FINANCIAL IMPLICATIONS

- 5.1 It is not possible at this stage to identify the specific costs associated with the recommendations of this report as these will be identified on a case-by-case basis. Using the immediate detriment framework now will not increase any direct amounts payable to individuals, it will simply bring some of those costs forward. It is understood that in agreeing to adopt the Framework, FRAs will bear the costs associated with any unauthorised tax charge which arise as a result of adjustments to pensions which are paid 12 months after the initial payment was made. The recommendation in 2.3 (b) may mitigate incurring unauthorised tax charges in some cases, where agreement is achieved and payments made are after 6 April 2022, following changes to tax provisions.
- 5.2 It is expected that the costs associated with the administration of the remedy will be borne by FRAs whilst monies owed to members will be met by government. However, there remains some uncertainty regarding the recovery of these costs and the short term impact on the revenue account. Clarity on this matter is awaited from the Home Office.
- 5.3 It is noted that in some circumstances individuals may incur additional costs as a result of a change in pension schemes e.g. annual allowance costs or receive additional payments such as the refunding of pension contributions. The Government on 27 October 2021 published a policy paper: Taxation of public service pension reform remedy, which sets out proposed revisions to existing legislation to mitigate the impact on individuals affected by the age discrimination identified in the 2015 public service pension schemes. The measure will have effect from 6 April 2022 and in some circumstances it may be more advantageous for individuals in category 2 cases to have amendments made to pensions, in accordance with wishes, post this date.
- 5.4 In not applying the guidance, further legal action could be taken by the Fire Brigades' Union and result in further litigation costs.

6. LEGAL IMPLICATIONS

- 6.1 The MoU contains a 'Compensation Record' (Annex 3 of the MoU) which the member signs and which is signed on behalf of the FRA, recording the benefits provided to the member under the Framework process. In addition, the Compensation Record also states that the benefits provided are in full and final settlement of the relevant issues noted in the Compensation Record, and the member agrees not to issue proceedings in respect of them against the

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FRA either as employer or as scheme manager, other than if there is a failure to abide by the agreement.

- 6.2 The MoU covers compensation as set out in the Framework. It does not cover any additional remedies as that is currently under consideration in the Employment Tribunal, such as injury to feelings. Therefore, the Compensation Record does not seek to settle those claims.
- 6.3 Although the Compensation Record states it is in full and final settlement of the Framework issues, it is not a formal settlement agreement or ACAS (Advisory Conciliation and Arbitration Service) COT3 agreement which would prevent an employee bringing a tribunal claim in respect of the issues.
- 6.4 The LGA has advised FRAs that:
 1. The terms of the MoU give comfort in that the FBU agrees that it will not provide any financial or other support to members who have received compensation or are otherwise remedied under the Framework. Whilst this does not mean that claims will not or cannot be brought on an individual or collective basis supported by 'no win no fees' type solicitors, one would expect that fewer firefighters would want to embark on claims themselves, and no win no fee solicitors would be aware of the risk of no awards being made for such claims, due to 'just and equitable' considerations¹;
 2. If FRAs were to try to enter into mass settlement agreements or COT3s it would be difficult to organise (as it is likely to be on an individual basis) and if it is by way of a settlement agreement there would be a cost per agreement for the independent legal advice which the FRA would usually be expected to cover. A standard cost would be around £300 plus VAT for an agreement where the terms are agreed in principle; and
 3. Moreover, COT3s and settlement agreements usually exclude the right to claim accrued pension rights from any waiver as a matter of public policy as set out in s.91 of the Pensions Act 1995, which prevents such a waiver subject to some very limited exceptions.

7. EQUALITY DIVERSITY AND INCLUSION IMPLICATIONS

- 7.1 To reduce the risk of discrimination, this report proposes that in applying the immediate detriment framework, individuals who meet the eligibility criteria are provided a choice of which scheme they would like to be in for the remedy period regardless of whether they are a claimant or non-claimant.
- 7.2 The public sector equality duty requires public bodies to eliminate discrimination, harassment, victimisation and any other conduct that is

¹ The general principle for compensation for age discrimination is that it is "just and equitable" and so there should be strong arguments that a tribunal hearing such a claim should take into account, and so set off, any compensation already paid in respect of the same loss. That concept is effectively supported by the provisions in the Public Service Pensions and Judicial Offices Bill (the primary remedy legislation) designed to prevent double recovery.

prohibited by or under the Equality Act 2010. The resolution in this report aims to meet this duty.

- 7.3 The Service has already received a number of enquiries from members and retired members in relation to the MoU and Framework. They have been advised that further information will be provided regarding the adoption of the Framework in due course. If the Framework is adopted scheme members will be made aware of their right to apply under the Framework and the local process for doing so.

8. RISK IMPLICATIONS

- 8.1 As indicated in 5.1 and 5.2 above, clarity is awaited on the recovery of costs. It is understood that the processing of Immediate Detriment cases before the forthcoming changes to tax exemptions, will mean FRAs are liable for any unauthorised tax charge and this will not be met centrally by Government in the period before tax provisions are amended effective 6 April 2022.
- 8.2 There are significant changes to firefighter pension schemes and the outcomes of the changes to the legislation will result in wide ranging impacts for the administration of firefighter pension schemes for many years to come.
- 8.3 There are likely to be challenges in undertaking calculations for some Immediate Detriment cases because the legislation and guidance on some technical aspects do not exist.
- 8.4 As indicated in 3.11 above, the administrator cannot guarantee meeting the timeline if there is a high number of pension calculations required from all FRAs at the same time. To minimise this risk as much as possible FRAs and payroll providers will be required to provide more information to assist, creating additional pressure for HR and the payroll provider.
- 8.5 There is a risk that individuals may make decisions based on information at the time the decision is confirmed but later find themselves responsible for a tax charge linked to that decision. To try and mitigate the risk, individuals will be made aware of the proposed taxation changes, effective from 6 April 2022.
- 8.6 The impact of changes to firefighter pension schemes is noted as a risk on the Corporate Risk Register. While the MoU and Framework don't directly address any of the budgetary or resourcing impacts, it does reduce the risk of a potential failure to comply with legal requirements.

9. CONSISTENCY WITH DUTY TO COLLABORATE

- 9.1 The Memorandum of Understanding and Framework are available for all fire and rescue services to adopt.
- 9.2 Buckinghamshire and Milton Keynes FRS share the same pension administrator. The Authorities have sought to understand the position jointly, seeking advice and sharing information.

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10. PRINCIPAL CONSULTATION

- 10.1 The Chief Fire Officer/ Chief Executive has been consulted on the contents of this paper.
- 10.2 The Monitoring Officer has been consulted on the contents of this paper.
- 10.3 The Chief Finance Officer has been consulted on the contents of this paper

11 BACKGROUND PAPERS

- 11.1 Fire Authority report 17 February 2021 – Immediate Detriment Cases

12 APPENDICES

- 12.1 Appendix A - LGA/FBU. 8 October 2021. Framework for Managing Immediate Detriment Issues (Joint Statement)
- 12.2 Appendix B - LGA/FBU. 8 October 2021. Memorandum of Understanding between the LGA and FBU.
- 12.3 Appendix C - LGA. 8 October 2021. Immediate Detriment Framework (IDF) Guidance for Fire and Rescue Authorities in their role as scheme managers.

13 CONTACT DETAILS

- 13.1 Becci Jefferies, Head of HR and Learning and Development 07776 225975



**To: Fire and Rescue Authorities and Services
Fire Brigades Union members**

FRAMEWORK FOR MANAGING IMMEDIATE DETRIMENT ISSUES

You will be aware of legal cases brought in the High Court against the London Fire Commissioner (LFC) and Nottinghamshire and City of Nottingham Fire and Rescue Authority (NFRA). The cases concerned Immediate Detriment issues in relation to the McCloud/Sargeant judgment and the claimants were supported by the Fire Brigades Union (FBU).

It was apparent similar issues would arise more widely across the sector. The FBU was clear that matters for affected individuals needed to be resolved sooner rather than later and it would, if necessary, support further legal cases. Many Fire and Rescue Authorities (FRAs) across the UK on an individual basis had indicated that they wished to be able to deal with Immediate Detriment issues as soon as possible. The problem was not an unwillingness to do so but rather the need to identify and develop a suitable mechanism to be able to do so in a way which minimised the risks while the Government is putting in place the McCloud/Sargeant remedying legislation.

With that in mind, the Local Government Association (LGA) and the FBU have been in discussions to identify a mutually acceptable Framework, setting out a mechanism for handling Immediate Detriment cases, to assist all parties prior to completion and implementation of the McCloud/Sargeant remedying legislation. This would help in resolving the genuine difficulties that had arisen for FRAs in making payments to those affected (including for example issues around unauthorised payment charges and contribution holidays) and in removing the potential for further court claims (not just against NFRA and LFC).

During the course of the discussions, the Government laid primary legislation before Parliament in the Public Service Pensions and Judicial Offices Bill and will make secondary legislation pursuant to the Bill (together, the Remedying Legislation) to provide the affected pension scheme members with a remedy for the discrimination found in the McCloud/Sargeant claims.

Following a series of complex discussions including respective legal representatives, which were also able to utilise the longstanding national relationship between the LGA and FBU, we are pleased to advise you that agreement has today been reached on the attached Memorandum of Understanding and Framework.

We believe the Memorandum of Understanding and Framework are consistent with the principles currently set out in the Bill and will mean that appropriate action can be taken. As and when parts of the Remedying Legislation covering the relevant part of the Framework come into effect the MoU and Framework indicate that the relevant Remedying Legislation will then be used instead.

Each FRA is asked to consider adoption of the Framework and we would encourage such adoption in order to provide a consistent approach to Immediate Detriment cases across the fire and rescue service.

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Appendix A

You may also wish to be aware that, separately, we and respective legal representatives have worked with NFRA and LFC in respect of the High Court cases and can also advise that settlement has been reached. Settlement took into account the principles in the Framework, however, as is the norm in such settlements, details will remain confidential. The Summary Judgment hearing due to be heard in the High Court later this month is therefore no longer required.



Jeff Houston
Local Government Association



Matt Wrack
Fire Brigades Union

8 October 2021

Dated 8 October 2021

MEMORANDUM OF UNDERSTANDING

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Appendix B

PARTIES

- (1) Local Government Association of 18 Smith Square, Westminster, London, SW1P 3HZ (the **LGA**); and
- (2) Fire Brigades Union of Bradley House, 68 Coombe Rd, Kingston-upon-Thames, Surrey, KT2 7AE (the **FBU**).

1 BACKGROUND

- 1.1 The LGA represents Fire & Rescue Authorities (**FRAs**) in England, Scotland, Wales and Northern Ireland in connection with the matters covered by this memorandum of understanding (**MoU**).
- 1.2 The FBU is a trade union that represents firefighters and other employees employed by the FRAs (together the '**Members**') who are affected by the matters covered by this MoU.
- 1.3 The LGA (on behalf of the FRAs) and the FBU (on behalf of the Members) wish to record the basis on which they will collaborate with each other to ensure that Members who have (or will) suffer an "**Immediate Detriment**" (as described in para. 4.1 below) by reason of their retirement (or impending retirement), following the decision made by the Court of Appeal on 20 December 2018 and the Employment Appeal Tribunal on 12 February 2021 in the *Sargeant* claims, are provided with a remedy as swiftly as possible.
- 1.4 A framework (the **Framework**) and a timetable for providing a remedy for each affected Member is set out in Annex 1 and Annex 2 to this MoU, which the parties expect the FRAs and Members to adhere to. Nothing in the MoU shall be interpreted to mean that the FBU will not initiate or support legal proceedings on behalf of any Member whose case is not dealt with in accordance with the Framework or that timetable.
- 1.5 The MoU only covers compensation relating to any shortfall in the pension commencement lump sum, pensions benefits and contributions payable to or payable by a Member (including issues relating to tax relief, interest and charges connected to those amounts) as set out in Annex 1. This MoU does not cover any additional remedies currently under consideration in the Employment Tribunal.
- 1.6 In this MoU:
 - 1.6.1 references to a Member's **Legacy Scheme** are references to the pension scheme in which the Member was an active member on 31 March 2012; and
 - 1.6.2 references to the **2015 Scheme** are references to the firefighters' pension schemes in England, Wales and Scotland created under the Public Service Pensions Act 2013.

2 OBJECTIVES

- 2.1 The parties acknowledge the importance of ensuring that Members who have suffered (or will suffer) an Immediate Detriment (as described in para. 4.1 below) receive compensation or are otherwise remedied now. They recognise that the Government has laid primary legislation before Parliament in the Public Service Pensions and Judicial Offices Bill (the **Bill**), and will make secondary legislation pursuant to the Bill (together, the **Remedying Legislation**) to provide the affected Members with a remedy for the discrimination found in the *Sargeant* claims.

The parties believe that the Framework is consistent with the principles currently set out in the Bill. In particular, any compensation or remedy provided to Members under this MoU:

- 2.1.1 amounts to “compensation” of the type anticipated by clause 21¹ of the Bill; and/or
 - 2.1.2 is to be taken into account when assessing whether the Member has:
 - (a) “benefited from an immediate detriment remedy” for the purposes of clause 29 of the Bill; and/or
 - (b) been provided with a remedy under any scheme regulations of the type anticipated by clause 28 of the Bill
- (to avoid a situation where the Member receives additional recoveries under the Bill which have already been compensated for under this MoU).

- 2.2 This MOU is separate from, and is not subject to or dependent on, any guidance issued in relation to “Immediate Detriment” before the Remediating Legislation comes into force.

3 PRINCIPLES OF COLLABORATION

- 3.1 The LGA will request that the FRAs, and the FBU will request that its Members, adopt the following principles:
 - 3.1.1 Collaborate and co-operate. To adhere to the Framework so that activities are delivered and actions taken as required;
 - 3.1.2 Act in a timely manner. Recognise the importance of moving things forward swiftly and responding accordingly to reasonable requests for support; and
 - 3.1.3 Act in good faith to support achievement of the objectives and adherence to these principles.

4 IMMEDIATE DETRIMENT CASES IN SCOPE

- 4.1 The Framework will apply to Immediate Detriment cases that have already arisen, or arise before the Remediating Legislation comes into force, namely cases for:
 - 4.1.1 Members who, at the date of this MoU, are employed by an FRA and:
 - (a) become eligible to retire (for any reason, including ill-health) and draw any pension and/or lump sum benefit and want to have all their benefits paid from their Legacy Scheme (not the 2015 Scheme); or
 - (b) do not qualify for a lower-tier (and therefore higher-tier) ill-health pension under the single pot ill-health retirement arrangement provided for in the 2015 Scheme and are therefore left without an immediately payable pension, but would be entitled to such a pension under their Legacy Scheme

(Category 1 cases);

- 4.1.2 Members who, at the date of this MoU:

¹ In this MoU, references to clause numbers in the Bill refer to the clauses as numbered on the date when the MoU is signed.

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Appendix B

- (a) have already retired (for any reason, including ill-health) and who are receiving a pension under the 2015 Scheme, and who wish to be treated as having retired as a member of their Legacy Scheme; or
- (b) have left the fire and rescue service and did not qualify for a lower-tier (and therefore higher-tier) ill-health pension under the single pot ill-health retirement arrangement provided for in the 2015 Scheme, and are therefore left without a pension in payment but would be entitled to such a pension under their Legacy Scheme

(Category 2 cases).

- 4.2 The Category 2 cases include the claims set out in High Court claim number QB-2021-000636, although the parties acknowledge that the claimants and the defendants in that claim will (subject to agreeing the position on legal costs) need to file a consent order recording any settlement achieved in accordance with the Framework set out in this MoU.

5 FRAMEWORK

- 5.1 The parties intend that the various issues that arise in relation to Category 1 and Category 2 cases will be resolved in accordance with the Framework set out at Annex 1 to this MoU.
- 5.2 The parties anticipate that the Remediating Legislation will provide a mechanism that will allow some matters to be dealt with more conveniently once it comes into force. These matters are:
- 5.2.1 compensation for any tax relief foregone on the arrears of contributions payable by the Member (except for Category 1 cases where the contribution arrears can be processed through PAYE);
 - 5.2.2 interest payable by the Member on the arrears of contributions;
 - 5.2.3 interest payable to the Member on adjusted employee contributions under the 2006 Scheme; and
 - 5.2.4 CETVs and added pension (for Category 1 cases).
- 5.3 These matters (and only these matters) will be calculated and processed once the Remediating Legislation is in force. Where applicable, the way they will be dealt with until that point is reached is set out in Annex 1. The parties agree that the mechanism provided by the Remediating Legislation will be used to make the calculation and the amounts will be processed in accordance with the Remediating Legislation.
- 5.4 The LGA and the FBU will encourage the relevant FRA and Member to document the agreed compensation or remedy in line with the template set out at Annex 3 to this MoU (the **Compensation Record**). This does not apply to the High Court claim referred to in para. 4.2 above where the terms of any settlement will be recorded in a confidential settlement agreement attached to a consent order.
- 5.5 The FBU agrees that it will not provide any financial or other support to Members who have received compensation or are otherwise remedied under the Framework to bring any court or tribunal proceedings relating to matters which have been (or are being) addressed under the Framework (or, in the case of those matters listed at para. 5.2 above, will be addressed under the Remediating Legislation). The FBU's agreement does not apply, however, to any question or dispute as to whether the Framework has been applied correctly in accordance with this MoU, or to any question or dispute regarding a matter that is not covered by the Framework.

6 CONCERNS OR COMPLAINTS

- 6.1 If either party has any issues, concerns or complaints about any matter in this MoU that party shall notify the other party and the parties shall then seek to resolve the issue through discussion (consistent with the objectives and principles set out at paras. 2 and 3 above). Those discussions may involve the relevant FRA and Member where appropriate.
- 6.2 Either party may terminate such discussions at any time. Where it has been agreed that the Framework is being used, the fact that such discussions could be commenced or have been commenced will not act as an impediment to any Member who alleges that the FRA concerned is not dealing with their case in accordance with the Framework and seeks relief from the Court. Nor will it act as an impediment to the FBU providing legal or other support to such a Member.

7 REVIEW, TERM AND TERMINATION

- 7.1 This MoU shall commence on the date of signature by both parties.
- 7.2 The parties will meet periodically on dates to be agreed between them (the first such meeting to take place within five weeks of the date of this MoU) to:
 - 7.2.1 review the application of the Framework and the process set out in Annex 2, paying attention, in particular, to the timetable for processing cases in the light of the number of cases being dealt with by FRAs; and
 - 7.2.2 discuss whether any changes to the Framework are needed if the passage of the Bill (and the secondary legislation made pursuant to the Bill) adversely affects the ability of an FRA or a Member to implement the Framework and/or the process set out in Annex 2 and work in a spirit of cooperation to agree those changes.
- 7.3 If, on the date Remediating Legislation applicable to an issue set out in Annex 1 comes into force, a case that includes that issue is still being processed under the Framework, that issue will instead be processed under the Remediating Legislation and that fact will be noted in the Compensation Record (Annex 3). For the avoidance of doubt the rest of the issues in the case will be dealt with in accordance with Annex 1.
- 7.4 If all of the issues relevant to a case are covered by Remediating Legislation which has come into force before a Compensation Record is signed by the Member and the FRA that case will instead be processed under the Remediating Legislation.
- 7.5 This MoU will automatically expire on the last date on which Remediating Legislation applicable to all of the issues set out in Annex 1 comes in to force and will in any event expire on 1 October 2023. However, the parties agree that the timeframes set out in Annex 2 will continue to apply to the issues set out in Annex 1 where those issues are being processed under the Remediating Legislation provided that the timeframes do not put an FRA in breach of its obligations under the Remediating Legislation.
- 7.6 This MoU may be terminated (in whole or in part) by agreement in writing between the parties.
- 7.7 This MoU may be terminated by either party if the other party is in serious or repeated breach of its terms, and does not remedy the breach within 21 days of notice being given requiring it to do so.

8 VARIATION

- 8.1 This MoU, including Annexes 1, 2 and 3, may only be varied by written agreement of the parties.

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9 CHARGES AND LIABILITIES

- 9.1 Liability for the legal costs incurred in High Court claim number QB-2021-000636 will be payable in accordance with any agreement reached between the parties to that claim or any order made by the Court in those proceedings.
- 9.2 Subject to para 9.1, and except as otherwise provided, the parties, FRAs and Members shall each bear their own costs and expenses incurred in agreeing to and implementing this MoU and the Framework.
- 9.3 Each party shall remain liable for any losses or liabilities incurred due to their own actions and neither party intends that the other party shall be liable for any loss it suffers as a result of this MoU.

10 STATUS

- 10.1 This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the parties from this MoU. The parties enter into the MoU intending to honour all their obligations.
- 10.2 Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party as the agent of the other party, or authorise either of the parties to make or enter into any commitments for or on behalf of the other party.

11 GOVERNING LAW AND JURISDICTION

- 11.1 This MoU shall be governed by and construed in accordance with the laws of England and Wales and, without affecting the procedure set out in para. 6, each party agrees to submit to the non-exclusive jurisdiction of the courts of England and Wales.



Signed by **JEFF HOUSTON**

for and on behalf of the **LGA**

HEAD OF PENSIONS

8th October 2021

[Date]

Signed by **MATT WRACK**

for and on behalf of the **FBU**



GENERAL SECRETARY

8 October 2021

CONTACT POINTS

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ANNEX 1 – FRAMEWORK

Issue	Category 1 cases	Category 2 cases
Shortfall in retirement lump sum and past pension payments	Retirement lump sum and benefits paid on retirement through Legacy scheme (so that no shortfall arises).	Pay as lump sums (comprising pension lump sum and arrears lump sum likely made in two payments) through the 1992 scheme (as arrears). Pension arrears will be subject to PAYE, but if any additional income tax is payable by the member that would not have been payable if the member had never been treated as a member of the 2015 Scheme, the FRA will compensate the member for that tax liability.
Interest on shortfall in retirement lump sum and past pension payments	No interest due because correct lump sum and pension benefits will be paid on retirement.	Interest paid at 3% p.a. simple, from the date lump sum / benefits should have been paid.
Employee contributions: 1992 Scheme	Member pays shortfall (since 2015) through payor as a deduction from retirement lump sum.	Member pays any shortfall (since 2015) as a deduction from retirement lump sum. If no lump sum is payable, the member will need to pay any contributions owed from their own resources and to be given a reasonable time to pay based on their individual circumstances.
Employee contributions: 2006 Scheme	Compensation for excess contributions to be paid on retirement. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	FRA to pay compensation for excess contributions. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.
Tax relief on employee contributions	<p>Process through PAYE to the extent possible if time/amount allows. If time does not allow, then any tax relief not collected through PAYE will be calculated and paid when the remedying legislation is in force.</p> <p>FBU and FRAs will encourage members to give as much notice of retirement as possible to facilitate payment through PAYE.</p>	Compensation for any tax relief foregone will be paid to the individual when the remedying legislation is in force. So, for now, individuals will pay the gross amount of contributions due.

Interest payable on adjusted employee contributions (1992 Scheme)	Interest to be paid by the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation). If tax relief was not processed through PAYE (because time/amount did not allow), where the individual is due to receive a future payment to compensate him or her for the tax relief foregone, the interest amounts will be deducted from that payment.	Interest to be paid by the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation). Where the individual is due to receive a future payment to compensate him or her for the tax relief foregone, the interest amount will be deducted from that payment.
Interest payable on adjusted employee contributions – compensatory amount (2006 Scheme)	Interest to be paid to the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation).	Interest to be paid to the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation).
Contribution holidays: excess employee contributions	Compensation for excess contributions to be paid on retirement. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	FRA to pay compensation for excess contributions. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.
CETVs and added pension	If an issue arises, then look at it at that point. Individual and FRA will work together to agree a holding compromise that the CETV/added pension will stay in the 2015 scheme until the legislative solution arrives.	Deal with as and when arises.
Annual Allowance charges	Recalculate pension input amount for each year of remedy. If an annual allowance charge would have arisen if the individual had not been transferred to the 2015 Scheme, the charge remains payable by the member (through scheme pays or otherwise). If an annual allowance charge would not have arisen (or a lesser charge applied) if the member had not transferred to the 2015 Scheme, the member will pay that charge and the FRA will compensate the member for the annual allowance	Recalculate pension input amount for each year of remedy. If an annual allowance charge would have arisen if the individual had not been transferred to the 2015 Scheme, the charge remains payable by the member (through scheme pays or otherwise). If an annual allowance charge would not have arisen (or a lesser charge applied) if the member had not transferred to the 2015 Scheme, the member will pay that charge and the FRA will compensate the member for any annual allowance

	charge that is demanded (or any excess over the lesser charge that would have applied).	charge that is demanded (or any excess over the lesser charge that would have applied).
Scheme pays (MSP/VSP)	Member pays tax through VSP for statutory tax years for which it becomes due.	Member pays tax through VSP for statutory tax years for which it becomes due.
Converting scheme pays debits	FRA to recalculate the pension debit as if taken at time of original scheme pays election using actuarial factors applicable at time.	FRA to recalculate the pension debit as if taken at time of original scheme pays election using actuarial factors applicable at time.
Converting pension sharing debits	Deal with on a case by case basis as issues arise.	Deal with on a case by case basis as issues arise.
Dependents	Deal with on a case by case basis as issues arise (and in accordance with the timeframes set out in Annex 2 where reasonably practicable).	Deal with on a case by case basis as issues arise (and in accordance with the timeframes set out in Annex 2 where reasonably practicable).
Taper members	Tapering to stop (because that is the only step that is consistent with the ET decision).	Tapering to stop (because that is the only step that is consistent with the ET decision).
Unauthorised payments	N/A	The FRA will compensate the member for unauthorised payment charges which the member has had to pay and which he or she would not have had to pay if the member had not transferred to the 2015 Scheme.

ANNEX 2 – THE PROCESS

- 1 Any Member who believes that he or she is a Category 1 or a Category 2 case, and any person who believes that he or she is a dependant of a Category 1 or a Category 2 case Member ('an **Applicant**'), may give notice to the FRA which last employed the Member concerned requiring the FRA to investigate their case. Any such notice must be given in writing (by post or by email).
- 2 Within 14 days of receipt, the FRA shall acknowledge receipt of any such notice in writing (by post or by email), and inform the Applicant:
 - 2.1 either that the FRA accepts that the Applicant is entitled to a remedy under the Framework; or
 - 2.2 explain why, in the FRA's view, the Applicant is not entitled to a remedy under the Framework.
- 3 If the FRA accepts that the Applicant is entitled to a remedy under the Framework, as soon as reasonably practicable and in any event within 62 days after receiving an application under paragraph 1, the FRA shall send to the Applicant:
 - 3.1 In a Category 1 Case:
 - 3.1.1 a statement of the benefits that the Member would be entitled to receive if he or she retires under the rules of the Member's Legacy Scheme;
 - 3.1.2 a statement of the benefits that the Member would be entitled to receive if he or she retires under the rules of the 2015 Scheme; and,
 - 3.1.3 a form inviting the Applicant to choose to take benefits in accordance with the rules of the 2015 Scheme or the Member's Legacy Scheme.
 - 3.2 In a Category 2 Case:
 - 3.2.1 a statement of the benefits that the Member would have received if he or she had retired under the rules of the Member's Legacy Scheme, calculated as at the date of retirement or, in the case of a Member who left employment without an immediate pension, as at the date of leaving;
 - 3.2.2 a statement of the benefits that the Member received or was prospectively entitled to receive under the rules of the 2015 Scheme, calculated as at the date of retirement or, in the case of a Member who left employment without an immediate pension, as at the date of leaving;
 - 3.2.3 a statement of the arrears of pension and lump sum that the FRA will pay if the Applicant chooses to take benefits under the terms of the Member's Legacy Scheme;
 - 3.2.4 a statement of the arrears of contributions that will have to be paid or that will be reimbursed (if any) if the Applicant chooses to take benefits under the terms of the Member's Legacy Scheme;
 - 3.2.5 a statement of any tax adjustments that will have to be made if the Applicant chooses to take benefits under the terms of the Member's Legacy Scheme (including details of any "scheme pays" election that the Applicant might be able to make); and

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3.2.6 a form inviting the Applicant to choose to take benefits in accordance with the rules of the 2015 Scheme or the Member's Legacy Scheme.

4 If the Member's entitlements under their Legacy Scheme cannot be determined without further medical advice, the period between the date of the request for further medical advice and the date when that advice is received shall be ignored for the purposes of the timetable set out in paragraphs 2 and 3 above.

5 Once the FRA receives notice of the Applicant's election, and if the Applicant chooses to receive benefits under the rules of the Member's Legacy Scheme:

5.1 In a Category 1 Case, the Applicant's entitlements shall be progressed as "business as usual".

5.2 In a Category 2 Case, the FRA shall:

5.2.1 adjust the Applicant's pension debit if required to allow for any "scheme pays" election that the Applicant makes on account of any annual allowance charge that would have arisen if the Member had never been treated as a Member of the 2015 Scheme;

5.2.2 begin to pay benefits in accordance with the Legacy Scheme rules with effect from the next pension payroll date which is at least one month after the receipt of the Applicant's election;

5.2.3 as soon as reasonably practicable and in any event within 28 days after receipt of the Applicant's election, pay to the Applicant the arrears of pension and lump sum, calculated under 3.2.3 above and rolled forward to the date of payment, with interest calculated in accordance with the Framework to the date of payment, plus compensation for any excess contributions paid, after deducting:

(a) any arrears of contributions calculated under 3.2.4 above; and

(b) any additional tax required to be paid under PAYE on arrears of pension that would have arisen if the Member had never been treated as a Member of the 2015 Scheme.

If the deductions to be made under paragraph 5.2.3(a) and (b) exceed the arrears to be paid under 5.2.3, the FRA shall not be obliged to begin to pay benefits under the Legacy Scheme rules in accordance with 5.2.2 until a reasonable schedule for payment of the excess has been agreed between the Applicant and the FRA.

6 In a Category 2 case, no further action is required if the Applicant chooses to continue to receive benefits under the Rules of the 2015 Scheme.

7 Until the Applicant makes an election under paragraph 3.1.3 or 3.2.6, no further action is required.

8 Giving effect to the Applicant's election under paragraph 3.1.3 or 3.2.6 to receive benefits calculated in accordance with the Legacy Scheme rules shall be conditional on the Applicant signing and returning a settlement agreement substantially in the form of the record of agreed compensation and remedy set out in Annex 3 to the MoU.

9 The member and an FRA's commitment to adhere to the process and timeframes as set out above is in consideration of the Principles of Collaboration and the ongoing review of the Framework as provided for at clauses 3 and 7.2 of the MoU respectively.

ANNEX 3 – RECORD OF AGREED COMPENSATION / REMEDY

I [NAME OF MEMBER] have agreed with [NAME OF FRA] in its capacity as both an employer and scheme manager to receive compensation and/or a remedy in line with the framework set out in the MoU dated [DATE] between the LGA (on behalf of FRAs) and the FBU (on behalf of its members).

I am a “Category [1/2]” case.

I understand and agree that:

- the Government has proposed to make new legislation that is intended to provide me with the pension benefits that I could have received if the pension changes made in 2015 had not been made, but that new legislation may not come into force until October 2023;
- some of the issues relating to my pension benefits have not been fully resolved and will not be fully resolved until the new legislation comes into force in October 2023, and as a consequence some payments (including tax relief and some interest amounts) might be calculated and processed once the new legislation comes into force. These issues are noted in the table below;
- The compensation I have received will be taken into account for the purposes of the new legislation (to avoid a situation where I receive additional amounts under the new legislation which have already been compensated for under the agreed framework);
- I understand that survivor benefits under the 1992 Firefighters Pension scheme are payable only to a legal spouse or civil partner, meaning a partner with whom I have entered into a formal registered civil partnership. If I choose to receive benefits under the rules of the Firefighters’ Pension Scheme 1992 and I am unmarried and not in a civil partnership at the date of my death then a survivor’s pension will not be payable;
- The decision I make to receive benefits under the rules of the Firefighters’ Pension Scheme 1992/ Firefighters’ Pension Scheme 2006/ Firefighters’ Pension Scheme 2015 [delete as applicable] is irrevocable. Neither I nor my dependants will be given an option to reconsider this decision once the new legislation comes into force;
- The way in which the issues relevant to my case are dealt with under the framework (as noted in the table below) amounts to a full and final settlement of my claim. I will not commence or continue any court or tribunal proceedings against [NAME of FRA] (in its capacity as employer or pension scheme manager) in relation to any matters that are covered by this agreement (other than a failure to abide by the terms of this agreement); and

The issues in my case have or will be addressed as follows:

[PARTIES TO INSERT RELEVANT ROWS FROM THE ANNEX 1 FRAMEWORK TABLE WITH AN ADDITIONAL COLUMN TO DOCUMENT THE ACTUAL PAYMENT, ADJUSTMENT AND/OR RECORD ALTERATION MADE FOR EACH SPECIFIC ISSUE FOR THAT MEMBER.]

Signed by [NAME of MEMBER] on [DATE]

Signed by [NAME] on behalf of [FRA] on [DATE]

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Immediate Detriment Framework (IDF) - Guidance for Fire and Rescue Authorities in their role as scheme managers

Version number	Date of publication
1.0	8 October 2021

The IDF has been developed and agreed by the LGA (in line with the decisions of the Steering Committee specifically set up to deal with matters arising from Sargeant) and the FBU based on the current understanding of the provisions contained for remedy in the [Public Service Pensions and Judicial Offices Bill 2021](#). Its purpose is to provide a framework under which members in scope can receive benefits prior to all remedying legislation being in force, therefore avoiding significant additional numbers of Immediate Detriment legal claims as a result of the [Sargeant age discrimination case](#).

This document makes reference to Category 1 (Cat 1) and Category 2 (Cat 2) cases. These are respectively those members who have not yet had benefits brought into payment and those who have had benefits brought into payment. The exception is members who did not qualify for ill-health retirement under the FPS 2015 and are not currently in receipt of benefits and are applying for FPS 1992 ill-health benefits, who are treated as Category 2.

Payments made under the IDF will either be a scheme payment and therefore from the pension fund account or an employer payment which cannot be met from the pension fund account. The table in [Annex 1](#) sets out which payments are from the pension fund account and which are not.

It is for each Fire and Rescue Authority (FRA) as the relevant [scheme manager](#) within the Firefighters Pension Scheme (FPS) to adopt the IDF. FRA's are encouraged to do so particularly given the breadth and complexity of the matters covered, which will support a consistent approach across FRAs.

In considering its decision an FRA will also wish to take into account the risks in terms of potential legal claims should they not do so, given the FBU has previously indicated its intention to bring claims should it feel a case has not been dealt with correctly.

The FBU are of course party to the Memorandum of Understanding (MoU) which contains the Framework agreement and in that MoU they agree that where a member receives a remedy/compensation under the IDF they will not provide any financial or other support to the member to bring legal action relating to such remedy/compensation (they can of course back action where there is a dispute about whether the Framework has been applied correctly).

Adoption of the Framework

In considering the adoption of the IDF, the FRA should undertake the following steps immediately on the announcement of the framework agreement:

1. Obtain the necessary FRA agreement to make use of the IDF, involving the FRA's Nominated Contact for the purposes of the transitional protections claims. Although we understand that the FBU will be communicating the details of the IDF to their members, FRAs should ensure that they communicate the timeframe for this decision to all scheme members.
2. Notify their administrator of their intention to make use of the IDF and the timescales contained.
3. **The FRA will need to discuss with the administrator the necessary resourcing and/or re-prioritising or work to ensure the IDF can be delivered or if this is not possible arrange for alternative resourcing to deliver the IDF.**
4. If the decision is that the IDF will not be adopted, it will be for the FRA to make their own arrangements with regard to any claims and payments made by/to members in this area.
5. Once the IDF is adopted, scheme members should be made aware of their right to apply under the IDF and the local process for doing so through an appropriately widespread and proven means of communication. Such communications could include, for example, a note on payslips of all post 2015 pensioners and a page on the intranet for active members. They should also indicate that the scheme member will need to sign the Compensation Record (set out at Annex 3 of the MoU)
6. These communications should include at least the following information/options:
 - i. The dates and rules for being in scope.
 - ii. The process for applying under the IDF – for example in writing/ by email/ completion of a form, and what information is required within the application. This could include the member's personal details, date of joining, FPS scheme they were a member of, any previous public service pension membership, and the basis for the application i.e. ill-health pension not in payment, or revision of normal retirement.

- iii. The potential for delay if incomplete or inaccurate information is supplied by the member (for example if the member has public service pension membership that has not already been notified to the FRA).

Implementing the framework

Once the FRA has adopted the IDF, the steps below will need to be undertaken in respect of members who apply under it. Although some of these steps will be undertaken by the appointed scheme administrator on behalf of the FRA, the FRA as scheme manager is responsible in law for managing the scheme and paying benefits and as employer for the payment of any compensation.

This document should be read in conjunction with the IDF, and particular attention is drawn to timescales in Annex 4 of the IDF.

Step 1 Collect the data required to assess if member is in scope of the IDF

1. Date of commencement in the FPS.
2. If the date of commencement is after 31 March 2012 and before 1 April 2015, the date of leaving any public service pension scheme in condition iii. below prior to the date of commencement in the FPS (the member will have to provide this if there is no record).
3. If the member is applying for retrospective ill-health benefits under the FPS 1992 the original report of the Independent Qualified Medical Practitioner's (IQMP) report (Cat 2 only). Note that FRAs were advised in [FPS Bulletin 28](#) to obtain IQMP assessments against both final salary and CARE schemes for current and new ill-health cases.

Step 2 Determine if member is in scope of the IDF

1. To be in scope a member must meet all of the following conditions:
 - i. They must have pensionable service under FPS 2015 in the period beginning 1 April 2015 and ending 31 March 2022 (the remedy period).
 - ii. That service would have been pensionable service under FPS 1992 or FPS 2006 but for the person's failure to meet the condition relating to the person's attainment of normal pension age by a specified date. (i.e., they are unprotected or tapered members).
 - iii. They must have been, on 31 March 2012 or any earlier day, in service in any employment or office that is pensionable service under:
 - a) a public service legacy scheme,
 - b) a judicial legacy scheme or
 - c) A local government legacy scheme.
 - iv. There must not be a continuous break of 5 years or more without any pensionable service in the schemes listed in condition iii., from the last

day of pensionable service in condition iii. to the first day of pensionable service in condition i.

2. If the member is applying for retrospective ill-health retirement under the FPS 1992 in addition to meeting the conditions above, they must also meet the qualifying conditions for ill-health retirement in that scheme.
3. If a Category 1 member meets each of the conditions above, they should be informed within 14 days of application that they are in scope of the IDF and that their options and figures will be available at the time they take their benefits. Although the steps below are not immediately required in these cases, FRAs are advised to begin the process set out in step 3 to ensure they have the necessary data in place when the member does take their benefits. The remainder of the steps should be followed once the member has notified the FRA of their intention to retire.
4. If a Category 2 member meets each of the conditions above, they should be informed within 14 days of application that they are in scope of the IDF and that their options and figures will follow.
5. If the member does not meet the conditions above, they should be informed within 14 days of application that that they are not in scope of the IDF and the conditions which they did not meet.

Step 3 Data required for calculations of ID

FRAs are advised to read this section in conjunction with the [Age discrimination remedy data collection guidance for administrators and FRAs](#).

1. Obtain a breakdown of the original benefit calculation to include:
 - i. The FPS 2015 pension and lump sum
 - ii. The total pensionable service, pensionable pay, commutation decision, pension, and lump sum in respect of the FPS 1992 or FPS 2006.
2. Determine the pensionable service which would have been accrued under the FPS 1992 or FPS 2006 during each year of the remedy period (the “remediable service”). For further information on pensionable service please see the [Age discrimination remedy data collection - Guidance for administrators and FRAs](#).
3. Determine the appropriate pensionable pay and any Additional Pension Benefits (APBs) due for each year of remediable service. Any entitlement to a two-pension award should also be determined at this point. For further information on pensionable pay and two pensions please see the [Age discrimination remedy data collection - Guidance for administrators and FRAs](#).
4. Determine the total gross contributions which were paid by the member during each year of remediable service

5. Determine the FPS 1992 or FPS 2006 employee contribution rates applicable to each year of remediable service as per the tables in the following links:

[FPS 1992 contribution rates 2015/16 - 2021/22](#)

[FPS 2006 \(standard\) contribution rates 2015/16 - 2021/22](#)

[FPS 2006 \(special\) contribution rates 2015/16 - 2021/22](#)

6. Determine to what extent the member would have qualified for a contributions holiday during the remedy period. For further information on contribution holidays please see the [Age discrimination remedy data collection - Guidance for administrators and FRAs](#)
7. If the member is applying on health grounds, determine if they would have qualified for ill-health retirement under the FPS 1992. See [FPS Bulletin 28](#) for more information on assessing current/ new or retrospective ill-health applications.
8. Obtain details of any transfers into the FPS 2015 scheme.
9. Obtain details of any contract in place to pay contributions for additional pension in the FPS 2015.
10. Obtain details of any divorce pension debit or scheme pays deductions in place.

Step 4 Determine any change in Annual Allowance (AA)

For some members the impact of treating them as if they had never left their previous final salary scheme might mean that they would have breached the annual allowance limits in former pension input period years.

1. For each pension input period calculate the opening balance and closing balance in respect of each year in the remedy period as if the member had remained in their relevant legacy scheme (FPS 1992 or FPS 2006).
2. Calculate the excess, if any, of the growth in each year (the difference between the opening and closing balance) over the relevant Annual Allowance limit including any carry forward.
3. Do the same calculations for the member based on the current mix of FPS 1992 or FPS 2006 plus FPS 2015 pension (the transitional benefits) and compare the two sets of values.
4. Further information on the Annual Allowance, including pension input periods, opening and closing balances, and carry forward can be found on the [Annual Allowance page](#) of the FPS member website or in [HMRC Tax Manual PTM051100 - Annual allowance: essential principles](#).

Step 4A Determine the extent of an FPS 1992 or FPS 2006 breach of the AA limit

5. If the Annual Allowance limit is breached (or the breach is increased) because of FPS 1992 or FPS 2006 benefits calculate the relevant amount of new or increased pension deduction under mandatory scheme pays or voluntary scheme pays using the relevant scheme factors. Note that the member is only liable for any charge that would have arisen if they had remained in their legacy scheme throughout the remedy period.

Mandatory scheme pays (MSP)

6. Section 237B of the Finance Act 2004 allows MSP where:
 - i. the tax charge is over £2,000, and
 - ii. the individual is subject the standard annual allowance (currently £40k)
 - iii. this relates to a single scheme and to the immediately preceding tax year.
7. If the conditions are met, then the scheme administrator becomes jointly and severally liable (with the member) for the annual allowance charge and must pay this to HMRC within a given timescale. They must also make a consequential adjustment to the member's pension savings or their benefits under the pension scheme.
8. MSP can only apply to the immediately preceding tax year, so MSP cannot be used to pay breaches of annual allowance in previous years within the remedy period.
9. For periods within the statutory time limits, where an individual has already used MSP, pension debits for previous years can be adjusted to accommodate any revisions to the annual allowance charge owed.

Voluntary Scheme Pays (VSP)

10. Where in certain circumstances an individual cannot use MSP to pay a relevant HMRC tax charge, they may be able to use VSP, so called because the scheme can agree to voluntarily pay the tax charge and deduct from the member via the debit.
11. As a voluntary arrangement there are no conditions attached to it other than the scheme agreeing they can pay it.
12. However, under VSP the member is individually and solely liable and the charge must be paid within the normal HMRC rules for paying tax (31 January following the year of tax charge).

13. In May 2017, following legal advice a [technical note](#) was issued to confirm that FRAs were able to utilise VSP to pay tax charges on a member's behalf, and guidance was subsequently issued with [FPS Bulletin 4](#) including election forms for the member and scheme manager.
14. FRAs may now wish to re-visit the decisions they made about allowing VSP, to amend the conditions they apply to payments under VSP.
15. For more information on calculating the scheme pays debit see the [Tax charge debits \(scheme pays\) page](#) on the FPS Regulations and Guidance website

Step 4B Determine the extent of an FPS 2015 breach of the AA limit

16. If the Annual Allowance was breached under the FPS 2015 benefits but is not breached or the breach is less under FPS 1992 or FPS 2006 benefits calculate any new amount of reduced pension deduction under mandatory scheme pays or voluntary scheme pays using the relevant scheme factors.
17. For more information on calculating the scheme pays debit see the [Tax charge debits \(scheme pays\) page](#) on the FPS Regulations and Guidance website.
18. If applicable, calculate the amount of compensation equal to the excess scheme pays deductions made as a result of 16 above since the member took their benefits.

Step 5 Calculate the difference in benefits payable (Category 2 only)

1. Calculate FPS 1992 or FPS 2006 pension and any lump sum as if the member had continued in that scheme until the date they retired.
2. These calculations should be performed using the original commutation decision made by the member. Note that the effect of the Bill provision is understood to effectively return the member back to immediately prior their benefits coming into payment so they could, if they wish, revisit the commutation decision made at the time and should be informed accordingly as set out below.
3. If the member has applied to have their ill health decision and/or benefits revisited under the IDF then the FRA should reassess the qualification for ill health under the FPS 1992, including obtaining an IQMP determination if this is not already available, and if appropriate calculate the amount of benefits payable under that scheme.
4. If the FPS 1992 or FPS 2006 benefits are higher than those currently in payment, calculate the amount of arrears of pension and lump sum due.

5. Calculate interest on the arrears of benefits payable to the member at a rate of 3% per annum simple. Note this interest will be subject to tax at 20%, and the FRA will need to deduct that on paying it to the scheme member. Interest on pension arrears must be calculated for each month or part month at 3% simple (without compounding), for the period between the date of the original monthly pension payment and the date of the arrears payment.

Step 6 Calculate the lump sum unauthorised payment charge and compensation

1. Calculate the revised unauthorised payment charge in respect of the arrears of lump sum relating to the excess over 25% (maximum tax-free cash).
2. Calculate the unauthorised payment charge in respect of late payment of the arrears of lump sum (if payable more than 12 months after the original date that the benefits came into payment).
3. The amount of unauthorised payment charge compensation is equal to the amount in respect of late payment but not that in respect of exceeding 25%.
4. The LGA's current understanding is that compensation for unauthorised payment charges in relation to late payments is not subject to tax and should therefore be paid without a deduction for tax. It is anticipated that legislation will confirm the position on tax in relation to compensation for unauthorised payment charges. Should this compensation be determined, either by legislation or HMRC prior to the laying of legislation, to be taxable the FRA will be required to further compensate the member for any tax which becomes payable.

Step 7 Calculate contributions owed by the member – FPS 1992 (ignoring any contribution holiday)

1. For each year of remediable service calculate the gross employee contributions due under the FPS 1992 using the appropriate pensionable pay and contribution rates. The effect of any contribution holidays should be ignored as any overpayment will be compensated for later in the process.
2. Compare the result with the actual gross contributions paid under the FPS 2015.
3. If the amount paid is less than amount due the member will owe an amount equal to the difference which they may elect to be deducted from any arrears of lump sum. If no lump sum is payable, the member will need to pay any contributions owed from their own resources and to be given a reasonable time to pay based on their individual circumstances.
4. Category 1 members can pay arrears through their pay or as a deduction from their pension commencement lump sum (PCLS).



Step 8 – Calculate compensation for an amount equivalent to net contributions overpaid by an FPS 1992 or FPS 2006 member

1. It is important to be aware that this part of the process does not impact whatsoever on the amount of contributions paid into the scheme and does not constitute neither refund of contributions nor a reconciliation of tax as if the contributions had not been made. It is designed to compensate the member for contributions which were overpaid and will remain so.
2. **The amount calculated in 8A and 8B below is payable as compensation for overpaid contributions NOT as a refund of contributions.**

Step 8A – Calculate contributions owed to the member – FPS 2006

3. For each year of remediable service calculate the gross employee contributions due under the FPS 2006 using the appropriate pensionable pay and contribution rates.
4. Compare the result with the actual gross contributions paid under the FPS 2015.
5. If the FPS 2015 contributions are greater than the FPS 2006 contributions, calculate a best estimate of the net amount of contributions overpaid. This should be done using the marginal rate for the member at the time the contributions were deducted.
6. Calculate the gross compensation necessary to achieve the net figure in 5 above when applying the current marginal rate. If both rates are 20% the gross compensation will be the same as the gross contributions. If not, the gross compensation will need to be adjusted to result in the correct net outcome – see example below.
7. The amount deducted from the compensation should be withheld until the tax position of compensation is clarified by legislation. If this does not happen before the tax becomes due, the FRA should contact the member to agree that it should be paid to HMRC on their behalf to avoid any tax liability falling on the member.

Examples of compensation calculation

Example 1

The member paid a gross excess contribution of £100 in a period when the member's marginal rate was 20%. The net overpayment was therefore £80.

The member's marginal rate now is also 20% so the amount of gross compensation required to achieve an outcome after tax of £80 is also £100

Example 2

The member paid a gross excess contribution of £100 in a period when the member's marginal rate was 40%. The net overpayment was therefore £60.

The member's marginal rate now is 20% so the amount of gross compensation required to achieve an outcome after tax of £60 is £75

Example 3

The member paid a gross excess contribution of £100 in a period when the member's marginal rate was 20%. The net overpayment was therefore £80.

The member's marginal rate now is 40% so the amount of gross compensation required to achieve an outcome after tax of £80 is £133

Step 8B – Contributions holiday for an FPS 1992 member

8. Under the terms of the FPS 1992 the maximum pensionable service that a member can accrue is 30 years' service, while the earliest point at which they can retire is at age 50. This means that some scheme members – mainly those who joined before age 20 – must continue to pay employee contributions beyond the point of accruing maximum pensionable service but before they are able to retire.
9. For example, if someone joined the scheme at 18 and paid contributions for 30 years by age 48, they would have accrued maximum pensionable service in the pension scheme yet could not retire until age 50.
10. The government introduced an employee contributions holiday for FPS 1992 members who accrue the maximum 30 years' pensionable service prior to age 50. This applies from the point of accruing maximum pensionable service in the scheme until the member's 50th birthday.
11. Calculate the gross amount of contributions which would have been payable by the member under the FPS 1992 including the effect of their contributions holiday during the appropriate years of remediable service.
12. Compare the result with the actual gross contributions paid under the FPS 2015.
13. If FPS 2015 contributions are greater than FPS 1992 contributions including the effect of the contributions holiday, then calculate a best estimate of the net amount of contributions overpaid and gross compensation using the same method as shown above for an FPS 2006 member.
14. The amount deducted from the compensation should be withheld until the tax position of compensation is clarified by legislation. If this does not happen before the tax becomes due, the FRA should contact the member to agree

that it should be paid to HMRC on their behalf to avoid any tax liability falling on the member.

Step 9 – Inform the member of their options (including mandate for deducting unauthorised payment tax from lump sum and scheme pays) and await a decision

1. The member should be notified of the results of the calculations and their options within 62 days (unless a revised medical opinion is required) of the date of application, in particular:
 - i. A statement of the benefits available under the FPS 1992 or FPS 2006, to include any dependents benefits available.
 - ii. The amount of arrears of pension and lump sum if the FPS 1992 or FPS 2006 benefits are higher than those currently in payment (Cat 2 only).
 - iii. Their right to revisit their original commutation decision, noting that such a revisit will delay the process as new calculations will be required (Cat 2 only).
 - iv. The amount of any unauthorised payment charge due to exceeding the maximum tax-free lump sum.
 - v. An estimate of any new, or increase or decrease in any existing, breach of the Annual Allowance together with any scheme pays deduction.
 - vi. The amount of underpaid gross contributions which will be deducted from the arrears of lump sum (or PCLS for Cat 1 members).
 - vii. The amounts of any compensation for late payment of lump sum unauthorised payment charges, overpaid contributions, or excess scheme pays deductions.
 - viii. The amount of interest on the appropriate elements of the above amounts.

2. The member should also be provided with:
 - i. The option to elect for benefits under the IDF and the Compensation Record (set out at Annex 3 of the MoU).
 - ii. A mandate for deducting unauthorised payment charges from the lump sum arrears.
 - iii. The option to deduct any underpaid gross contributions from the arrears of lump sum or PCLS. If the member does not elect for this, they must be informed that they will be required to pay the gross amount of contributions to the FRA directly.
 - iv. The option to confirm no change to the original commutation decision. If the member wishes to change their commutation decision, they

should be notified that further calculations will be required which will delay the payment of arrears.

Step 10 – Payment of sums due

The process for payment will depend which category the member is in.

Step 10A – Business as usual (Cat 1)

1. Category 1 members making a benefit election shall be processed as business as usual in line with an FRAs normal timescales/ dates for payment.

Step 10B – Revise the pension in payment (Cat 2)

2. Category 2 members making an election for legacy scheme benefits will have their pension in payment adjusted from the next pension payroll date, at least one month after the FRAs receives the election.

Step 10C – Arrears of pension and lump sum (Cat 2)

3. Arrears of pension and lump sum should be paid to the member within 28 days of their election.
4. The amount payable in respect of arrears of pension shall be made up of the total of pension underpaid relating to the remediable service plus interest at 3% simple less any new or increased deduction for scheme pays. Where possible this should be paid via the payroll in order to ensure the correct tax is taken. If this is not possible the member should be informed that they must declare the arrears as taxable income.
5. The amount payable in respect of lump sum shall be made up as follows:
 - i. The amount of underpaid lump sum
 - ii. Plus interest at 3% simple
 - iii. Less any mandated unauthorised payment deductions
 - iv. Less any amount of underpaid gross contributions
 - v. Plus any compensation

Governance

1. FRAs will need to ensure that the details of calculations, how they applied before remedy, and the underpinned benefits on the reformed basis are properly recorded to enable any rectification needed or answer questions once the legislation comes into force.
2. Local Pension Boards (LPBs) may want to consider what assurances they can seek that additional processes are in place to check decision making.

3. LPBs will also want to assure themselves that TPR requirements are being complied with. Particularly to ensure:
 - i. The policies in place to support the [six key processes](#) TPR use to measure performance are updated to ensure they take account of immediate detriment decision making and payments.
 - ii. How [breaches of law](#) will be recorded and reported to TPR.
 - iii. How immediate detriment data will be measured as part of the TPR [data scoring requirements](#), without automated systems, and methods to record the data.

Issue	Category 1 cases	Category 2 cases	Payment type
Shortfall in retirement lump sum and past pension payments	Retirement lump sum and benefits paid on retirement through Legacy scheme (so that no shortfall arises).	Pay as lump sums (comprising pension lump sum and arrears lump sum likely made in two payments) through the 1992 scheme (as arrears). Pension arrears will be subject to PAYE, but if any additional income tax is payable by the member that would not have been payable if the member had never been treated as a member of the 2015 Scheme, the FRA will compensate the member for that tax liability.	Scheme benefit payable from the pension fund account under Section 61 Equality Act
Interest on shortfall in retirement lump sum and past pension payments	No interest due because correct lump sum and pension benefits will be paid on retirement.	Interest paid at 3% p.a. simple, from the date lump sum / benefits should have been paid.	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.
Employee contributions: 1992 Scheme	Member pays shortfall (since 2015) through pay or as a deduction from retirement lump sum.	Member pays any shortfall (since 2015) as a deduction from retirement lump sum. If no lump sum is payable, the member will need to pay any contributions owed from their own resources and to be given a reasonable time to pay based on their individual circumstances.	N/A

Appendix C

Employee contributions: 2006 Scheme	Compensation for excess contributions to be paid on retirement. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	FRA to pay compensation for excess contributions. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.
Tax relief on employee contributions	<p>Process through PAYE to the extent possible if time/amount allows. If time does not allow, then any tax relief not collected through PAYE will be calculated and paid when the remedying legislation is in force.</p> <p>FBU and FRAs will encourage members to give as much notice of retirement as possible to facilitate payment through PAYE.</p>	Compensation for any tax relief foregone will be paid to the individual when the remedying legislation is in force. So, for now, individuals will pay the gross amount of contributions due.	N/A – will be dealt with when legislation is available
Interest payable on adjusted employee contributions (1992 Scheme)	Interest to be paid by the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation). If tax relief was not processed through PAYE (because time/amount did not allow), where the individual is due to receive a future payment to compensate him or her for the tax relief foregone, the interest amount will be deducted from that payment.	Interest to be paid by the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation). Where the individual is due to receive a future payment to compensate him or her for the tax relief foregone, the interest amount will be deducted from that payment.	N/A

Interest payable on adjusted employee contributions – compensatory amount (2006 Scheme)	Interest to be paid to the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation).	Interest to be paid to the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation).	N/A – will be dealt with when legislation is available
Contribution holidays: excess employee contributions	Compensation for excess contributions to be paid on retirement. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	FRA to pay compensation for excess contributions. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.
CETVs and added pension	If an issue arises, then look at it at that point. Individual and FRA will work together to agree a holding compromise that the CETV/added pension will stay in the 2015 scheme until the legislative solution arrives.	Deal with as and when arises.	N/A
Annual Allowance charges	Recalculate pension input amount for each year of remedy. If an annual allowance charge would have arisen if the individual had not been transferred to the 2015 Scheme, the charge remains payable by the member (through scheme pays or otherwise). If an annual allowance charge would not have arisen (or a lesser charge applied) if the member had	Recalculate pension input amount for each year of remedy. If an annual allowance charge would have arisen if the individual had not been transferred to the 2015 Scheme, the charge remains payable by the member (through scheme pays or otherwise). If an annual allowance charge would not have arisen (or a lesser charge applied) if the member had not transferred to the 2015 Scheme, the member will pay that charge and the FRA will compensate the member for any	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012. Only relates to compensation for AA charges that would not have arisen save for the discrimination.

	not transferred to the 2015 Scheme, the member will pay that charge and the FRA will compensate the member for the annual allowance charge that is demanded (or any excess over the lesser charge that would have applied).	annual allowance charge that is demanded (or any excess over the lesser charge that would have applied).	
Scheme pays (MSP/VSP)	Member pays tax through VSP for statutory taxyears for which it becomes due.	Member pays tax through VSP for statutory taxyears for which it becomes due.	N/A
Converting scheme pays debits	FRA to recalculate the pension debit as if taken at time of original scheme pays election using actuarial factors applicable at time.	FRA to recalculate the pension debit as if taken at time of original scheme pays election using actuarial factors applicable at time.	N/A
Converting pension sharing debits	Deal with on a case-by-case basis as issues arise.	Deal with on a case-by-case basis as issues arise.	N/A
Dependents	Deal with on a case-by-case basis as issues arise (and in accordance with the timeframes set out in Annex 2 where reasonably practicable).	Deal with on a case-by-case basis as issues arise (and in accordance with the timeframes set out in Annex 2 where reasonably practicable).	Scheme benefit payable from the pension fund account under Section 61 Equality Act
Taper members	Tapering to stop (because that is the only step that is consistent with the ET decision).	Tapering to stop (because that is the only step that is consistent with the ET decision).	N/A
Unauthorised payments	N/A	The FRA will compensate the member for unauthorised payment charges which the member has had to pay and which he or she would not have had to pay if the member had not transferred to the 2015 Scheme.	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.

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ROYAL BERKSHIRE FIRE AUTHORITY REPORT



COMMITTEE	MANAGEMENT COMMITTEE
DATE OF MEETING	7 DECEMBER 2021
SUBJECT	2021/22 BUDGET MONITORING – QUARTER 2
LEAD OFFICER	CONOR BYRNE, HEAD OF FINANCE AND PROCUREMENT
LEAD MEMBER	COUNCILLOR DENNIS BENNEYWORTH
EXEMPT INFORMATION	NONE
ACTION	FOR NOTE

1. EXECUTIVE SUMMARY

- 1.1 To inform members of the estimated revenue outturn and to provide an update on capital projects at the end of quarter 2 2021/22.

2. RECOMMENDATION

- 2.1 That the Management Committee **NOTE** the report.

3. REPORT

Commentary on Revenue Outturn

- 3.1 The detailed revenue outturn for quarter 2, 2021/22 is shown in **Appendix A**. Net costs of TVFCS for quarter 2 are shown in **Appendix B**.
- 3.2 The 2021/22 Revenue Budget agreed by Members in February 2021 was set at £35.779m. Expenditure was anticipated to exceed income by £29,000, meaning that the Fire Authority was reliant on its reserves to balance the budget.
- 3.3 Whilst staffing salary budgets were set based on the central Government position of a public sector pay freeze, the NJC have subsequently agreed a grey book pay award of 1.5%, effective from 1 July 2021, which will cost an additional £240,000. A final offer of 1.75% has also been made for green book staff. If agreed, this will be effective from 1 April 2021 and will cost an estimated additional £132,000. Set against these pay pressures there are in-year savings as a result of reduced availability on on-call stations as well as

Agenda Item 9

some short-term vacancies. Finally, following a review of corporate priorities, the implementation of the Nucleus Crewing project has been delayed – with one-off in-year savings of £174,000.

- 3.4 Pressure on the *Repairs and Maintenance* line has continued in quarter 2, leading to projected expenditure being £94,000 over budget. Major costs include roof repairs at four stations, a water leak at the training centre and work on the extractor unit at the Firehouse.
- 3.5 On a more positive note, the Authority has been working in collaboration with a property specialist to appeal business rate charges applied to our properties. This has proven to be successful and confirmation has recently been received of the value of the back-dated refunds amounting to £319,000 for fifteen stations, which will be received in 2021/22. £243,000 relates to previous years. The process is ongoing in relation to one other station. Business rates for the new station in Theale are yet to be confirmed but a part-year estimate has been included in the outturn forecast.
- 3.6 As has been reported previously, the Authority is facing significant cost pressures in relation to supplies and services. To this point we have been fortunate to benefit from hedging by our energy supplier meaning that cost rises have been subdued. However, price rises will feed in during the second half of the financial year and will increase further next year.
- 3.7 The *Equipment* line includes additional costs related to Covid and BA equipment. More generally, we are seeing notifications of price rises coming through due to increased fuel and import costs.
- 3.8 The *Communications* line includes an increase in the BT contract due to improved capacity of network services which will increase resilience and bandwidth and enhance the management of security and firewalls.
- 3.9 As stated in the quarter 1 report, there is an additional cost pressure in relation to legal fees which are forecast to exceed the allocated budget by £70,000.
- 3.10 There are various pressures in relation to the *Vehicle Running Costs* line, including rising fuel and one-off fleet maintenance costs.
- 3.11 Cross border charges data have been agreed with Thames Valley partners for the first two quarters of the year and the estimated outturn position is that charges will be £41,000 lower (under *Contracts Other*) and income £34,000 higher than the budgeted targets.
- 3.12 The *Grants* line is showing an adverse variance as the Home Office miscalculated the Firelink grant due to fire and rescue services. In our case, the Home Office paid us £47,000 too much in 2020/21, which is being recovered in the current year.
- 3.13 At the point of budget setting, there was uncertainty about the final level of funding the Authority would receive via the Berkshire unitary authorities and

section 31 grants. Final confirmation was received after the budget was set and the Authority will be receiving an additional £251,000.

- 3.14 In summary, the forecast year-end outturn shows a deficit of £67,000 to be funded from reserves, an increase of £38,000 from the budget setting position.

Capital

- 3.15 Capital expenditure to quarter 2, 2021/22 and supporting commentary for each respective scheme is shown in **Appendix C**.

4. CONTRIBUTION TO STRATEGIC COMMITMENTS

- 4.1 Commitment 5 – We will ensure that Royal Berkshire Fire and Rescue Service provides good value for money.

5. FINANCIAL IMPLICATIONS

- 5.1 The forecast outturn position on the Revenue Account is expected to increase the call on reserves by £38,000 by the end of the financial year.

6. LEGAL IMPLICATIONS

- 6.1 Expenditure complies with the Authority's Financial Regulations.

7. EQUALITY AND DIVERSITY IMPLICATIONS

- 7.1 There are no equality and diversity implications arising from this report.

8. RISK IMPLICATIONS

- 8.1 The revenue and capital outturns together with the reserves position are consistent with the assumptions within the Medium Term Financial Plan.
- 8.2 Regular monitoring of expenditure against budgets helps ensure that resources are matched to need.

9. CONSISTENCY WITH DUTY TO COLLABORATE

- 9.1 The duty to collaborate is considered as part of the procurement process for both revenue and capital expenditure.

10. PRINCIPAL CONSULTATION

10.1 The Chief Fire Officer has noted the contents of the report.

11. BACKGROUND PAPERS

11.1 Agenda and Minutes, Royal Berkshire Authority: 17 February 2021.

12. APPENDICES

12.1 Appendix A – Revenue position at quarter 2 2021/22

12.2 Appendix B – Net costs of TVFCS quarter 2 2021/22

12.3 Appendix C – Capital position at quarter 2 2021/22

13. CONTACT DETAILS

13.1 Conor Byrne
Head of Finance and Procurement
07585 991602

	Annual Budget £'000	Sep-21 Outturn £'000	Forecast to YE £'000	Fcast - Budget Variance £'000
EMPLOYEES				
STATIONS	16,820	8,473	16,863	43
NON-STATIONS	11,404	5,626	11,560	156
TRAINING	543	163	544	1
OTHER	258	149	269	11
	29,025	14,411	29,236	211
PREMISES				
REPAIRS & MAINTENANCE	712	267	806	94
RATES	920	469	654	(266)
CLEANING	236	57	241	5
UTILITIES	458	148	520	62
	2,326	941	2,221	(105)
SUPPLIES				
INSURANCE	385	224	385	0
EQUIPMENT	539	242	565	26
IS EQUIPMENT & LICENCES	692	558	708	16
CLOTHING/PPE	374	137	375	1
COMMUNICATIONS	776	280	803	27
OCCUPATIONAL HEALTH	198	122	198	0
PRINT/STATIONERY/PUBLICATIONS/SUBSCRIPTIONS	139	95	153	14
COMMUNITY FIRE SAFETY SUPPLIES	180	61	180	0
SUPPLIES OTHER	220	82	218	(2)
	3,503	1,801	3,585	82
CONTRACTS				
CONTRIBUTION TO TVFCS & COLLABORATION	911	458	922	11
LEGAL	50	18	120	70
CONTRACTS OTHER (incl Professional Services)	689	228	654	(35)
	1,650	704	1,696	46
TRANSPORT				
VEHICLE RUNNING COSTS	694	348	736	42
TRAVEL	217	81	213	(4)
	911	429	949	38
PENSIONS				
PENSIONS	406	180	410	4
	406	180	410	4
INCOME				
GRANTS	(2,257)	(2,240)	(2,210)	47
RENTAL INCOME	(173)	(93)	(173)	0
TVFCS RECHARGE INCOME	(324)	(162)	(324)	0
INCOME OTHER	(311)	(35)	(351)	(40)
	(3,065)	(2,530)	(3,058)	7
NET COST OF SERVICES	34,756	15,936	35,039	283
DEBT CHARGES INTEREST	374	163	380	6
INVESTMENT INTEREST	(10)	(5)	(10)	0
REVENUE FUNDING OF CAPITAL	600	0	600	0
CAPITAL CONTRIBUTIONS TO STAFFING COSTS	(163)	(69)	(163)	0
APPROPRIATION TO/(FROM) RESERVES	(359)	0	(359)	0
FINANCING COSTS	610	0	610	0
NET EXPENDITURE	35,808	16,025	36,097	289
GOV GRANTS/PRECEPTS	(35,779)	(21,573)	(36,030)	(251)
(SURPLUS)/DEFICIT BEFORE USE OF RESERVES	29	(5,548)	67	38

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Royal Berkshire Fire Authority
Quarter 2 Budget Monitoring Report 2021/22

Thames Valley Fire Control Service (TVFCS)

	Annual Budget £'000	Outturn Sep-21 £'000	Forecast to Y/E £'000	Forecast Variance £'000
EMPLOYEES	1,798	936	1,832	34
CORPORATE RECHARGES TO TVFCS FROM RBFRS	324	162	324	0
SUPPLIES/ OTHER	38	2	38	0
TECHNOLOGY	250	112	246	(4)
NET COST OF TVFCS	2,410	1,212	2,440	30
RBFRS Share of Costs (37.8%)	911	458	922	11

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Project Owner	Active Capital Projects	Total Project Budget £000's	Actual Spend in Prior Years £000's	Expected spend in 21/22	Actual Spend in Q1&2 £000's	TOTAL	Total Estimated Project Spend £000's	Commentary
						Estimated Project Spend to Completion £000's		
Property, Capital Projects and Estates	New tri-service community fire station - Theale	9,220	6,016	2,570	2,020	1,184	9,220	Construction of the new Fire Station at Theale was completed to programme and on time. The Capital Projects team are now working with the main contractor to complete any outstanding snagging items. The station now falls within its 12 month defects identification and rectification period. Due to seasonal restrictions, the main landscaping and planting of trees has now progressed and the landscaping will be complete by the end of December. This meets our ecological and soft landscaping planning conditions. Operational crews moved into Theale at the end of September 2021 as per programme and the relocation of further departments identified to move to the new fire station will take place over the coming months. The official opening ceremony is scheduled for March 2022. Final budgets are still being prepared, however, we anticipate delivering this project on budget. A project closedown report will be presented to Members at the appropriate time.
	Fire stations - Minor Capital Works Programme	1,250	2	245	12	1,236	1,250	The Minor Capital Works programme is now under way, with the first package of work tendered and ready to start on site shortly. All other packages of work are being prepared ready to release to the market in stages over the coming months. It should be noted that costs are rising in the construction sector, far in excess of inflation, so regular review and reporting of this project, with tight contract management will be key to attempting to deliver it in its entirety on time and on budget. The Lead Member for Strategic Assets and the Property Development Working Group will continue their oversight of this project as it moves forward.
Fleet & equipment	New Fire Appliances	4,860	4,453	407	388	19	4,860	Despite some production delays caused by Covid-19, the remaining four main pumping appliances have arrived. The fleet team undertook acceptance testing in August and now two appliances are fully operational at Caversham Road and Maidenhead fire stations. The remaining two are in the final stages of commissioning, will become operational in Q3 and deployed to Slough fire station.
	Aerial Ladder Platform	740	756	0	0	0	756	The Aerial Ladder Platform went on the run in August after successful driver and operator training and a period of familiarisation. The final stages of commissioning and training involved excellent intra-department working between the fleet & equipment teams, ICT team and the crews at Whitley Wood to make this appliance fully operational.
	4x4 Fire Appliance at Maidenhead	175	75	99	99	1	175	The replacement smaller 4x4 appliance for Maidenhead has also arrived in Service, and is subject to commissioning before being made available for operator/user training. The vehicles will then become fully operational towards the end of quarter 3.
	White Fleet	240	0	100	0	240	240	In February 2021, Fire Authority approved the purchase of nine new white fleet vehicles. Initial orders have been placed for some light commercial vans and specifications are being finalised for the others vehicles, which will include hybrid and electric vehicles, and orders will be placed. Suppliers have advised of long lead times, so it is expected that most of these vehicles will be ordered this financial year but will not become operational until 2022/23.
	BA Equipment	972	0	250	5	872	872	In April 2021, Management Committee approved the allocation of £972k of funding for the replacement of BA apparatus. After successful and robust user testing and equipment trials, a competitive tender process led to the contract being awarded to the successful bidder. Total spend is projected to be lower than initially forecast and will deliver a saving on the original budget allocation agreed. The project team made up of representatives from all three Thames Valley fire and rescue services will be working closely with the manufacturer over the coming months to prepare for user training to commence in early 2022 with RFBRs planned to go live with the new equipment around November 2022.
	Network Refresh	394	0	394	0	394	394	Upgrading and updating of our network infrastructure is a key activity that underpins many of RBFRS' strategic plans going forward. The network hardware refresh is to align with new Wide Area Network (WAN) provision. The contract has now been approved and the implementation project start up is underway with the vendor.

Project Owner	Active Capital Projects	TOTAL						Commentary
		Total Project Budget £000's	Actual Spend in Prior Years £000's	Expected spend in 21/22	Actual Spend in Q1&2 £000's	Estimated Project Spend to Completion £000's	Total Estimated Project Spend £000's	
ICT	Hardware - Tablets	11	0	11	11	0	11	This project reflects the increase in deployment of tablet devices to enable use outside of the existing prevention function and to support information management related projects in protection and other areas of service delivery.
	Hardware - Telephony System	75	0	75	38	37	75	Telephony systems requires a hardware refresh to allow software upgrades that will ensure supportability going forward, and additional applications such as Microsoft Teams. The Procurement tender process has commenced to enable the contract to be awarded.
	Hardware - Computer peripheral refresh	30	0	30	11	19	30	This project supports the ongoing replacement of computer peripheral equipment, including headsets, speakerphones, cameras, keyboards, monitors and mice. This process is aligned to the client computer hardware refresh cycle. Purchase of the required equipment has commenced in quarter 2, including monitors, hard disk upgrades and headsets.
	Software - Firewatch Development	50	0	50	0	50	50	System development costs to cover a number of one off known initiatives for additional modules, linked to the wider asset management project.
	Services - Applications Deployment	63	0	63	24	39	63	Temporary resources required for the successful implementation of the projects and services noted above, including Firewatch / IBIS testing. Long term plan for both posts linked to outcome of ICT department reorganisation.
	Services - Technical Support	47	0	47	18	29	47	Temporary resources required for the successful implementation of the projects and services noted above, specifically implementation resource. Role is currently filled.
	Services - Project Management	88	0	88	27	61	88	Temporary resources required for the successful implementation of the projects and services noted above, specifically technical project management resource. Role is currently filled.
	Video Conferencing Equipment	88	0	88	0	88	88	Additional funding secured from Central Government for specific projects linked to COVID-19 has enabled tender processes to commence to purchase and implement additional video conferencing capabilities and equipment.
	Helpdesk System	45	29	16	3	13	45	Alemba platform (both test and production environment) has been upgraded to newer version 10.2 in October.
TOTAL		18,348	11,331	4,533	2,656	4,282	18,264	

ROYAL BERKSHIRE FIRE AUTHORITY REPORT



COMMITTEE	MANAGEMENT COMMITTEE
DATE OF MEETING	7 DECEMBER 2021
SUBJECT	APPLIANCE AVAILABILITY BY CREWING TO MEET CORPORATE MEASURES 16 AND 17
LEAD OFFICER(S)	DOUG BUCHANAN, ASSISTANT CHIEF FIRE OFFICER AND PAUL ILLMAN, AREA MANAGER RESPONSE AND RESILIENCE
LEAD MEMBER	N/A
EXEMPT INFORMATION	NONE
ACTION	TO NOTE

1. EXECUTIVE SUMMARY

- 1.1 This report provides information on Quarter 2 (Q2) performance with supporting narrative on the Whole-time Duty System and the On-Call (previously referred to as the Retained Duty System) appliance availability.
- 1.2 Whole-time appliance availability for Q2 averaged **84.6%** across the Service. This quarter was particularly challenging, not least as a result of direct and indirect impacts of the Covid-19 pandemic.
- 1.3 On-Call appliance availability through crewing for Q2 was also significantly impacted, averaging **34.7%** across the Service against the target of 60%.
- 1.4 Despite crewing levels presenting significant challenges for the Service throughout Q2, the effective and efficient use of available staff and additional mitigating measures applied enabled the Service to exceed the response standard with an average of **77%**.

2. RECOMMENDATION

- 2.1 That the Management Committee:

Note the 2021-22 Q2 performance of **84.6%** appliance availability of the Service's 14 Whole-time appliances in line with Corporate Measure 16¹

Note the 2021-22 Q2 performance of overall On-Call appliance availability of **34.7%** against the Service target of 60% in Corporate Measure 17².

¹ Corporate Measure 16: Achieving the sufficient minimum number of qualified firefighters (4 personnel) on all Whole-time appliances (fire engines) through Q2 2021-22

² Corporate Measure 17: Percentage of hours per month where there is adequate crewing on all On-Call appliances (fire engines) through Q2 2021-22

3. REPORT

- 3.1 This report provides the **2021-22 Q2** update of performance against Corporate Measure 16; *to ensure 100% of full shifts where there is adequate crewing on all Whole-time frontline pumping appliances.*
- 3.2 RBFRS employ a lean operating model including the Whole-time Duty System provision. With an establishment of 324 staff (81 per duty line), maintaining sufficient minimum numbers of qualified firefighters requires effective management combined with flexibility and commitment to provide additional hours from staff on a Pre-arranged overtime (PAOT) basis.
- 3.3 The report also details performance against Corporate Measure 17, which sets a target of *60% of hours where there is adequate crewing on On-Call frontline pumping appliances (based on 24/7 crewing)*. This measure being applied across the individual and overall availability of the Service's five³ On-Call appliances.

Whole-time Duty System Appliance Availability – Q2 2021-22 (Corporate Measure 16)

- 3.4 The availability of the Service's 14 Whole-time appliances is measured by the percentage of shifts (day and night) that appliances are available with appropriately qualified firefighters. There were 81 days in Q2; the total number of day and night shifts for Q2 therefore equates to 192.
- 3.5 Corporate measure 16 allows for a two-hour period at start of each shift for any moves of operational personnel between stations. This is known as a critical stand-by move and is usually employed to cover short notice sickness or other unforeseen absences.
- 3.6 Performance of appliance availability across the Service's 14 Whole-time appliances for Q2 was **84.6%**. This equates to **25** shifts where crewing was not achieved in line with the Corporate Measure 16. On **3** of these occasions there were two appliances unavailable. The performance in Q2 is a decrease on the **98.9%** performance level achieved Q1.
- 3.7 There were several contributing factors relating to the unusual decrease in this performance measure, which include:
- i. COVID-19 presented a significant impact to operational personnel with many required to 'self-isolate' and/or 'shield'. At its worst, there were 17 WDS staff absent from the workplace, which was in line with Government requirements at the time.
 - ii. A higher than usual level of staff on long-term sickness and restricted duties (in addition to direct Covid conditions). This was caused by staff not being able to access health care support, due to pressures across the NHS, which may have ordinarily enabled a quicker return to operational duties.

- 3.8 To help mitigate these pressures a number of actions were taken that had been originally set out in the Service's 'crewing degradation' scenario plans as established at the start of the pandemic.
- 3.9 Service Delivery established a cross-departmental 'Crewing Task Team' to closely monitor and manage impacts. This team met daily at the peak of the impacts and made a number of interventions to maintain appropriate response standards balanced across immediate and longer-term impacts for the organisation. These included:
- i. Monitored the impacts of planned training events and postponed these where they had a direct impact on appliance availability.
 - ii. Realigned operationally competent staff performing other duties (such as projects or resilience planning) to targeted operational shifts. Staff on restricted duties were used to backfill this impact where possible.
 - iii. Recommended the immediate increase of competent 'transferees' from other FRS', resulting in an additional six contracts being offered. Due to employment processes and training requirements these staff do not improve availability until Q3.
 - iv. Improved the communication and processes availability of PAOT for staff, including on-call personnel. This led to the acceleration of resource management functionality software, which is due for rollout in Q3/4.
 - v. Ensured that the Service's degradation policy was consistently applied to reduce the impact on response standards.
- 3.10 Most notably, 11 on-call duty staff were offered six month temporary contracts on the WDS, to fill personnel gaps. This made a significant and immediate improvement to availability. An assessment was made to understand the most likely impact to on-call availability and how this could be minimised. This was balanced across the increased likelihood of maintaining the Service's overall response standard of attending 75% of emergencies within 10minutes.
- 3.11 RBFRS are incredibly grateful for the flexibility and commitment shown by the staff during this period. The high level of co-operation and commitment to provide additional availability displayed by personnel was remarkable. Notably, those on-call staff undertaking temporary contracts have enabled the Service to deliver a response standard of 77% for the residents of Royal Berkshire in Q2 despite the uncontrollable pressures faced.

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On-Call Duty System Appliance Availability – Q2 2021-22 (Corporate Measure 17)

- 3.12 The overall availability for On-Call appliances in Q2 was **34.7%**; a decrease from **59.8%** in the previous quarter.

The table below provides a breakdown of appliance availability based on station and month with an averaged quarterly total:

Station	Availability target	July 21	Aug 21	Sept 21	Q2 average
Hungerford	70%	40.9%	31.5%	58.2%	43.4%
Lambourn	40%	8.2%	10.2%	6.8%	8.4%
Mortimer	70%	76.2%	23.5%	18.8%	39.7%
Crowthorne	85%	59.2%	49.3%	52%	53.5%
Maidenhead	70%	32.9%	11.5%	40.7%	28.3%

The variations between stations are indicative of their differing establishment profiles (the number of individuals at each station, the qualifications and skill sets held, and the amount of operational cover each individual can provide).

- 3.13 There are a number of factors that have contributed to the decrease in overall on-call appliance availability from 59.8% in Q1 down to 34.7% in Q2. These include:
- i. A number of on-call personnel were impacted by the impacts of Covid-19 and had unplanned changes to their working circumstances and availability. This led to an unexpected increase in staff turnover and a relative decline in establishment. At the end of Q1 the On-Call establishment was 71 personnel this decreased to 66 in Q2. The on-call workforce has 16 current vacancies.
 - ii. The Service have not been able to undertake its usual on-call attraction and recruitment activity due to pandemic restrictions and other pressures as a result of prioritising the response to Covid-19.
 - iii. Staff have are required to take statutory leave periods, much of which had been carried forward from 2020, in line with Government guidance. This had a knock on impact in 2021. RBFRS also wanted to ensure that staff had sufficient periods of rest and recovery following a difficult and challenge year for many on-call staff.
 - iv. Restrictions were placed on some staff who were required to self-isolate in line with Government requirements.
 - v. Staff with key skills, such as Incident Commander, where unavailable for long periods of Q” due to sickness. This has a disproportionate impact on

appliance availability due to the limited resilience provided through the on-call duty system arrangements.

- 3.14 The 11 on-call staff on temporary WDS contracts have sought to maintain on-call availability. This has placed an increased pressure on on-call crewing as the shift pattern requirements of WDS has changed the profile of availability of those staff. Impacts were in line with planning assumptions, but were further impacted with factors noted in i-v.
- 3.15 Hub-based management teams continue to provide support to all On-Call station-based teams to promote and increase the availability of On-Call fire appliances across the Service through management of provided hours.
- 3.16 To evaluate the changes in availability noted in Q2 and provide measures to increase resilience across the on-call teams the on-call station manager (west hub) has undertaken a detailed review of on-call availability across the Service. As a result and in conjunction with the lifting of COVID restrictions recruitment activity has resumed and the service has 11 on-call applications in progress.
- 3.17 The on-call station manager has also attended the NFCC on-call practitioners' forum (October 18th) to seek opportunities to peer review the RBFRS on-call model. This has led to invitations to visit services that face similar challenges to RBFRS in terms of managing on-call recruitment, retention, training and contract types. This will inform our current review of availability and offer suggestions for improvement.

4. CONTRIBUTION TO STRATEGIC COMMITMENTS

- 4.1 Commitment 2 – We will ensure a swift and appropriate response when called to emergencies.
- 4.2 Commitment 5 – We will ensure that Royal Berkshire Fire and Rescue Service provides good value for money.

5. FINANCIAL IMPLICATIONS

- 5.1 The use of pre-arranged overtime (PAOT) continues to be utilised to mitigate other extractions. This requirement means that the PAOT expenditure is above planned levels.
- 5.2 The use of PAOT through **Q2** continued to enable the Service to maintain a operational availability that supported the achievement of the Service's response standard commitment.

6. LEGAL IMPLICATIONS

- 6.1 None identified

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7. EQUALITY AND DIVERSITY IMPLICATIONS

7.1 None identified

8. RISK IMPLICATIONS

8.1 The provision of sufficient minimum qualified firefighters and therefore appliance availability is listed as a corporate risk under risk number 681. It is monitored by the Deputy Chief Fire Officer and, as necessary, treatments are reported to the Senior Leadership Team and the Audit and Governance Committee.

9. CONSISTENCY WITH DUTY TO COLLABORATE

9.1 None identified.

10. BACKGROUND PAPERS

10.1 21 June 2020 – Fire Authority Paper, Annual Plan 20/21.

10.2 14 October 2019 – Management Committee Paper, 2019-20 Q1 Appliance Availability Report

10.3 06 February 2018 – Management Committee Paper, Review of Underpinning Assumptions of 2015 Crewing Strategy and Quarter 3 Appliance Availability Update.

11. APPENDICES

11.1 None

12. CONTACT DETAILS

12.1 Doug Buchanan – Assistant Chief Fire Officer buchanand@rbfrs.co.uk

12.2 Paul Illman – Area Manager, Response and Resilience illmanp@rbfrs.co.uk

ITEM	DECISION BODY	NEXT REPORTING DATE	REPORTING FREQUENCY	RECOMMENDED ACTION	LEAD OFFICER	LEAD MEMBER	PART I / II
Quarterly Performance Report	TVFCS Joint Committee	16.12.21	Bi annual	Note	AM C&P and HF&P	N/A	Part I
Capita Contract Novation	TVFCS Joint Committee	16.12.21	Ad-hoc	Agree	AM C&P	N/A	Part I
TVFCS Members Workshop	TVFCS Joint Committee	16.12.21	Ad-hoc	Agree	AM C&P	N/A	Part I
Proposed Budget 2022/23	TVFCS Joint Committee	16.12.21	Annual	Note and recommend	HF&P	N/A	Part I
Presentation on Control National Operational Guidance	TVFCS Joint Committee	16.12.21	Ad-hoc	Note	AM (C&P)	N/A	Part I
Core Code of Ethics for Fire and Rescue Services (England)	A&GC	24.01.22	Ad-hoc	Note and recommend	DChEx	N/A	Part I
Members Code of Conduct	A&GC	24.01.22	Annual	Agree	MO	N/A	Part I
Pension Board Six Month Update	A&GC	24.01.22	Bi-annual	Note	HHR&L&D and Pension Board Chair	N/A	Part I
Pay Policy Statement	A&GC	24.01.22	Annual	Note and Recommend	HHR&L&D	N/A	Part I
Internal Audit report	A&GC	24.01.22	Quarterly	Note	HF&P	N/A	Part I
External Audit report	A&GC	24.01.22	Quarterly	Note	HF&P	N/A	Part I
Q2 Performance Report	A&GC	24.01.22	Quarterly	Note	HCS	N/A	Part I
Emergency Services Mobile Communications Programme - Presentation	A&GC	24.01.22	Bi annual	Note	HBIS	N/A	Part I
Budget Monitoring Q3	Management Committee	03.02.22	Annual	Note	HF&P	Budget and Income Generation Lead	Part I
Scheme of Member Allowances Annual Review	Management Committee	03.02.22	Annual	Note and recommend	MO	N/A	Part I
Appliance Availability Q3	Management Committee	03.02.22	Quarterly	Note	AM (R&R)	N/A	Part I
Asset Release Update	Management Committee	03.02.22	Ad-hoc	Note	HCP&E	Strategic Assets Lead	Part II
Pay Policy Statement	Fire Authority	15.02.22	Annual	Agree	HHR&L&D	N/A	Part I
Scheme of Allowances Annual Review 22/23	Fire Authority	15.02.22	Annual	Agree	MO	N/A	Part I
Core Code of Ethics for Fire and Rescue Services (England)	Fire Authority	15.02.22	Ad-hoc	Note	DChEx	N/A	Part I
Modern Slavery Statement / HR Policies	Fire Authority	15.02.22	Ad-hoc	Agree	HHR&L&D	N/A	Part I
Annual Budget 22/23, Medium Term Financial Plan & Strategic Asset Investment Framework and TVFCS Budget	Fire Authority	15.02.22	Annual	Agree	HF&P	Budget and Income Generation/ Collaboration and Strategic Assets Lead	Part I
Internal Audit Report	A&GC	23.03.22	quarterly	Note	HF&P	N/A	Part I
External Audit Report	A&GC	23.03.22	quarterly	Note	HF&P	N/A	Part I
Gender Pay Gap	A&GC	23.03.22	Annual	Note	HHR&L&D	N/A	Part I

ITEM	DECISION BODY	NEXT REPORTING DATE	REPORTING FREQUENCY	RECOMMENDED ACTION	LEAD OFFICER	LEAD MEMBER	PART I / II
Statement of Assurance	A&GC	23.03.22	Quarterly	Note and Recommend	HCS	RBFA Chairman and A&GC Chairman	Part I
Statement of Accounts	A&GC	23.03.22	Annual	Agree	HF&P	Budget and Income Generation Lead	Part I
Members Code of Conduct	A&GC	23.03.22	every four years	Agree	MO	N/A	Part I
Member/Officer Protocol	A&GC	23.03.22	every four years	Agree	DCS	N/A	Part I
Annual Report on Members Development	A&GC	23.03.22	Annual	Note and Recommend	HCS	Organisational Development Champion	Part I
Annual report on Governance / Members attendance and allowances	A&GC	23.03.22	Annual	Note and Recommend	HCS	A&GC Chairman	Part I
Annual Plan 2022/23	A&GC	23.03.22	Annual	Note and Recommend	HCS	N/A	Part I
Quarter 3 Performance Report	A&GC	23.03.22	Quarterly	Note	HCS	N/A	Part I
Capital Projects Update - project closedown report	Management Committee	05.04.22	Ad-hoc	Note	HCP&E	Strategic Assets Lead	Part II
Corporate Calendar 2021/22	Fire Authority	28.04.22	Annual	Agree	DCS	N/A	Part I
Lead Members Annual Reports	Fire Authority	28.04.22	Annual	Note	Lead Officers	Lead Members	Part I
Built Environment Presentation	Fire Authority	28.04.22	Ad-hoc	Note	ACFO	N/A	Part I
Member Champion Annual Reports	Fire Authority	28.04.22	Annual	Note	Lead Officers	Member Champions	Part I
Annual Plan 2022/23	Fire Authority	28.04.22	Annual	Agree	DCS	N/A	Part I

**Categories of “Exempt Information”
under Schedule 12A of the Local Government Act 1972**

	Category
	[For each of nos 1 - 7, see <u>Qualification 1</u> below]
1	Information relating to any individual
2	Information which is likely to reveal the identity of an individual.
3	Information relating to the financial or business affairs of any particular person (including the authority holding that information). [see <u>Qualification 2</u> below]
4	Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6	Information which reveals that the authority purposes: (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment.
7	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

Qualifications:

- (1) Information falling within paragraph 3 is not exempt information by virtue of that paragraph if it is required to be registered under -
 - (a) the Companies Act 1985;
 - (b) the Friendly Societies Act 1974;
 - (c) the Friendly Societies Act 1992;
 - (d) the Industrial and Provident Societies Acts 1965 to 1978;
 - (e) the Building Societies Act 1986; or
 - (f) the Charities Act 1993.
- (2) Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.
- (3) Information which -
 - (a) falls within any of paragraphs 1 to 7 above; and
 - (b) is not prevented from being exempt by virtue of the two preceding paragraphs
 is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest

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in disclosing the information.

Interpretation:

- (4) "*Employee*" means a person employed under a contract of service;
- (5) "*Financial or business affairs*" includes contemplated, as well as past or current, activities;
- (6) "*Labour relations matter*" means -
 - (a) any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992[10] (matters which may be the subject of a trade dispute, within the meaning of that Act);
 - or
 - (b) any dispute about a matter falling within paragraph (a) above;and for the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders under the authority as they apply in relation to employees of the authority;
- (7) "*Office-holder*", in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority;
- (8) "*Registered*" in relation to information required to be registered under the Building Societies Act 1986, means recorded in the public file of any building society (within the meaning of that Act).

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