

# ESSEX FIRE AUTHORITY

## Essex County Fire & Rescue Service



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MEETING

AGENDA ITEM

**Policy and Strategy Committee**

**6**

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MEETING DATE

REPORT NUMBER

14 January 2015

**EFA/003/15**

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SUBJECT

Insurance Pooling - Counsel's Advice

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REPORT BY

Deputy Clerk and Solicitor to the Essex Fire Authority

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PRESENTED BY

Deputy Clerk, Shirley Jarlett

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### SUMMARY

Upon agenda item 6 EFA/003/14 being presented to and considered by the Policy and Strategy Committee at its meeting on 15 January 2014, the following was resolved, in principle, by the Committee:-

1. Agreed to the Authority participating in establishing a Fire and Rescue Authorities Insurance Pool; and agreed that the Authority becomes a full member of the company and authorises the Finance Director and Treasurer, and the Clerk to take all necessary steps to achieve this;
2. Agreed that the Authority utilises the pooling arrangement for its corporate property, liability, motor and other miscellaneous insurance requirements for a minimum period of three years through the pooling entity with effect from 1 November 2014, or thereafter subject to final arrangements being in place;
3. Agreed to participate in a financial guarantee for supplementary premiums should claims against the pool exceed the funding available and authorise the Finance Director & Treasurer to take all necessary steps to achieve this;
4. Agreed that Officers may serve as Directors of the pooling entity and that the Chief Fire Officer or their nominee be empowered to represent the Authority's interests at any formal meetings of the pooling entity and to vote on its behalf; and
5. Agreed to waive the Authority's existing procurement rules that would require competing bids for the provision of insurance services to allow for the provision of cover for losses through the pooling company.

The resolutions were made subject to a subsequent satisfactory review of the report, to be undertaken by the Clerk, and in particular, a diligence examination of the legal advice set out therein.

## **RECOMMENDATIONS**

Members of the Policy and Strategy Committee are asked to:

1. Note counsel's Opinion.
2. Agree that counsel's Opinion provides satisfactory assurance in relation to the matter of *vires* and entering into insurance pooling
3. Agree that those matters previously resolved, as set out in the above summary, be actioned.

## **BACKGROUND**

The diligence exercised in particular seeking legal advice in relation to the proposed arrangements for insurance pooling resulted in a difference of opinion between the lawyer acting on behalf of Essex Fire Authority and those acting for other Authorities who were considering entering the insurance pooling. This led to doubts being raised over the Authority having the required *vires* to engage in the pooling scheme and in particular ensuring that the Essex Fire Authority did not become involved in costly litigation as occurred in the case of Brent (Brent LPC v Risk Management Parties Ltd (2008)). As a result it was considered prudent to obtain leading Counsel's opinion on the question of *vires*. John Cavanaugh QC was duly instructed to advise.

The opinion received from Counsel was thorough in its examination of the issues raised and in considering the likelihood of challenge to the proposed pooling. In particular Counsel acknowledged that it was unclear how wide the powers granted by Section 5A of the Fire and Rescue Services Act 2004 actually are as there has not been (to date) a case before the Courts on scope of the section. The position of the law has been further complicated by the fact that Section 34 of the Local Democracy Economic Development Construction Act 2009 which would have specifically given to powers to FRAs (and certain other public bodies) to enter into pool insurance arrangements has not been brought into force apparently because the Government thought it was no longer necessary to do so in light of the extended powers granted by the Section 5A. However when questioned about why the section had not been brought into force, the Parliamentary Under-Secretary referred to the Section 34 powers as being "superseded for eligible authorities by the general power of competence in the Localism Act 2011". However the 2011 Act did not grant general powers of competence to FRAs and so this response has further confused matters.

However despite the fact that the Localism Act did not confer such wide powers to FRAs as was provided for local authorities, Counsel's view is that Section 5A, when read literally, does provide the necessary powers to FRAs to enter into the pooling arrangements as long as it does so through a company.

Counsel also considered whether it was permissible for a FRA as a consequence of the pooling to indirectly provide quasi insurance cover for other authorities. He concluded that it was not unlawful as it was an unavoidable by product of the arrangement but not the purpose of the arrangement. Counsel concluded that it was more likely than not that Section 5A did confer the necessary *vires* to enable FRAs to enter into the insurance pooling arrangements

## **FINANCIAL IMPLICATIONS**

As set out in EFA/003/14.

## **LEGAL/RISK IMPLICATIONS**

As set out above.

## **Use of Resources**

There are no use of resources implications within this report.

## **Environmental Implications**

There are no environmental implications arising from this report.

## **Equality Implications**

There are no equality implications arising from this report.

<b>LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985</b>	
<b>List of appendices attached to this paper:</b> EFA/003/14	
<b>List of background documents (not attached):</b> John Cavanaugh QC - <i>Curriculum Vitae</i> <a href="http://www.11kbw.com/app/files/CVs/JC_QC.pdf">http://www.11kbw.com/app/files/CVs/JC_QC.pdf</a>	
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