

Fire and Rescue Authority Mutual Limited

Report of the Chief Fire Officer

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1 Purpose of Report

This report informs members of the recent court judgment made in relation to the Local Authority Mutual insurance company (LAML), its impact on the Fire Authority Mutual insurance company (FRAML), and the Fire Authority's position on this matter.

2 Recommendations

The Committee is asked to note the contents of the report.

3 Background

Over the last 18 months, Fire Authorities have come under considerable pressure to look at joining the new Fire Authority Mutual Insurance Company (FRAML) set up by a number of Fire Authorities around the country. Due to the inherent risks incurred through such ventures (potentially significant liabilities being held for a number of years after premiums are paid in one particular year, being perhaps the most significant), the Authority has taken a cautious approach to this opportunity. This opportunity was captured within our Corporate Risk Register with the Chief Fire Officer as the Risk Owner and Sharon Lloyd (the Corporate Services Manager) acting as the Control Owner (Risk ID 53).

4 Legal Challenge

FRAML came about following the introduction of a similar partnership within several Councils within London, who set up the Local Authority Mutual (LAML). It would appear that although Fire Authorities and Local Authorities operate under slightly different legislation, the basis for the legality behind setting up these Mutual Insurance companies was very similar. The premise being that monies saved from reduced insurance premiums could be reinvested into other aspects of service delivery, thereby helping to meet the Government's efficiency agenda. The legality of these ventures has been directly challenged in the courts in a test case brought by an insurance company (RMP), against Brent Council. The findings from this case were reported at the end of April 2008.

Although the court judgment has not ruled out the possibility that Local Authorities could legally join together to form Mutual Insurance Companies, it has certainly cast some doubt over the legality of the arguments used to do so to date. The main issue appears to be that, whilst Authorities are legally authorised to set up companies to do work that is directly incidental to their legal responsibilities (for example, providing a Fire Control is a direct requirement of Fire and Rescue Authorities (FRAs) meeting their duties to respond to emergencies), they cannot set up companies to do work that is 'incidental' to their incidental responsibilities. To clarify; FRAs have to have insurance cover in place to cover any liabilities that may arise and insurance is therefore considered as incidental to our main responsibilities. However, operating as a Mutual Insurance Company is incidental to the insurance cover, not directly to the FRA's responsibilities.

The court case has however, stated that if Local Authorities can demonstrate that there is direct benefit to the communities they serve, then they may be able to use their 'Wellbeing Powers' granted under Section 2 of the Local Government Act 2000, as the case for getting involved in a Mutual Insurance Company. Saving money on premiums is not considered sufficient to meet the requirements of this section of the Act. The Judge has stated that the Mutual Company must be able to demonstrate it is having a direct impact on the people the Council serves, perhaps by giving advice and support on how to reduce the risk to their buildings, not the Council's buildings, in order for them to be able to use this section of the Act.

LAML consider the judgment to be very grey and are therefore going to appeal against it to ensure they have legal clarity.

5 FRAML's position

Although FRAML's legal advice tells them that their existence is legal, they have decided to take a cautious approach to the situation, to ensure their members do not take on any additional risks that could be avoided. FRAML have therefore taken the decision to cease providing insurance cover for its members from the date the judgment was released. This has required the Fire Authorities in FRAML to get insurance cover from the normal insurance market to cover the period up to the end of the period covered by their FRAML policies (September).

FRAML are making representations to Government to get the legislation changed so that it is clear that Local Authorities and FRAs are able to set up companies in this way, in order to meet the efficiency requirements placed on Authorities by the Government. FRAML fully intend to continue where they left off, once the legal position has been fully cleared, either through the courts from the appeal, or by Government changing legislation. However, either option may take some time.

6 The Fire Authority's position

As stated previously, the Fire Authority has registered FRAML as an opportunity in its risk register. As such we have been monitoring the progress that FRAML has made over the last twelve months.

Although only anecdotal evidence is available, it is possible that the existence of FRAML has already benefited the Authority through a more competitive quote from the insurance market when we tendered last year. In view of the time frame likely to be experienced, before the legal clarification FRAML are seeking is forthcoming, the decision has been taken to close this risk. This opportunity may be reopened in the future if FRAML commences trading again.

7 Financial Implications

This report is purely for information purposes and therefore has no financial implications.

8 Legal Comment

There is no legal comment to be made upon the information contained within the report. The information is in the public domain and there is nothing further to add at this time.

9 Equality Impact Assessment

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

10 Appendices

There are no appendices attached to this report.

11 Background Papers

There are no background papers associated with this report.

Implications of all of the following have been considered and, where they are significant (i.e. marked with an asterisk), the implications are detailed within the report itself.

Balanced Score Card		Integrated Risk Management Planning	
Business Continuity Planning		Legal	*
Capacity		Member Involvement	
Civil Contingencies Act		National Framework	
Comprehensive Performance Assessment		Operational Assurance	
Efficiency Savings		Retained	
Environmental		Risk and Insurance	*
Financial		Staff	
Fire Control/Fire Link		Strategic Planning	
Information Communications and Technology		West Midlands Regional Management Board	
Freedom of Information / Data Protection / Environmental Information		Equality Impact Assessment	*