



Guidance on the use of Fire & Rescue Authorities' names & logos

Disclaimer

This Guidance has been produced and published in good faith by the Chief Fire Officers Association ('CFOA') and CFOA shall not incur any liability for any action or omission arising out of any reliance being placed on the guidance (including any information it contains) by any organisation or other person. Any organisation or other person in receipt of this guidance should take their own legal, financial and/or other relevant professional advice when considering what action (if any) to take in respect of any associated initiative, proposal or other arrangement, or before placing any reliance on the guidance (including any information it contains).

Introduction

This guidance has been produced by the Chief Fire Officers Association (CFOA) on behalf of the UK Fire and Rescue Service and in consultation with the Department of Communities and Local Government.

It is possible for any business to be permitted to use the name and / or logo of a fire and rescue authority. In addition, a number of fire and rescue authorities have used their legal powers¹ to establish trading subsidiaries. These companies are able to provide a range of services. The relationship with the fire and rescue authority varies depending on the nature of the company and includes community interest companies. Depending on the structure of the subsidiary company, any profits made are usually re-invested to the benefit of their fire and rescue authority or the community.

In some circumstances there is the potential for legal challenge by a business or trade body which is in competition with a business or fire authority trading company which may be perceived to be receiving an unfair advantage from a fire and rescue authority if such rights are provided for no or below market consideration. In effect such a challenge could be made on the basis that such an arrangement distorts competition and could contravene European Commission rules relating to aid by the State.

One specific example of this might be the way in which a trading subsidiary (or a separate company) makes use of the name and / or logo a fire and rescue authority.

That legal challenge might also be found to be successful even if the business was not a trading subsidiary of the fire and rescue authority or a community interest company. So it might succeed if the business was an entity in its own right, and used the authority's name and / or logo (for example, under licence).

This guidance sets out advice about the use of the name and / or logo to obviate the risk of legal challenge for the unlawful provision of state aid.

¹ The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 SI 2009 / 2393 HMSO which authorises a fire authority to "do for a commercial purpose anything which it is authorised to do for the purpose of carrying on any of its ordinary functions".

Scope

This guidance is designed to assist all UK fire and rescue authorities that operate trading subsidiaries or which licence other businesses to use their name and / or logo. It has been developed after discussion with several fire and rescue authorities in England which have established trading companies. However this guidance may have wider application and be helpful to other fire and rescue authorities and associated trading entities across the UK'

The guidance covers the use of a fire and rescue authority name and / or logo by:

- an independent business; and
- its own trading subsidiary or community interest company.

The guidance does not extend to:

- the provision of other products / services by fire and rescue authorities to their trading subsidiaries other than the use of the name and / or logo; or
- the provision of products / services by trading subsidiaries to their parent fire and rescue authority; or
- matters relating to intellectual property.

The guidance does not cover arrangements where the fire and rescue authority establishes an informal partnership (e.g. with another public sector body, voluntary organisation or charity) and agrees to the use of its name and / or logo as part of the joint agreement, if the work of the partnership does not involve offering goods and services in the marketplace.

Individual fire and rescue authorities have a high public profile and members of the community respect the services provided. They have a positive reputation and recognition for the work they do. These attributes have usually been built up over time, by the provision of valued services rather than specific investment in marketing and promotion. There is debate about whether this legally provides an economic advantage and therefore whether the use of the name and / or logo can have a value; this guidance does not seek to reach a conclusion on this point. Instead it seeks to minimise the risk of challenge were this point to be established.

Legislative framework

This guidance covers two elements related to the use of the fire and rescue authority name / or logo:

- a) Agreements with a third party business which allows the business to use the fire and rescue authority name and / or logo; and
- b) Use of the fire and rescue authority name and / or logo by a company established by the authority.

Third parties

Although an authority may want to establish a company as a vehicle for function-related trading, it does not have to proceed in this way. It may equally benefit from a cooperation arrangement with a wholly independent company.

If the fire and rescue authority chooses to work with an independent company, it may agree that the company can use the authority's name and / or logo, possibly by means of a licence, and subject to appropriate consents and conditions. If it does so, however, it should consider minimising the risk of a state aid challenge by charging an appropriate market value for the use of the name / logo, as discussed further below.

Fire and rescue authorities' trading subsidiaries

A fire and rescue authority has the power to trade i.e. to make a profit on the services that are indirectly incidental and ancillary to its statutory functions (pursuant to Local Government Act 2003², Fire and Rescue Services Act 2004³ as amended by the Localism Act 2011⁴ and the Local Government Order 2009⁵). However, in order to exercise this particular power, the authority is required to do so via a prescribed corporate vehicle.

Whatever an authority chooses to call or establish as their trading body, it has to fit the description of 'companies' under Part 5 of the Local Government and Housing Act 1989.

Types of company include:

- a) a company limited by shares;
- b) a company limited by guarantee and not having a share capital;
- c) a company limited by guarantee and having a share capital;
- d) an unlimited company;
- e) a society registered or deemed to be registered under the Co-operative and Community Benefits Act 2014; and
- f) community interest companies which are a special type of limited company which exist to benefit the community rather than private shareholders.

The fire and rescue authority will need to consider under local government accounting rules whether it needs to produce group accounts. The company established by the Authority will need to meet the requirements of the Companies Act 2006 that regulates companies established in the UK.

The legal relationship between an authority and its trading subsidiary can take two forms: local authority controlled company or an 'arms length' company. These are set out in the Local Government and Housing Act 1989⁶. Fire and rescue authority's trading companies are covered by the Local Authorities (Companies) Order 1995 SI 849.

Fire and rescue authorities' trading subsidiaries – acknowledging the relationship

Public accountability of fire and rescue authorities' trading companies is set out in the Local Government and Housing Act 1989. In particular there is a statutory requirement⁷ to state on the companies' letterheads that it is a fire authority controlled company:

Identification of companies

4. (1) A regulated company shall have mentioned on all relevant documents the fact that it is a company controlled, or, as the case may be, influenced, by a local authority, within the meaning of Part V; and naming the relevant authority or authorities.

(2) In this article "relevant documents" means business letters, notices and other documents of the company, being of any kind mentioned in paragraphs (a) to (d) of section 349(1) of the 1985 Act.

This order places a clear obligation on fire and rescue authority trading subsidiaries to clearly state their link to the authority to meet the legal requirements to disclose the ownership relationship. In practice the relationship will vary with each authority.

² Local Government Act 2003 Section 93 and 95

³ Fire and Rescue Act 2004 Section 19

⁴ Localism Act 2011 Section 1 (general power) and Sections 4 and 5

⁵ The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 SI 2009 / 2393

⁶ Local Government and Housing Act 1989, Section 68

⁷ Local Authorities (Companies) Order 1995 SI 849

For example:

- some authorities regard their trading company to be an integral part of what they do and there is a considerable overlap in areas such as staffing, premises and information technology systems;
- other authorities meet the minimum legal disclosure requirements but prefer to create a separate and distinct identity for the trading activity.

The fire and rescue authority is subject to public body accounting rules (Chartered Institute of Public Finance and Accounting - CIPFA) and in particular requirements for producing consolidated accounts. This requires the disclosure of the connection between the authority and its subsidiary in the same way as required for any group of companies in the private sector. So, for the authorities where the size of the trading subsidiary is financially material, the trading subsidiary's accounts will need to form part of the group accounts of the fire and rescue authority.

Fire and rescue authorities' trading subsidiaries – recovery of costs

There is a statutory requirement⁸ for the fire and rescue authority to recover the costs of any accommodation, services, staff, goods, etc. it provides to a company.

What is meant by name and / or logo?

This advice relates to the use of the fire and rescue authority name, the name of the authority's fire and rescue service or the logo used by either the authority or service. In considering the use of the name, the guidance covers minor variants to the name which are still so similar that a person reading the company name would still make a link to the authority. The same interpretation applies to the authority logo or minor variations to it.

In the commercial market the perceived 'distinction and recognition' of the name and / or logo may be considered to confer an economic advantage over other competitors usually based upon the strength of customer loyalty to or recognition of the name and / or logo in question.

What is the UK Fire and Rescue name or logo?

There is no single UK fire and rescue authority and there is no controlling body which could claim authority over a UK fire and rescue name and / or logo. So there is not a national or general organisational name and / or logo. This guidance therefore considers the use of a fire and rescue authority name and / or logo at a local level.

Different local fire and rescue authorities will have different relationships with their trading subsidiaries or related companies. Some companies will not seek to use the fire and rescue authority's name or logo beyond the minimum information required by law (for trading subsidiaries), and will instead invest in distinctly different names and logos, which may include their own trademarks. Others will make more obvious use of the fire and rescue authority's name or logo.

In the latter case, some examples of where a company might be perceived to benefit from a relationship with a fire and rescue authority include:

- use of the fire and rescue authority name in the company name;
- use of the fire and rescue authority logo in the company logo; and
- use of the fire and rescue authority name and / or logo in the company's material and activities (beyond the minimum legal requirement).

Circumstances will vary at a local level for each fire and rescue authority.

⁸ The Local Government (Best Value Authorities) (Power to trade) (ENGLAND) Order 2009 No. 2393

State aid

If a Member State provides a benefit that favours some undertakings over others, and is liable to affect trade between Member States and distort competition, this could contravene the European Union rules on the grant of state aid.

In the context of this guidance, if a fire and rescue authority provides preferential treatment to one or more companies this could be unlawful. In particular, if an authority allows a company (without charge or low value) to use its name and / or logo then this might be claimed to be providing preferential treatment to that company.

It is often very difficult even to establish if a benefit constitutes state aid and whether the criteria used to assess this are met. The rules governing state aid are very complex, and there is no established case law or guidance in relation to the use of a fire and rescue authority name and / or logo by a subsidiary company or other associated company. It is essential to consider at the earliest possible stage whether a measure will present problems and to obtain specialist legal advice.

This guidance should not be read as an acknowledgement by the CFOA that use of a name and / or logo could give rise to state aid. Rather, it is aimed at reducing the possibility of a state aid challenge and putting in place adequate measures to be able to refute a challenge.

How can fire and rescue authorities reduce the risk of a state aid challenge?

There are two things a fire and rescue authority can do which will help to minimise the risk of a legal state aid challenge:

Either

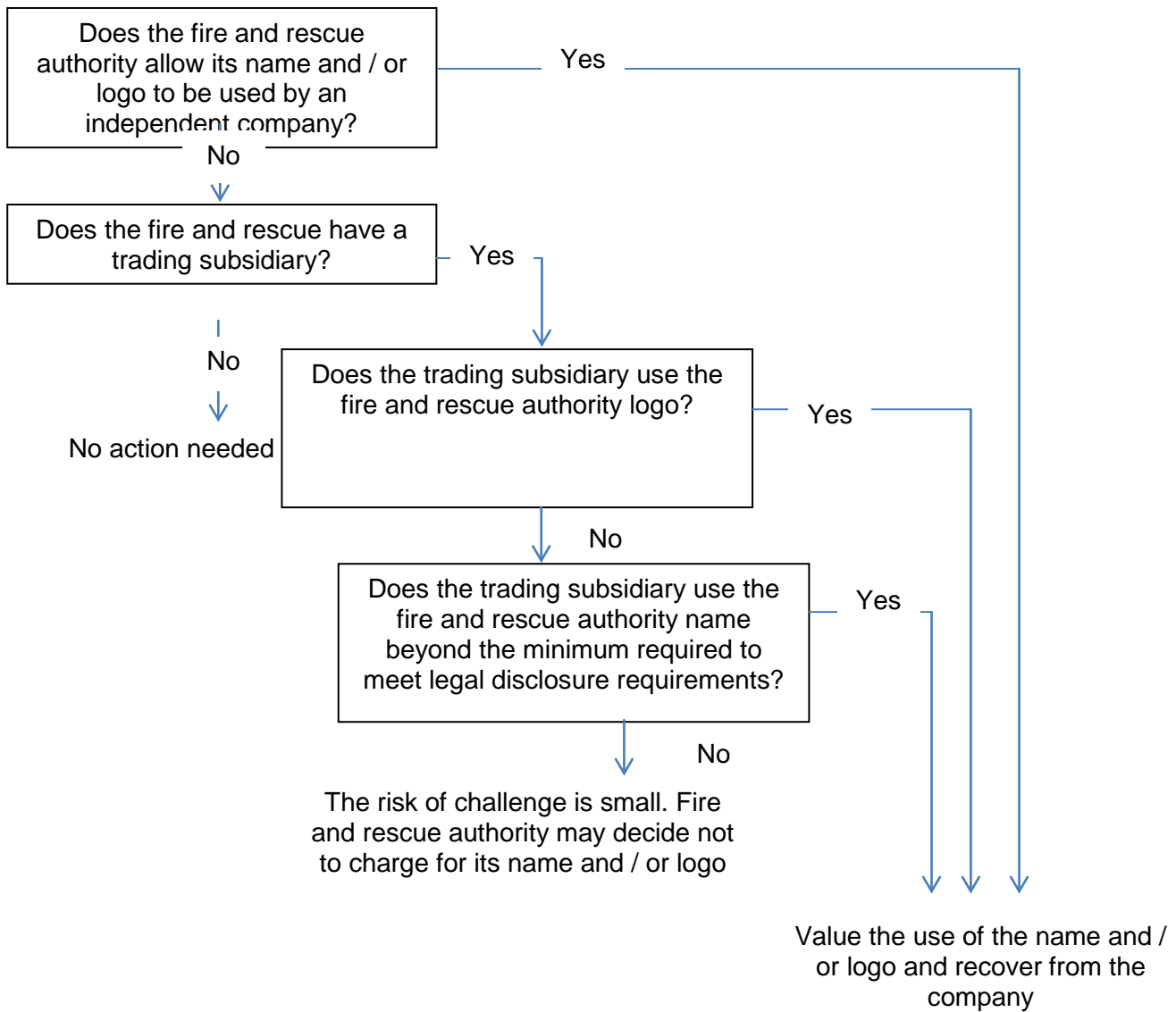
the fire and rescue authority does not allow its logo to be used at all, and only allows its name to be used where necessary to satisfy the minimum legal disclosure requirements if it operates through a trading subsidiary (see above)

Or

the fire and rescue authority allows the name and / or logo to be used, values the benefit derived from this use and recovers that value from the company.

This is illustrated in Table 1.

Table 1 – Flowchart to illustrate the decisions required when using a fire and rescue name and / or logo.



Approaches to valuing the fire and rescue authority name and / or logo

There are a number of different ways for the fire and rescue authority to value the use of the name and / or logo by a company. There will be local considerations including the types of products / services being provided and the nature of the marketplace. It will be for individual fire and rescue authorities to determine the most appropriate method.

Some possible approaches are:

a) Related to the company's turnover

This method, which is broadly the royalty relief method, could be applied by assuming that the use of the fire and rescue authority name and / or logo has an effect on the company's turnover. For example, it might be considered to increase the company's success at winning business.

In simple terms the value may be derived from the scale of the company's turnover. So a percentage of the turnover may be used to quantify the value attributable to the use of the fire and rescue name and / or logo.

The percentage could be applied to the total turnover. There is no agreed percentage to apply although 'brand' studies in other markets have indicated percentages in the range of 2% to 5%.

Alternatively the turnover might be broken down into distinct products / services and different percentages applied to each segment. For example the percentage applicable to the turnover derived from selling training may be different to that used for the sale of vehicles.

b) Regarding the use of the fire and rescue authority name and / or logo as an asset.

The fire and rescue authority might consider that by allowing a company to utilise its name and / or logo it is in effect giving the company an asset to use. How the company uses that asset is the company's responsibility and the risk of whether the turnover increases, or not, by using the asset rests with the company.

In this case the fire and rescue authority may decide to put a 'market value' to the use of the asset which is independent of the turnover the company actually achieves. The valuation by the fire and rescue authority will be an assessment of how much the company will pay for the benefits it would expect to receive (probably as increased turnover).

c) Related to the transactions between the fire and rescue authority and the company

The company may use fire and rescue staff, vehicles and accommodation or other support services. The costs of these services will normally be recharged by the fire and rescue authority to the company.

The company might be perceived to gain the benefit of the fire and rescue authority name and / or logo as a consequence of these uses. In these circumstances, the fire and rescue authority may conclude that the benefit derives from the scale of usage of these services. So it may decide to recover the value of this benefit by applying an oncost percentage to the charge for these services.

This method requires an assessment to be made of the benefit to the company of using the authority name and / or logo when using the fire and rescue authority's services.

Other considerations in valuing the fire and rescue authority name and / or logo

Inevitably there will be variations in the circumstances of different fire and rescue authorities and the companies. Each fire and rescue authority will need to make its own assessment.

There will be different operating models ranging from companies which are an integral part of the fire and rescue authority and difficult to distinguish separately, to those companies where every effort has been made to separate the company from the fire and rescue authority (where only the minimum disclosures are retained), to independent companies.

The range of activities undertaken by the company will vary between fire and rescue authorities and the impact of using the name and / or logo on turnover and winning business may be different in different sections of the fire market.

The company may have invested in establishing its own name / logo and the cost of this could reasonably be argued to offset, at least in part, the perceived benefit from using the fire and rescue authority name and / or logo.

The company may derive its business as a consequence of partnering with another company and not rely on the fire and rescue authority name / or logo to win business.

These variations indicate that the approaches outlined above should be regarded as indicative only, and each situation should be assessed on its own facts.

General approach

The approach adopted by the fire and rescue authority may be subject to external scrutiny (e.g. as part of the annual external audit). For this reason the authority should:

- Make an explicit decision about the approach to be followed and document it;
- Maintain transparency about the approach (without necessarily disclosing detailed information which should be regarded as commercially confidential and does not need to be disclosed);
- Apply the selected methodology consistently year on year;
- Keep the methodology and calculation under review to ensure it remains reasonable to an external observer; and
- Document annual calculations and explicitly invoice for the agreed charge for using the 'authority's name and / or logo so that there is a clear audit trail.

Other considerations

As with all activities associated with a fire and rescue authority operating a trading subsidiary, there is a need to avoid any perceived conflict of interest when decisions are taken. This will apply equally to decisions about the value associated with using the name and / or logo. The assessment of the appropriate charge for this use is for the authority rather than the company although there will need to be agreement to the quantum.

Decisions about setting up a new trading subsidiary should take account of the extent to which the company will seek to use the fire and rescue authority name and / or logo and incorporate this into the business plan.

Some fire and rescue authorities have sought to protect their logo by registering their trademarks. This protection can be sought at different levels (e.g. UK, European or worldwide). Fire and rescue authorities may wish to consider if they wish to do this.