

## PFCC Decision Report

**Report reference number:** 114/2022

**Classification:** Not protectively marked

**Title of report:**

Special Resolution to amend the Articles of Association of BlueLight Commercial Limited

**Area of county / stakeholders affected:** BlueLight Commercial Limited

**Report by:** Pippa Brent-Isherwood (Chief Executive and Monitoring Officer)

**Chief Officer:** Pippa Brent-Isherwood (Chief Executive and Monitoring Officer)

**Date of report:** 22 July 2022

**Enquiries to:** Pippa Brent-Isherwood (Chief Executive and Monitoring Officer)

### 1. Executive Summary

On 6 July 2022, BlueLight Commercial Limited circulated a proposed Written Resolution (attached at Appendix 1) relating to proposed changes to the company's Articles of Association, to be passed by way of Special Resolution. The PFCC for Essex has received the Resolution in their capacity as a member of BlueLight Commercial Limited and is requested to agree or disagree with the Resolution as they see fit. The purpose of this decision report is to summarise the key changes proposed and the associated implications, in order to assist the PFCC in their decision making around how to cast their vote.

### 2. Recommendations

That the PFCC for Essex agrees the Written Resolution attached at Appendix 1 (that the draft Articles of Association appended to the Resolution be adopted as the Articles of Association of BlueLight Commercial Limited in substitution for, and to the exclusion of, the company's existing Articles of Association), for the reasons set out in this report.

### **3. Background to the Proposal**

BlueLight Commercial Limited has recently reviewed its Articles of Association for the first time since they were adopted in March 2020. The review is intended to reflect how the company has developed during its first two years of operation, along with its current activities.

A similar Special Resolution, seeking agreement to alter the company's Articles of Association, was circulated in May 2022. Whilst the majority of members (including the PFCC for Essex) voted in favour of the proposed changes, the 75% majority required for the Resolution to pass was not obtained. It is understood that, on that occasion, eight too few votes were cast in favour of the Resolution for it to pass.

Sufficient agreement (of at least 75% of the members) needs to be received by 5pm on 26 July 2022 in order for the new Resolution to pass. Once a member has indicated their agreement to the Resolution, they may not revoke it. Failure to reply will be deemed as non-agreement to the Resolution. If sufficient agreement is not received by the stated time the Resolution will lapse.

### **4. Proposal and Associated Benefits**

A covering letter from the Chair of the company's Board (attached at Appendix 2) provides an overview of the proposed changes along with the reasoning behind them.

If passed, the Resolution would delete the following as reserved matters, meaning that the Board would be able to make these decisions rather than requiring members to vote on them:

- The request to the Home Office in respect of national provision requiring the participation of all national police forces.
- The taking of or agreement to take any freehold or leasehold interest in, or licence over or any other interest in any land where the value exceeds £100,000.
- The sale, lease or disposal of all or any part of the real or personal estate belonging to the company where the value exceeds £100,000.
- The borrowing by the company of any money or obtaining of any advance or credit in any form where the value exceeds £100,000.
- Any remuneration of the Chief Executive Officer in excess of £180,000 per annum.

These changes are intended to give the Board more flexibility in the running of the company and shorten the timescales within which such decisions can be made.

Alongside this, and among others, the following new articles are proposed:

- Article 4.3, which widens the objects of the company to include providing top level specialised contract management and transformation programmes for police forces, fire and rescue authorities and other members. This presents

opportunities for further collaboration across blue light services in line with the statutory duty to collaborate under the Policing and Crime Act 2017.

- Article 5.2, which grants the company an additional power to enter into national contracts on behalf of all members where it is authorised to do so. Such authorisation will be obtained through members signing Sub-Agreements. This is different from the current position, whereby the contracting powers are vested locally in each PCC.
- Article 11.1.9, which adds a further category to the persons eligible to be members (of “such blue light partner organisations agreed from time to time by way of special resolution of the members”). This change is proposed so that, if other organisations (such as an Ambulance Trust) wish to join in the future and the members agree, they can do so. Again, this presents opportunities for further collaboration across blue light services in line with the statutory duty to collaborate under the Policing and Crime Act 2017.
- Article 26.16, which requires decisions made by the Board on issues that would no longer be reserved matters to be notified to members promptly afterwards.

In addition, Article 26.14 has been amended to require any observers at the board to enter into a non-disclosure agreement with the company. This is intended to protect the confidentiality of any commercially sensitive information disclosed.

The proposed new Articles of Association are attached at Appendix 3. A version clearly highlighting the proposed amendments and additions is attached at Appendix 4.

## **5. Options Analysis**

The PFCC could choose to vote against the Resolution, however this is not considered necessary given that concerns previously raised by the PFCC have been addressed by the revised Resolution and accompanying communications that have now been circulated (see section 6 below).

Whilst a suggestion was made at recent briefing events that it may be prudent to delay circulation of the Resolution until after the Home Office confirms the future funding position of BlueLight Commercial Limited (see sections 6 and 9 below), the Board was keen to progress the matter in advance of this, given that it is not in control of the timescales for Home Office decision making in this regard.

It was further suggested that PCCs be given the option to vote on individual amendments to the Articles, or on smaller groupings of them, rather than on the whole package. However the Board preferred to focus on alleviating any potential concerns of its members, such that they would feel comfortable to vote in favour of the entire package.

## **6. Consultation and Engagement**

Prior to circulating the Resolution attached at Appendix 1, briefing events were hosted by BlueLight Commercial Limited for Chief Executives and Monitoring Officers and PCCs on 29 June and 1 July 2022. The PFCC was represented at these briefings by his Chief Executive and Monitoring Officer and his Deputy PFCC.

When returning his previous vote on the matter, the PFCC for Essex made clear that, with regard to the proposed new Article 26.16, which requires decisions made by the Board on issues that are no longer reserved matters to be notified to members promptly afterwards, these matters would need to be brought back formally to a General Meeting of the shareholders, held not less than once a year. He was clear that, should this be deemed too onerous, or could not be adhered to, that the Essex PFCC would look to withdraw from BlueLight Commercial Limited. The Chair of the Board has now confirmed, both at briefing events and in his letter attached at Appendix 2, that the company's AGM will be used to communicate any such decisions.

It should be noted that the Resolution previously circulated also proposed to delete Article 26.8 (which requires a PCC director majority for decisions on the budget, finances or strategy to be taken) as a reserved matter, on the basis that company has its own budget, funded by a Home Office grant. Following representations made by several PCCs, including the PFCC for Essex, that that it is vital that the governing bodies retain a majority vote in respect of strategic issues, it is no longer proposed to delete this as a reserved matter.

## **7. Strategic Links**

The PFCC's membership of BlueLight Commercial Limited contributes to the priority of Increasing Collaboration set out in the Police and Crime Plan.

## **8. Police operational implications**

There are no operational policing implications arising from this decision report.

## **9. Financial implications**

There are no financial implications arising directly from this decision report. The company currently has its own budget, funded from a £5.7m grant paid by the Home Office for 2022/23. Though the Home Office has not yet confirmed that it will continue to fund BlueLight Commercial Limited beyond March 2023, the Chair of the Board has highlighted, both at the briefing events and in his letter attached at Appendix 2, that the company has been identified as a key enabler of efficiency and effectiveness by the Association of Police and Crime Commissioners (APCC) and the National Police Chiefs Council (NPCC) as part of the sector's response to the Comprehensive Spending Review, so he has "every confidence" that the Government will continue to fund it and PCCs will not be required to step in. It was further advised at the briefing events that the Home Office has requested a revised business plan for the next two years demonstrating the return on investment and benefits that would be derived if the Home Office was to continue to fund the company for that period.

Should the company move to a different funding model, and PCCs be requested to contribute directly to the budget of BlueLight Commercial Limited in the future, not only would this require a separate decision of the PFCC, but the Customer Agreement with the company would need to be revisited as the current £10 liability cap would be insufficient. The Commissioner's attention is drawn to the reference in the letter from the Chair of the Board (attached at Appendix 2) to the Customer Agreement being

under review by the company's legal team. Should this result in the PFCC being requested to accept any subsequent changes to the agreement, this will be subject to a separate decision report in due course.

## **10. Legal implications**

The Directors of BlueLight Commercial Limited propose that, under Chapter 2 of Part 13 of the Companies Act 2006, the Resolution attached at Appendix 1 is passed as a Special Resolution with effect from the date on which sufficient agreement is received for the Resolution to pass. A Special Resolution is a resolution of the company's shareholders. Special Resolutions are considered in Section 283 of the Companies Act 2006 and are used to transact important business, in this case proposed changes to the company's Articles of Association.

As set out earlier in this report, the proposed new Article 5.2 confirms the power of the company to enter into national contracts on behalf of all police forces, where authorised to do so. Independent legal advice provided to BlueLight Commercial Limited by Capsticks Solicitors in October 2021 (a copy of which is attached at Appendix 5), has confirmed that BlueLight Commercial Limited is a Central Purchasing Body as defined by the Public Contracts Regulation 2015 and that any such procurement would be legally compliant. Even with the addition of the proposed new Article, however, PCCs would still need to sign a Customer Agreement and / or a Sub-Agreement in order to access the contract in question. The additional Article therefore creates no additional obligations upon PCCs unless they expressly wish to access the goods / services offered through the contract in question.

Once this resolution is dealt with, the Board cannot change the Articles of Association again without instigating a further Special Resolution which would likewise require a 75% in favour vote from the member base. Any further changes to the Articles would have to be referenced to the full membership as required by the Companies Act 2006.

## **11. Staffing implications**

There are no staffing implications arising from this decision report.

## **12. Equality, Diversity and Inclusion implications**

There are no equality, diversity and inclusion implications arising from this decision report.

## **13. Risks and Mitigations**

Under the current arrangements, concerns from members about unknown resultant liabilities are mitigated by the cap in liability being £10 for each member (as set out in Article 8.1).

Whilst the previous proposal to delete Article 26.8 (which requires a PCC director majority for decisions on the budget, finances or strategy to be taken) as a reserved matter has been withdrawn from the Resolution currently under consideration, it was indicated at the briefing events held in June 2022 that this may be reconsidered at a

later stage. Should this be the case, the company would need to circulate a further Special Resolution which would likewise require a 75% in favour vote from the member base.

#### **14. Governance Boards**

The proposals were referenced at the Association of Police and Crime Commissioners (APCC) General Meeting in April 2022 and again at the Annual General Meeting in July 2022.

#### **15. Links to Future Plans**

N/A

#### **16. Background Papers and Appendices**

Appendix 1 – BlueLight Commercial Written Resolution – New Articles of Association to be Adopted

Appendix 2 – Letter to BlueLight Commercial Members from the Chair 06.07.2022

Appendix 3 – Proposed Articles of Association of BlueLight Commercial Limited – July 2022

Appendix 4 - Proposed Articles of Association of BlueLight Commercial Limited (tracked) – July 2022

Appendix 5 – Advice on BlueLight Commercial Limited’s status as a Central Purchasing Body


**Report Approval**

The report will be signed off by the PFCC's Chief Executive and Chief Finance Officer prior to review and sign off by the PFCC / DPFCC.

Chief Executive / M.O. Sign: 

Print: P. Brent-Isherwood

Date: 22 July 2022

Chief Finance Officer Sign: 

Print: Janet Perry

Date: 26 July 2022

**Publication**

Is the report for publication? YES  NO

If 'NO', please give reasons for non-publication (Where relevant, cite the security classification of the document(s). State 'None' if applicable)

.....  
.....None.....

If the report is not for publication, the Chief Executive will decide if and how the public can be informed of the decision.

**Redaction**

If the report is for publication, is redaction required:

1. Of Decision Sheet? YES  NO  2. Of Appendix? YES  NO

If 'YES', please provide details of required redaction:

.....  
.....N/A.....

Date redaction carried out: .....

**Chief Finance Officer / Chief Executive Sign Off – for Redactions only**

If redaction is required, the Treasurer or Chief Executive is to sign off that redaction has been completed.

Sign: .....

Print: .....

**Chief Executive / Chief Finance Officer**

**Decision and Final Sign Off**

I agree the recommendations to this report:

Sign: 

Print: Roger Hirst

**PFCC**

**Date signed:** 25 July 2022

I do not agree the recommendations to this report because:

.....  
.....  
.....

Sign:

Print:

**PFCC/Deputy PFCC**

**Date signed:**