

Personal Injury Claims 2023/2024

Report to:

Date:

Investment and Finance Board

27 October 2022

Commissioner's Board

9 November 2022

Deputy Mayor's Fire and Resilience Board.....

13 December 2022

London Fire Commissioner

Report by: Yvonne McKenna, Head of Litigation, General Counsel's Department

Report classification:

For decision

For publication

PART ONE

Non-confidential facts and advice to the decision-maker

Executive Summary

General Counsel seeks authority to settle personal injury claims up to the amounts set out in Part 2 of this report for the financial year 2023/24. The delegation sought exceeds that which is permitted by the London Fire Commissioner's Scheme of Governance.

This report replicates the contents of DMFD132 in respect of PI claims in 2022/23, which was approved by the Deputy Mayor on 21 December 2021 and the London Fire Commissioner on 11 January 2022.

For the Deputy Mayor

1. That the Deputy Mayor for Fire and Resilience authorises the LFC to commit expenditure in respect of PI cases for the amounts set out in part 2 of the decision for personal injury claims settled in the financial year 2023/24 provided: (i) the LFC obtains and follows the advice of specialist counsel on settlement, and the advice of a costs draftsman on costs claimed; (ii) spend is contained within the total funding for 2023/24, as identified in part 2 of this decision; (iii) spend per claim is contained within the limit identified in part 2 of the decision; (iv) LFC's General Counsel notifies the Deputy Mayor when a claim is received, which is and anticipated to exceed £150,000, and upon final settlement of such cases; and (v) the LFC provides the Deputy Mayor with a year-end financial update on spend that occurred within the terms of this authority.

For the London Fire Commissioner

1. Subject to approval of the Deputy Mayor Fire and Resilience, that the London Fire Commissioner delegates authority to the General Counsel to settle PI claims up to the amounts set out in part 2 of the decision, in respect of settled claims in 2023-24 subject to compliance with the following reporting requirements; i) the LFC takes the advice of specialist counsel on settlement, and the advice of a costs draftsman on costs claimed; ii) spend is contained within the total funding for compensation matters of the amount contained in part 2 of this report; iii) General Counsel notifies the Deputy Mayor upon receipt of cases anticipated to exceed £150,000, and upon final settlement of such cases; and iv) the LFC provides the Deputy Mayor with a year-end financial update on spend that occurred within the terms of this authority..

1 Introduction and background

- 1.1 The majority of PI claims against the LFC (or indeed the settlement of any other litigation) are less than £150,000 and are settled under the delegation provided in the LFC Scheme of Delegation. In respect of claims, the provision is for the settlement of any claim, including claims for costs, by or against the LFC up to £150,000 by General Counsel. Decisions to settle over £150,000 are a matter for the LFC and trigger the current Mayoral Direction of 2018, requiring the Commissioner to seek the prior approval of the Deputy Mayor before “[a] commitment to expenditure (capital or revenue) of £150,000 or above as identified in accordance with normal accounting practices...”. Cases are settled based on advice provided by specialist counsel, which relies on well-established guidelines on damages, and on previous reported legal cases that set precedents and principles, and in relation to legal costs, on the advice of a costs draftsman experienced in such matters.
- 1.2 The procedure for dealing with high-value claims is not straightforward, especially if liability and/or causation are in dispute. The final value of these claims is often only fully quantified as the parties progress through the litigation process. The risk of not being able to negotiate settlement of these high-value claims at short notice is being penalised in terms of additional costs and, reputationally, by being perceived as delaying settlement.
- 1.3 The main type of claims that are likely to exceed the amount that triggers the Deputy Mayor’s prior approval and exceeds the current LFC delegation to General Counsel are:
 - mesothelioma
 - possibly other asbestos-related claims (asbestosis, lung cancer)
 - cancer-related claims
 - psychiatric injuries (usually PTSD)
 - any claim that results in a medical retirement.

2 Objectives and expected outcomes

- 2.1 The objective of this report is to seek authority to settle PI claims for the financial year 2023/24.
- 2.2 On the basis of details of the cases anticipated in 2023- 2024; the expert external legal and other advice sought on quantum and costs; the difficulties in anticipating exact figures, in terms of settlement and costs, within the litigation process; and the financial benefits of achieving early settlements, it is proposed that the LFC authorise General Counsel to settle claims up to the value on the terms set out in the recommendation.
- 2.3 The budgetary implication of the number and costs of cases received is clearly recognised. Accordingly, it is proposed that this arrangement continues to be subject to reporting

mechanisms to the Deputy Mayor. This includes notifying the Deputy Mayor of cases where expenditure may exceed £150,000; and notifying the Deputy Mayor of confirmed costs when such cases are settled. The Deputy Mayor will also receive an update at the end of 2023-24 on expenditure incurred on PI claims under this authority.

- 2.4 The authority sought is limited to the financial year 2023-24. Its use and effectiveness would be reviewed prior to any proposal to extend the authority for future years.

3. Equality comments

- 3.1 The LFC and the Deputy Mayor for Fire and Resilience are required to have due regard to the Public Sector Equality Duty (section 149 of the Equality Act 2010) when taking decisions. This in broad terms involves understanding the potential impact of policy and decisions on different people, taking this into account and then evidencing how decisions were reached.
- 3.2 It is important to note that consideration of the Public Sector Equality Duty is not a one-off task. The duty must be fulfilled before taking a decision, at the time of taking a decision, and after the decision has been taken.
- 3.3 The protected characteristics are:- age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership (but only in respect of the requirements to have due regard to the need to eliminate discrimination), race (ethnic or national origins, colour or nationality), religion or belief (including lack of belief), sex, and sexual orientation.
- 3.4 The Public Sector Equality Duty requires decision-takers in the exercise of all their functions, to have due regard to the need to:
- eliminate discrimination, harassment and victimisation and other prohibited conduct.
 - advance equality of opportunity between people who share a relevant protected characteristic and persons who do not share it.
 - foster good relations between people who share a relevant protected characteristic and persons who do not share it.
- 3.5 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic where those disadvantages are connected to that characteristic.
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
 - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 3.6 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

3.7 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard to the need to:

- tackle prejudice
- promote understanding.

3.8 There are no specific equality implications arising from this report.

4 Other considerations

Workforce comments

4.1 This report concerns individual issues. Accordingly, there are no staff side consultations have been undertaken.

Sustainability comments

4.2 There are no sustainability implications arising from this report.

Procurement comments

4.3 There are no procurement implications arising from this report.

5. Financial comments

5.1 The report sets out arecommendation that authority is delegated to settle all personal injury claims up to a maximum specified amount as contained in part 2 of this report. It is envisaged that these costs will be contained within existing base budget.

5.2 The 2023/24 LFC budget submission includes an amount contained in part 2 of this report as base funding. This budget is based on previous year's spend and future anticipated expenditure. It is currently estimated it will be sufficient to meet the costs arising in 2023/24. However, in unexpected circumstances such as a large number of claims or a significant settlement, there is also an earmarked reserve specifically for these types of events.

6. Legal comments

6.1 Under section 9 of the Policing and Crime Act 2017, the London Fire Commissioner (the "Commissioner") is established as a corporation sole with the Mayor appointing the occupant of that office. Under section 327D of the GLA Act 1999, as amended by the Policing and Crime Act 2017, the Mayor may issue to the Commissioner specific or general directions as to the manner in which the holder of that office is to exercise his or her functions.

6.2 By direction dated 1 April 2018, the Mayor set out those matters, for which the Commissioner would require the prior approval of either the Mayor or the Deputy Mayor for Fire and

Resilience (the "Deputy Mayor") Paragraph (b) of Part 2 of the said direction requires the Commissioner to seek the prior approval of the Deputy Mayor before "[a] commitment to expenditure (capital or revenue) of £150,000 or above as identified in accordance with normal accounting practices...".

- 6.3 The proposals in this report seek to provide delegated authority to General Counsel to settle PI claims (or in the alternative a specific PI claim) in excess of £150,000, and accordingly this falls within those matters set out in the 2018 Directions and therefore requires prior approval of the Deputy Mayor.

List of appendices

| Appendix | Title | Open or confidential* |
|----------|-------|-----------------------|
| | None | |

Part two confidentiality

Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part Two form, together with the legal rationale for non-publication.

Is there a Part Two form: YES

Originating officer declaration

Reporting officer to
confirm the following
by using 'x' in the box:

Reporting officer

Yvonne McKenna has drafted this report, with assistance of the lawyer dealing with personal injury claims, and confirms the following:

1. Assistant Director/Head of Service
Kathryn Robinson has reviewed the documentation and is satisfied for it to be referred to Board for consideration

X

2. Advice
The Finance and Legal teams have commented on this proposal:
Yvonne McKenna Legal Advisor, on behalf of General Counsel (Head of Law and Monitoring Officer).
David O'Sullivan Financial Advisor, on behalf of the Chief Finance Officer.

X

X