

## PART 2 – CONFIDENTIAL FACTS AND ADVICE

**DMFD58**

### **Title: Authority to settle a personal injury claim**

*Information may have to be disclosed in the event of a request under the Freedom of Information Act 2000. In the event of a request for confidential facts and advice, please consult the Information Governance team for advice.*

### **This information is not for publication until the stated date, because:**

Publication of the details of report LFC-0321z to the London Fire Commissioner would prejudice the management of future similar claims against the Commissioner. Such claims are for a limited and reducing cohort of ex-firefighters.

### **Date** at which Part 2 will cease to be confidential or when confidentiality should be reviewed:

To be reviewed on 1 April 2021.

### **Legal recommendation on the grounds of keeping the information confidential:**

*Prejudice to commercial interests (FOIA section 43(2))*

*43(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).*

The contents of this report constitute a commercial interest for the purposes of s43(2) FOIA. The information contained in this report includes recommended settlement levels in an ongoing financial dispute along with information in regard to the overall budgetary envelope which, if disclosed at this point in the dispute would be highly likely to prejudice the Commissioner's position and related commercial interest in obtaining the best financial settlement possible in an ongoing negotiation.

The public interest test has been considered in this matter and it has been concluded that the underlying principles in Poole v IC (EA/2016/0074) are applicable. It is well established that in certain circumstances information can be exempted from disclosure where revealing that information would have a detrimental impact on negotiations.

**Information Governance Adviser** - I make the above recommendations that this information should be considered confidential at this time

**Name:**

**Date:**

### **Confidential decision and/or advice:**

The Claimant's expert is of the opinion that "[but] for [the deceased's] Mesothelioma illness and on the balance of probabilities he would have lived for a further 7.55 years. It follows that his Mesothelioma shortened his life expectancy by 7.55 years. The presence of organised thrombi within the pulmonary circulation at Post-Mortem resulted in the deceased's advance cancer".

The Claimant's husband lived with a cancer diagnosis for about four years. He died on 7 November 2017 at the age of 83.

The Claimant's experts' reports are not controversial as to their content and findings. Therefore, the Defendant relies on their expert opinions.

The Claimant claims compensation on behalf of her deceased husband for both the injury itself Mesothelioma (known as a claim for 'pain, suffering and loss of amenity' (PSLA) and also the financial impact of his injury/condition. The financial loss is calculated using a number of elements, including any loss of earnings (if any) due to the incident, care and pension loss.

The Claimant initially limited her claim to £130,000 (at the time of issuing proceedings in December 2018). However, she is not precluded from amending the Statement of Value at any stage or the Court awarding a higher amount should the matter go to trial for an Assessment of Damages.

The Claimant's most recent Schedule of Loss is in excess of £396,000, inclusive of General Damages PSLA of £100,000. The most recent Schedule of Loss was received by the London Fire Commissioner in February 2020.

The case has been listed for an assessment of damages hearing on 5 March 2020. As a result of 'without prejudice' discussions between the parties, the Claimant's solicitors have indicated that the Claimant would be willing to settle the claim in the sum of £375,000 plus costs currently estimated at £139,000. It is hoped that settlement can be achieved by the parties prior to 5 March 2020 to avoid the costs of attending the hearing.

The London Fire Commissioner has received a number of similar personal injury claims from former firefighters that remain pending. A further discussion with the Deputy Mayor for Fire and Resilience to inform the LFC's approach to future cases will take place at the earliest opportunity.

### **Counsel's advice on quantum**

The Claimant's expert notes that the deceased's exposure to asbestos most likely commenced on or soon after 1956. Based on the evidence presented and on the balance of probabilities, it is his opinion that the deceased's cumulative exposure to asbestos whilst employed as a firefighter was significantly above usual levels and sufficient to cause Mesothelioma. Causation of Mesothelioma has therefore been established on the balance of probabilities.

It is reasonable to assume that General Damages for PSLA will be in the region of £100,000 and Counsel has considered a number of authorities (case law) in this regard. Counsel has also provided his assessment of Special Damages based on the losses claimed in the sum of £252,398.

Total for PSLA and Special Damages is £352,398. For the purposes of settlement Counsel has recommended settlement in the region of £365,000.

### **Authority sought**

Based on Counsel's Advice authority is sought to settle the whole of this claim up to £514,000 (£375,000 damages plus £139,000 costs).

### **Financial comments**

The estimated forecast compensation costs for 2019/20 included an estimate of £245,000 for this claim, the additional costs of £269,000 will be contained within the overall compensation costs budget of the Commissioner for 2019/20.

### **Appendices and supporting papers:**

1. LFC-0321z – Authority to settle a personal injury claim.