

PART 2 – CONFIDENTIAL FACTS AND ADVICE

DMFD92

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This information is not for publication until the stated date, because:

Information relating to the London Fire Commissioner's personal injury claim proceedings are legally privileged.

Date at which Part 2 will cease to be confidential or when confidentiality should be reviewed:
1 March 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.

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

Name: Emma Brookman

Date: 9 November 2020

Once this form is fully authorised, it should be circulated with Part 1.

Confidential decision and/or advice:

The London Fire Commissioner (LFC) seeks to settle the personal injury claim up to a maximum settlement figure of £237,560 (Gross) plus costs up to £60,000.

The Claimant claims compensation for pain, suffering and loss of amenity ('general damages') and also the financial impact of her 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's finalised Schedule of Loss was served on 6 January 2020 and totals £501,277 exclusive of general damages. The LFC disputes this amount.

Counsel drafted a Counter-Schedule of Loss/Special Damages and provided final advice dated 23 March 2020 in which he recommended that, assuming the claimant offers a reasonable concession on the amounts set out in her schedule of loss, *"I would suggest an opening offer from the Defendant in the sum of £100,000 gross, but would expect ultimately to negotiate a settlement at around the £200,000 gross mark. In the interests of securing a settlement, I would advise that the Defendant give authority for the negotiations up to the level of... £237,560 gross"*.

An Assessment of Damages Hearing (i.e. a 4 day trial) has been listed for 14 December 2020. However, the parties are attempting to reach settlement by way of a Joint Settlement Meeting ("JSM") - an alternative disputes process - in advance of that date.

Before the JSM General Counsel would like to propose a settlement offer to the Claimant, in accordance with Part 36 of the Civil Procedure Rules ('CPR Part 36').

There are significant costs implications in relation to a CPR Part 36 Offer, which should incentivise the Claimant to reach settlement before trial. If the matter proceeds to trial and the Claimant fails to obtain a judgment that exceed the Part 36 Offer by LFC, then their costs will be significantly higher.

Based on counsel's advice authority is sought to settle the claim up to £237,560 (Gross) damages plus costs of up to £60,000.

Finance comments

This report recommends that authority is agreed to settle a personal injury claim for up to £237,560. The LFC's 2020/21 Quarter 1 Financial Position report (LFC-0397) included a forecast against this case of £174,000 and this contributed to the forecast overspend on the compensation budget leading to a forecast draw from the compensation reserve to meet this of £439,000. The position on the compensation budget will be kept under review, and will be updated to reflect the revised forecast on this case in the LFC's Quarter 2 Financial Position report.

An earmarked compensation reserve is maintained to support managing fluctuations in compensation costs from year to year, given the demand led nature of these costs. The reserve had an opening balance in 2020/21 of £1,000,000. The compensation budget is being reviewed as part of the budget process for 2020/21, considering the overspend on the budget in 2020/21 and the draw from the reserve to manage this.

Appendices and supporting papers:

LFC-0424y 'Authority to settle a personal injury claim'