



LONDON FIRE BRIGADE

Report title

Authority to Settle a Personal Injury Claim

Report to	Date
Corporate Services DB	9 September 2020
Deputy Mayor's Fire and Resilience Board	20 October 2020
London Fire Commissioner	

Report by	Report number
General Counsel	LFC-0424
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Summary

General Counsel seeks authority to settle a personal injury claim regarding an ex-firefighter with the London Fire Brigade, in which the range of reasonable settlement exceeds General Counsel's delegation to settle claims, as permitted by the London Fire Commissioner's Scheme of Governance.

Proposed Decision

For the Deputy Mayor

That the Deputy Mayor for Fire and Resilience consents to the expenditure of £297,560 for the settlement of a personal injury claim as set out in this report.

This decision will only be taken after further consultation with the Greater London Authority's finance and legal advisers and Corporate Investment Board.

For the London Fire Commissioner

Subject to the Deputy Mayor giving prior approval for expenditure up to £297,560, the London Fire Commissioner delegates authority to the General Counsel to settle the personal injury claim, up to a maximum settlement figure of £237,560 (Gross) plus costs up to £60,000.

Background

1. The claimant (Mrs Susan Chapple Née Witherstone) brought a claim for personal injury as a result of an accident at work on 1 October 2010. The claimant (an operational firefighter) was on duty as part of a crew who were responding to a fire call. Whilst assisting a colleague in removing the hose from the appliance she was struck on the head by a hose coupling. As a result of this she sustained a fracture and cut to the bridge of her nose and which (she alleges)

developed in to a haematoma, with associated severe tinnitus, ("PTSD") and Agoraphobia. In April 2019 her employment was terminated.

2. She now suffers from a number of different complaints (Orthopaedic, Neurological, Psychiatric and ENT) which have proved difficult to identify and treat.
3. On 5 February 2014, in open correspondence, liability was admitted subject to causation, without any allegations of contributory negligence.
4. As the employer the Brigade is, prima facie, vicariously liable in statute and common law for the negligent acts and/or omissions of its employees. On any assessment the actions of the firefighter who was responsible for the injury did not follow correct procedures and was negligent. There was no evidence to suggest that the Claimant was in any way contributory negligent, so this defence was not advanced by the London Fire Commissioner ('the defendant').
5. Proceedings were issued by the Claimant and served in December 2016. Since then the parties have been attending to procedural matters by way of complying with the court's order for directions.
6. In view of the comparatively minor initial injury suffered by the Claimant, there has been significant medical evidence produced by both parties in this litigation to confirm the Claimant's current status. These include reports from:-

Orthopaedic Surgeons;
Consultant Psychiatrists;
ENT Surgeons;
Pain Management Consultants; and
Consultant Neurologists.
7. There are areas of disagreement between experts for the Claimant and the London Fire Commissioner, which would have been decided at trial. However counsel has considered all of the medical evidence presented by both parties and used this to advise on the recommendation for level of damages.
8. 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.
9. The Claimant's finalised Schedule of Loss was served on 6 January 2020 and totals £501,277 exclusive of general damages. The London Fire Commissioner disputes this amount.
10. 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".

11. 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.
12. 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').
13. 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 London Fire Commissioner, then their costs will be significantly higher.
14. 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.

15. Finance comments

16. This report recommends that authority is agreed to settle a personal injury claim for up to £237,560. The Quarter 1 Financial Position (LFC-0397) report included a forecast against this case of £174k and this contributed to the forecast overspend on the compensation budget leading to a forecast draw from the compensation reserve to meet this of £439k. 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 Quarter 2 Financial Position report.
17. 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 £1,000k . 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.

18. Workforce comments

19. As this report concerns an individual issue, no staff-side consultations have been undertaken.

20. Legal comments

21. General Counsel is the author of this report.
22. 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..
23. Under section 327D of the Greater London Authority 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. 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, Fire and Resilience before "[a] commitment to expenditure (capital or revenue) of £150,000 or above as identified in accordance with normal accounting practices...". The settlement of this claim exceeds £150,000 and accordingly prior approval of the Deputy Mayor, Fire and Resilience is required.

24. The settlement of this claim also exceeds General Counsel's delegated powers under the Scheme of Governance and accordingly the London Fire Commissioner's specific delegation is sought to settle this matter.

25.Sustainability implications

26. There are no sustainability implications.

27.Equalities implications

28. Under s149 of the Equality Act 2010 (the Equality Act), as a public authority the LFC must have due regard to the need to eliminate discrimination, harassment and victimisation, and any conduct that is prohibited by or under the Equality Act; and to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not.

29. The Public Sector Equality Duty (PSED) is as follows:

The London Fire Commissioner must, in the exercise of their functions, have due regard to the need to:

- a. Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Equality Act 2010. Advance equality of opportunity between people who share a protected characteristic and those who do not.
- b. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.

30. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, and sexual orientation.

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