

PART 2 – CONFIDENTIAL FACTS AND ADVICE

DMFD132

Title: Personal Injury Settlements

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This information is not for publication until the stated date, because: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 information included in this report and/or its appendix relating to a personal injury claim would have an adverse impact the ability of the London Fire Commissioner (LFC) to effectively obtain the best financial settlement possible in an ongoing litigation.

This Part 2 also contains legal professional privilege and personal information.

Date at which Part 2 will cease to be confidential or when confidentiality should be reviewed: 1 November 2022.

Legal recommendation on the grounds of keeping the information confidential:

In the event the information contained in this Part 2 and/or its appendix is the subject of a request for information under section 1 of the Freedom of Information Act 2000 (the Act), it is considered that access can be denied on the basis that such information constitutes exempt information under:

- section 40(2) of the Act on the basis that part of the information is personal information
- section 42 of the Act on the basis that part of the information is legally privileged
- section 43(2) of the Act on the basis that part of the information includes recommended settlement levels in an ongoing personal injury claim; and the disclosure of such information would have, or would be likely to have, an adverse impact on the LFC's position and related commercial interest in obtaining the best financial settlement possible.

Public interest assessment

At present, on balance, it is considered that the public interest is best served if the information is not disclosed at this point. Disclosure by the LFC would be likely to have a detrimental effect on the LFC's position and related commercial interest in obtaining the best financial settlement possible in ongoing litigation; and would reveal personal information.

The eligibility of these exemptions should be reassessed in the event of a Freedom of Information request for this information, as the level of sensitivity will change over time and different circumstances may alter the arguments in favour of non-disclosure.

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

Name: Justine Curry

Date: 24 September 2021

Confidential decision and/or advice:

This report seeks the approval of the Deputy Mayor for Fire and Resilience for the LFC to commit expenditure on personal injury (PI) claims settled for the balance of the financial year 2021-22, provided:

- (i) the LFC takes 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 compensation matters of £2,000,000;
- (iii) spend per claim is contained within a limit of £750,000 (including costs of up to a maximum of £170,000);
- (iv) LFC's General Counsel notifies the Deputy Mayor upon receipt of claims 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.

Over the last 3 financial years (2018/19, 2019/20 and 2020/2021) the LFC has made significant payments in three cases, which in total exceed £150k for each case. The payments including damages and costs are £517,460, £434,381 and £213,039 respectively. The average of these payments equates to £388,293. The value of personal injury (PI) claims are unpredictable and the figure of £750k has been chosen to ensure that the LFC has a reasonable ceiling in the approval of the Deputy Mayor to cover future high value claims and costs.

It is understood that, if this decision is approved by the Deputy Mayor, LFC would delegate authority to settle claims to the LFC's General Counsel, within the terms of the Deputy Mayor's approved decision.

A list of current cases that are likely to exceed £150,000 is attached as Appendix 1 to the appended report LFC-0548y with relevant dates.

In the case of higher-value insured claims there will be additional reporting requirements to London Fire Brigade's (LFB's) insurer who can potentially exercise control over the case. This has never happened to date but would impact upon the governance process in the following ways:

- claims where value (including costs) is likely to exceed £100,000 are notified to LFB's insurer (QBE) who can, if they choose, influence the way the claim is dealt with
- the insurer can appoint one of their panel firms to take over the claim if the value of an individual claim is likely to exceed £250,000
- LFC could potentially be in a position where settlement decisions are made by the insurer in high-value claims which require payment.

Finance comments

This report recommends that authority is agreed to settle all personal injury claims up to a maximum value of £750,000 per case, including costs of up to £170,000, as long as the agreed spend is contained within the total funding identified of £2,000,000. The 2021-22 Budget includes a core budget for this expenditure of £1,000,000; and a reserve is being established for any costs that may arise above this for a further £1,000,000, as part of the report on the 2020-21 out-turn position. Any spend above £2,000,000 will need the prior approval of the Deputy Mayor. This core budget was increased from £550,000 in the 2021-22 Budget Report and will be reviewed again as part of this year's budget process.

Appendices and supporting papers:

Appendix 1: LFC-0548y – Personal Injury Settlements