

REQUEST FOR DEPUTY MAYOR FOR FIRE AND RESILIENCE DECISION – DMFD210

Title: Background Checks and Security Vetting

Executive summary:

This report requests the approval of the Deputy Mayor for Fire and Resilience to authorise the London Fire Commissioner (LFC) to commit revenue expenditure of £255,658 over the periods 2023-24 and 2024-25 and a further £78,000 per annum thereafter for the purposes of implementing arrangements for enhanced DBS background checks for all London Fire Brigade staff.

The London Fire Commissioner Governance Direction 2018 sets out a requirement for the London Fire 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...”.

Decision:

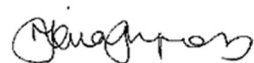
That the Deputy Mayor for Fire and Resilience approves the London Fire Commissioner to commit revenue expenditure of up to £255,658 over the periods 2023/24 and 2024/25 and a further £78,000 per annum thereafter for the purposes of implementing arrangements for staff background checks. The £88,829 of expenditure forecast to be incurred in the 2023/24 financial is planned to be funded from LFC’s budget flexibility reserve, and has been included in reserves forecast reported for Quarter 1 2023-24.

Deputy Mayor for Fire and Resilience

I confirm that I do not have any disclosable pecuniary interests in the proposed decision.

The above request has my approval.

Signature:



Date:

26/09/2023

PART I – NON-CONFIDENTIAL FACTS AND ADVICE TO THE DEPUTY MAYOR

Decision required – supporting report

1. Introduction and background

- 1.1. Report LFC-23-065 to the London Fire Commissioner (LFC) provides recommendations to deliver the vetting requirements for all London Fire Brigade (LFB) staff, detailing the legal position for current Brigade staff to have a form of background checks in accordance with the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act (Exemptions) Order 1975
- 1.2. A report by His Majesty Inspectorate of Constabularies and Fire & Rescue Services (HMICFRS) published on 30 March 2023 found that existing arrangements where fire and rescue services could only apply for a basic Disclosure and Barring Service (DBS) check for staff was an oversight that required amendment. The report included a range of recommendations referencing vetting checks, including
 - Recommendation six that FRAs incorporate employees in the Rehabilitation of Offenders Act (Exceptions) Order 1975 so that they are eligible for the appropriate DBS checks by January 2024.
 - Recommendation eight detailed that the Fire Standards Board in liaison with the NFCC should review the existing standards and underpinning guidance of background checks and clarify the minimum requirements for all staff roles, particularly those which have access to vulnerable members of the public.
 - Recommendation nine identified the need for all FRAs to immediately review their current background checks arrangements to ensure that suitable and sufficient checks are in place to safeguard their staff and communities they serve, with all appropriate checks submitted for all existing, new staff and volunteers according to their roles as identified by the Fire Standard Board.
- 1.3. The government agreed to forward recommendations from the HMICFRS report, including amending relevant regulations so that fire and rescue services are able to undertake enhanced checks. HMICFRS recommended that the Home Office work with the fire and rescue sector to arrive at an appropriate legislatively enabled solution that makes detailed provisions for fire and rescue services. Detail of all background checks/vetting levels are provided in Appendix 1 of the appended report LFC-23-065. Fire and rescue services are currently the only emergency service that does not routinely carry out enhanced checks. Enhanced DBS checks can better identify concerns with applicants for jobs, such as any police warnings and reprimands and whether applicants are considered unsuitable for working with children or vulnerable adults.
- 1.4. The London Fire Brigade currently undertakes basic DBS checks for staff notwithstanding the confidence levels noted in paragraph 1.13. There are small teams within Community Safety that are subject to Enhanced DBS checks for posts that involve substantial access to children.
- 1.5. The National Fire Chiefs Council (NFCC) Prevention Committee has led a proposal for the inclusion of the fire and rescue service authority employees in the Rehabilitation of Offenders Act (Exemptions) Order 1975.
- 1.6. The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2023 has now come into force amending the Rehabilitation of Offenders Act (Exemptions) Order 1975. The change enables Standard DBS checks to be conducted on all fire and rescue authority (FRA) employees. This new eligibility to carry out standard DBS checks would exist in addition to existing access to basic checks for all FRA employees and Enhanced DBS with a check of the relevant adults or children barred list for those employees who undertake certain activities.

Current position

- 1.7. LFB People Services currently manages the process for DBS checks for staff. It previously managed the higher vetting of existing LFB staff formerly undertaken by officers who handled Non-Police Personnel Vetting, Security Check and Developed Vetting applications for staff identified as carrying out specific roles that required enhanced vetting status. Due to staff changes and in line with protective security, the higher-level vetting process is undertaken by LFB's Operational Resilience & Control department (OR&C).
- 1.8. As of April 2023, approximately 36 per cent of the Brigade workforce has no current vetting or has never had any form of vetting whilst at LFB. This is broken down to the relevant staff groups below.
 - FRS (non-operational) staff without DBS/Vetting record – 25 per cent
 - Control staff without DBS/Vetting record – 24 per cent
 - Operational staff without DBS/Vetting record – 39 per cent

2. Objectives and expected outcomes

- 2.1. It is proposed that LFB implements enhanced DBS checks for all staff with three yearly checks. This will have an annual administration cost of £78,000. Enhanced level three checks cost £40.00 per check.
- 2.2. Prospective staff will continue to obtain their own checks, at the enhanced level. This is contained within the budget for recruitment within People Services based on the maximum of 240 training units per year. These arrangements would see costs increase from a maximum of £6,000 to £11,000 annually for reimbursement upon appointment
- 2.3. It is also proposed to commence processing background checks for existing LFB staff. A new post will be created at FRS grade C , with a two-year fixed term contract. This will deal with the current backlog of 2106 members of staff with no background checks. The expectation is this will be complete within 18 months. The additional post will cost £46,709 annually with a total of £93,418.
- 2.4. An option for outsourcing enhanced vetting has been explored however this incurs considerable cost. This option would result in the cost rising to approximately £200 per application for basic vetting with a total approximate cost of £390,000 per year to LFB. Requirements for an external company to carry out LFB staff checks also require LFB to complete employee background forms which would result in an administration cost and process to be in place. Employees are required to complete permission forms which if not submitted by employees within a specified timeframe, vetting charges would still apply and there would be no requirement for an external company to pursue LFB staff to progress the application. In addition, due to Gentle Data Protection Regulations considerations a private company would not be able to enforce vetting for LFB staff if they refuse to proceed with the vetting process. As a result, it is not recommended as an option to outsource the vetting to an external supplier.
- 2.5. This lapse of background checks within LFB for specific posts could pose a risk in terms of protective security and reputational damage. LFB's Community Risk Management Plan notes the importance of trust the Londoners require in LFB. The independent review of LFB culture, chaired by Nazir Afzal OBE highlighted poor behaviours and the need to gain the public trust. There have been high profile cases in partner emergency services where criminal activity has not been picked up resulting in serving members of the emergency services conducting the most terrible of crimes whilst in service. This evidence highlights the importance to commence work immediately and the potential risk if it is not.
- 2.6. To support delivery, further work is required to determine how LFB manages current staff who do not pass the security vetting. Whilst LFB contracts specify that individuals inform line management or People Services of any convictions whilst employed by LFB, there has been no instance of staff informing LFB of any convictions. OR&C will create a task & finish group with the correct

stakeholder engagement to create a case conference style review against individual cases when staff fail any vetting process.

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, in particular, to the need to:
 - tackle prejudice
 - promote understanding.
- 3.8. The EIA identified the existing LFB employment contractual agreements with LFB staff, which details the requirement for notification of convictions prior to and during employment. Further work is being undertaken to deliver policy and procedure to support the three-year rotational enhanced security vetting process for all Brigade staff as detailed within the EIA. LFB project leads Consultation with LFC General Counsel and Finance was undertaken with confirmation that in the light of the statutory

powers under Fire and Rescue Services Act 2004 section 44, and in particular the relevant provisions of the firefighter role maps on the provision of first aid and other treatment to casualties by firefighters at operational incidents, this aspect of the duties of a firefighter is likely to fall within a regulated activity for the purposes of Schedule 4 of the 2006 Act under the “health care” definition. Accordingly, it would follow that this is a basis for seeking an enhanced DBS check for spent convictions and cautions and police-held information for firefighters who may provide such treatment or aid as part of their operational duties.

4. Other considerations

Workforce comments

- 4.1. This report is subject to ongoing discussions with the representative bodies. The move to enhanced background checks will impact on the workforce. The task and finish group recommendations will be subject to Brigade Joint Committees and negotiations with representative bodies. This is added as agenda items of the relevant committees to commence early representative body engagement.

Sustainability comments

- 4.2. This report is not expected to have any direct sustainability implications.

Procurement comments

- 4.3. This This report is not expected to have any direct procurement implications, however further work may have an in direct impact on the current outsourced disciplinary support delivered by CMP. Early discussion will take place to identify potential impact for action.

Communications comments

- 4.4. Following approval from the Commissioner the updated process and move to enhanced background checks must be communicated all staff. This will include the rationale for the change and any supporting process and policy change. This must be completed prior to implementation to ensure staff are fully aware. It will also need to be added as an immediate requirement in the recruitment process for all prospective new staff. Articles on Hotwire, LFB’s internal communication channel, will need to be supplemented by manager briefings to staff.

Conflicts of interest

- 4.5. There are no conflicts of interest to declare from those involved in the drafting or clearance of this decision.

5. Financial comments

- 5.1. This report recommends that enhanced DBS background checks are implemented for all LFB staff. This has an ongoing annual revenue cost of £78,000 from April 2024. Initial costs in financial years 2023-24 and 2024-25 will be higher as a result of processing a backlog of checks and the creation of a new post.
- 5.2. An additional FRS grade C post would also be required for a two-year period from July 2023, at an annual cost of £46,709 and a total two year cost of £93,418.
- 5.3. If enhanced DBS checks are agreed for all staff this would result in additional annual costs of £78,000 as set out below. £88,829 of this cost is in the 2023/24 financial year and will be funded via the budget flexibility reserve. Ongoing costs from 2023/24 will be factored into the financial medium term forecast.

- 5.4. The Budget Flexibility Reserve has a forecast balance of £15.3 million as at the end of the 2023/24 financial year, reflecting the revised 2022/23 outturn position (£24.8 million), budgeted drawdowns as per the 2023/24 Budget Report (£6.3 million), and further commitments of £750,000 made in DMFD199, £358,000 made in DMFD205 and £2,083,000 made in DMFD209.

	2023/24 £	2024/25 £	2025/26 £	2026/27 and all future years £
Enhanced DBS Checks	£42,120	£120,120	£78,000	£ 78,000
Additional FRSC	£46,709	£46,709		
Total	£88,829	£166,829	£78,000	£ 78,000

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 Deputy Mayor's approval is accordingly required for the London Fire Commissioner to commit the unbudgeted expenditure set out in this report in respect of the additional DBS checks, additional staff costs and recruitment costs; these costs cumulatively exceed the £150,000 threshold.
- 6.4. Section 1 of the Fire and Rescue Services Act 2004 states that the Commissioner is the fire and rescue authority for Greater London.
- 6.5. The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2023 was laid before the Parliament recently as a 'draft affirmative' piece of legislation and came into force on 6 July 2023.
- 6.6. The above legislation has the following effects. It amends the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 ("the 1975 Order"). The 1975 Order disapplies specified provisions of the Rehabilitation of Offenders Act 1974 ("the 1974 Act") which would otherwise prevent a person from having to disclose a spent conviction or caution and protect that person from being prejudiced by that conviction or caution or any failure to disclose it.
- 6.7. Article 2 of the new legislation amends Schedule 1 to the 1975 Order by adding new paragraphs to Part 2 (offices, employment and work) to cover "Fire and rescue authority employees".
- 6.8. These amendments mean that a person's spent convictions and cautions may be taken into account when assessing a person's suitability to engage in such work.
- 6.9. Therefore, all fire and rescue authority employees are eligible for Standard DBS checks as described in Appendix 1 to this report.
- 6.10. The legislation will not permit wider use of the enhanced level checks referenced in Appendix 1 to this report.

- 6.11. Advice has been received that aspects of the Firefighter role map may permit such checks on the basis that they provide first aid and other treatment to casualties at operational incidents as part of the duties of a firefighter.
- 6.12. With respect to enhanced DBS background checks, while the advice received considered the conduct of such checks to be legally permissible in relation to all staff, this position has not been confirmed by legislation and it is possible that a challenge could be made to it.
- 6.13. It is recommended that as this report is progressed, the working team continues to engage with General Counsel to ensure the aims of this report can be met appropriately and lawfully.
- 6.14. Additionally, the information provided in any DBS check is likely to be highly sensitive and engage the UK's Data Protection legislation. It is further recommended that any process developed to collect, receive or otherwise process this information is discussed with the Data Protection Officer during its development and before commencement to ensure full compliance with the statutory regimes and requirements of the ICO.
- 6.15. These comments have been adopted from those provided by the LFC's General Counsel Department in report LFC-23-065 to the LFC with minor amendments to recognise the coming into force of the referenced legislation.

Appendices and supporting papers:

LFC-23-065 – Background Checks and Security Vetting

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after approval or on the defer date.

Part 1 Deferral:

Is the publication of Part 1 of this approval to be deferred? NO

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form – NO

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer

Richard Berry has drafted this report with input from the LFC and in accordance with GLA procedures and confirms the following:

✓

Assistant Director/Head of Service

Niran Mothada has reviewed the documentation and is satisfied for it to be referred to the Deputy Mayor for Fire and Resilience for approval.

✓

Advice

The Finance and Legal teams have commented on this proposal.

✓

Corporate Investment Board

A summary of this decision was reviewed by the Corporate Investment Board on 25 September 2023.

✓

INTERIM CHIEF FINANCE OFFICER:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature:



Date:

25/09/2023