

REQUEST FOR DEPUTY MAYOR FOR FIRE AND RESILIENCE DECISION – DMFD208

Title: Protection Staff Retention

Executive summary:

Since the 2017 Grenfell Tower fire, there has been a significant uplift in protection work, as well as a protracted and significant market demand for competent technical fire safety staff from the public and private sectors. Despite commencing in-house training, London Fire Brigade (LFB) continues to compete in a market for skilled staff that has seen salaries increase considerably over the last three years, with significant turnover of staffing numbers impacting on service delivery.

Pursuant to London Fire Commissioner Governance Direction 2018 this report requests the Deputy Mayor for Fire and Resilience's (the Deputy Mayor) approval of the London Fire Commissioner (LFC) commitment to revenue expenditure of £2,550,000 (£850,000 per annum across 2023-24, 2024-25 and 2025-26) for the payment of a market rate supplement (MRS) for specific Protection staff with accredited technical qualifications. This will be financed through the ringfencing of Prevention and Protection departmental budget underspends from 2022-23 and 2023-24. The MRS would be for up to 10 per cent of base salary for eligible staff.

Approval is also sought to secure £1,500,472 from said underspend to cover the cost of abatement for a limited number of skilled staff within the Prevention and Protection department across 2023-24, 2024-25 and 2025-26, noting that the changes to abatement signify a departure from the Fire and Rescue National Framework for England.

Decision:

That the Deputy Mayor for Fire and Resilience approves the decision of the London Fire Commissioner to commit to revenue expenditure of:

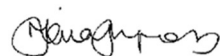
- up to £2,550,000 (£850,000 per annum across 2023-24, 2024-25 and 2025-26) for the payment of a market rate supplement for specific Protection staff in London Fire Brigade's Prevention and Protection Department; and
- £1,500,472 to cover the cost of abatement across 2023-24, 2024-25 and 2025-26 for a limited number of skilled staff in the Prevention and Protection Department.

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:

09/10/2023

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

Decision required – supporting report

1. Introduction and background

- 1.1. Report LFC-23-061 to the London Fire Commissioner (LFC) explains that, to support the work of the new Building Safety Regulator, London Fire Brigade (LFB) is expected to recruit 46 new inspecting officers (IOs) and circa 12 fire engineers (this recruitment has been considered under a separate decision form, DMFD207). To achieve this, LFB must recruit circa 100 fire safety advisers, which will also support filling current vacancies for fire engineers, team leaders and deputy team leaders.
- 1.2. Currently, there is a protracted and significant market demand for competent technical fire safety staff from the public and private sectors. This is exacerbated by the complexity of London's real estate, with over 50 per cent of the entire national risk (in terms of high-rise residential buildings (HRRBs)) located in London, further driving demand in the private and public sectors.
- 1.3. In recent years, there have been several retirements (mainly operational staff), and staff leaving to work in the public or private sectors for much higher remuneration packages. As a result the number of frontline service delivery Fire Safety (Protection) officers has dropped critically.
- 1.4. Since October 2022, in LFB's Protection team, 18 fire and rescue service (FRS) staff have left to work in the public and private sectors for higher salaries. In the same period, five operational staff have retired at pensionable age – two have returned on a part-time basis; and all have stated they want to return, but feel unable to do so due to abatement rules. The general principle behind abatement is to protect the public purse from paying a pension and a salary to the same person, i.e. the income from the public purse should not be increased by the addition of a pension.
- 1.5. LFB has seen a circa 50 per cent drop in the competency rate in IOs (those who are fully qualified and have gained experience) in just 12 months, even with active recruitment. This needs to be considered against the approximate development time of circa two and a half years to bring new officers up to a sufficient competency level so that they can inspect High Risk Residential Buildings (HRRBs) and four to five years plus to achieve competent Fire Engineer status. Recruiting specialist staff is also difficult despite several interventions, including LFB's Centre of Learning and Excellence, providing professional qualifications up to and including Fire Engineering degrees.
- 1.6. While LFB continues to pay salaries that are significantly lower than can be commanded in the private and public sectors, it is likely that staff will continue to leave. A market rate supplement (MRS) paid to technically skilled fire-safety professionals and their (technically skilled/experienced) managers within Protection may be one of several initiatives that could significantly slow down the rate at which staff choose to leave.
- 1.7. Additionally, abatement rules limit LFB's ability to re-hire technically qualified experienced staff who have retired from full-time roles. Such staff could help develop new, inexperienced staff and support service as required. The Fire sector in general, and London specifically, is facing a skills gap that will make it difficult to discharge the LFC's statutory obligations (including the work of the new Building Safety Regulator); address concerns raised in previous inspections by His Majesty's Inspectorate for Constabulary and Fire and Rescue Services; and deliver an effective service.
- 1.8. Engagement with the Home Office has made it clear that His Majesty's Treasury relaxing the abatement rules, or being able to use Protection Uplift funding, are not viable options. It has therefore, been recommended that the LFC departs from the Fire and Rescue National Framework for England (the Framework) and agrees to pay abatement in a defined way that has previously been agreed in FEP2795 (2017) and LFC-O075-D (2018).

Market rate supplements

- 1.9. MRSs result in pay differences, so care will be taken to ensure compliance with equal pay legislation. This proposal is being made using robust benchmarking data, and will be subject to annual review to ensure compliance with equal pay legislation.
- 1.10. LFC-23-061 seeks to establish a one-off payment each year for three years, with a review after one year, for those in a technical Protection role. This supplement should include technical staff and their managers. It would be set on a sliding scale of up to 10 per cent, depending on the qualification and market comparison. Officers with accredited technical qualifications (minimum Fire Safety Level 4 Diploma) and their (technically skilled/experienced) managers would potentially be eligible for an MRS.
- 1.11. The value of an MRS is determined by the difference between the top point of normal salary progression in the grade for the job (as determined by job evaluation) and the market rate for the job in question. However, it will not be salary alone that determines the final salary uplift percentage – other benefits and rewards will be taken into consideration. LFB has a range of active measures in place to address the staffing and competency issues, including a dedicated in-house training academy (supported by external formal qualifications) and a pilot to bring operational staff back into Protection teams. A robust process for determining the value of the MRS will be followed; it will be led by qualitative market data to support the business case.
- 1.12. The MRS will apply to FRS staff in Delivery teams with a Level 4 Fire Safety Diploma including IOs, development officers, enforcement officers and managers. The MRS would also apply to FRS-qualified fire engineers working in Central teams – the MRS would not apply to fire engineer technicians that have benefitted from an entrance salary at the top of the FRS D salary band.

Buy-back clause for qualifications

- 1.13. It is important that LFB provides efficiency and value for money. A cost recovery for higher-level qualifications (levels 4-7) is being explored. New staff that join as FSAs receive training that includes a Level 3 qualification. As this is an essential part of their role, a buy-back clause cannot be implemented. However, a buy-back clause is being explored for these qualification levels, to offset part of the cost of developing a staff member if they leave LFB within a specified period after obtaining these qualifications.

Abatement

- 1.14. The expectation set out in the Framework is that, when reappointing officers at any level, the requirements of part 6 of the Framework are considered. The Framework states:

“Fire and rescue authorities must not re-appoint principal fire officers after retirement to their previous, or a similar, post save for in exceptional circumstances when such a decision is necessary in the interests of public safety. Any such appointment must be transparent, justifiable and time limited...”

“In the exceptional circumstance that a re-appointment is necessary in the interests of public safety, this decision should be ... a publicised decision ... The reason why the re-appointment was necessary in the interests of public safety, and alternative approaches were deemed not appropriate, must be published and the principal fire officer’s pension must be abated until they cease to be employed by a fire and rescue authority.

“To ensure greater fairness and the exchange of talent and ideas, all principal fire officer posts must be open to competition nationally, and fire and rescue authorities must take account of this in their workforce planning.

“While the above requirements only extend to principal fire officers, we expect fire and rescue authorities to have regard to this principle when re-appointing at any level.”

- 1.15. Having reviewed the Framework, it is considered that the current abatement rules hamper LFB’s ability to re-hire qualified staff who have retired. This reduces the availability of competent personnel to

train, mentor and develop new staff, and to undertake higher-risk inspection work. This is likely to impact on LFB's ability to deliver a service that can target risk and meet the ambitions of the Building Safety Regulator (BSR). This may have a detrimental impact on public safety.

- 1.16. Under the Firefighters' Pension Scheme (FPS) 2015, and the Local Government Pension Scheme 2014 (for benefits built up post-2014), abatement of pension on re-employment no longer applies. This issue therefore pertains to firefighters retired under the schemes in operation from 1992 until 2015. Until 2013, abatement for these staff only applied to re-employment as a firefighter by an FRS. Amendments to the FPS 1992 made in 2013 changed that to re-employment 'in any capacity' by an FRS. This brought re-employment of retired fire and rescue staff in non-operational roles, such as fire engineering, within scope of the abatement rules.
- 1.17. Addressing the abatement issue is not seen as a panacea to all the staffing challenges faced by LFB. Rather, it is seen as a key enabling tool that will support the delivery of core business and the work of the BSR, which in turn will help to protect the communities we serve.
- 1.18. The National Fire Chiefs Council 2021 paper, 'Abatement – the case for a relaxation of rules for specialist protection staff', suggests that FRSs could lose 30-40 per cent of their competent and qualified protection staff over the next five years. With over 30 per cent of staff, at present, aged between 46 and 55, the situation as it currently stands is unlikely to improve without an intervention
- 1.19. As indicated in 1.15 above, the lack of staff capable of training, mentoring and developing new staff, and undertaking higher-risk inspection work, is a major obstacle to improved competency rates. Currently LFB's post-retirement Fire Safety professionals work on a part-time basis. Their skills and experience remain in great demand across the department. But currently, returning to work for LFB is not an attractive proposition because other employers – including local authorities and the NHS – pay more without the pension reduction that comes with working for LFB post-retirement.
- 1.20. This inability to bring back experienced staff who have retired from operational ranks exacerbates the issues, as it reduces the availability of competent staff to train, mentor and develop new staff, and undertake higher-risk inspection work. The implications of this are described at 1.15, above.
- 1.21. Provision to relax abatement in other key public sector organisations has already been made, for example in the NHS, in order to help deliver key services to the public. The Metropolitan Police Services (MPS) also offers an enhanced return scheme; this allows police officers to retire from the MPS and return as an attested officer after a short break of service. This scheme, in place until June 2025, allows an officer to take their full pension and monthly salary.

2. Objectives and expected outcomes

- 2.1. If the MRS is paid at 10 per cent for all qualifying staff, the cost to the Prevention and Protection department would be circa £850,000. This would be absorbed within the existing budget by ringfencing the department underspend for 2022-23. This underspend was £3,700,000 in 2020-21, and £5,200,000 in 2021-22; it is expected to fall as LFB recruits. An underspend of £1,341,742 has been ringfenced from the 2022-23 budget and placed into an earmarked reserve.
- 2.2. Where necessary, a vacancy gap of up to 10 posts will be maintained to cover the annual cost of the MRS and abatement (£1,350,000), along with any natural department underspend. Where it exceeds the underspend (created by the vacancy gap and any natural underspend), the £1,341,742 that has been ringfenced from the 2022-23 budget will be used to ensure that costs do not exceed the department budget.
- 2.3. Research by the Institute for Employment Studies, completed in November 2017, found MRSs improved retention and increased staffing levels in nursing between 2009 and 2014. The impact on recruitment was positive. The review stated that MRSs provided value for money.

- 2.4. In respect of abatement, the LFC can exercise its discretion under the 1992 and 2006 pension schemes to withdraw the whole or part of any pension, for any period in which the person entitled to it is employed in any capacity by the LFC. Whilst it is anticipated that recruitment numbers would be low, e.g. a maximum of 15, even such a small cohort of key and experienced staff would have a positive impact on the training and development of new staff, and the undertaking of specific higher-risk work – the detail of which has already been outlined in this report.
- 2.5. The recruitment process would be open and transparent, and undertaken in accordance with established policy. Offers will be made directly and solely to specific applicants possessing the necessary skills and qualifications to undertake the role.
- 2.6. The Deputy Mayor has been consulted on the above proposals.

3. Equality comments

- 3.1. The LFC and the Deputy Mayor for Fire and Resilience (the Deputy Mayor) 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. With the current cost-of-living crisis and the rise in state pension age (currently 66 for both men and women, but set to gradually increase from May 2026 for those born after April 1960), there has been a gradual increase in the age at which both men and women stop working. This is evidenced by official economic labour market statistics. By providing a competitive salary, LFB is seeking to afford many of its older staff the opportunity to continue within a role. This benefits their economic circumstances and, equally important, uses an invaluable skillset beneficial to both LFB and the communities we serve.
- 3.9. An Equality Impact Assessment (EIA) has been conducted to recognise and mitigate any adverse or unduly favourable impact on all protected characteristics as referenced within the 2010 Equality Act. (This EIA is contained in Appendix 2.) The EIA identified that the abatement is likely to positively impact more male than female operational personnel, due to the current breakdown of operational staff. However, this disproportionate positive impact for men will only affect those subjected to the 1992 and 2006 LFB pension schemes.

4. Other considerations

Workforce comments

- 4.1. Following consultation with People Services and representative bodies, it was acknowledged that mechanisms would need to be put in place to reduce the exodus of qualified staff from Fire Safety. It was agreed MRS and abatement should be considered alongside other measures, such as industry qualifications and flexible working.

Sustainability comments

- 4.2. The impact of the MRS will be reviewed annually to assess the financial situation and ensure it remains feasible. Consideration would be given to adjusting budget; exploring new funding sources (including revenue generation and grant funding); and saving costs through efficiency improvements, where they can be made.
- 4.3. The department would also seek to develop a comprehensive long-term plan that outlines steps needed to gradually increase the department budget over time. This plan would consider both short and long-term financial goals.

Conflicts of interest

- 4.4. 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 an MRS is agreed for affected staff. This is at an estimated total cost of £2,550,000, made up from spends of £850,000 across 2023-24, 2024-25 and 2025-26. The report also recommends that spend of £1,500,472 is agreed, over the same period, to cover the cost of pension abatements for a limited number of skilled staff.
- 5.2. These costs (MRS and abatement) will be contained within the existing staff budget for Fire Safety based on forecast vacancy levels. Any costs identified above this will be met from the £1,341,742

Prevention and Protection reserve, created as part of the 2022-23 Financial Outturn report. A review will be undertaken in 2024-25, and subsequent years, to ensure the spend does not exceed the reserve amount. This will be reported on as necessary as part of the published Quarterly Financial Position reports.

6. Legal comments

- 6.1. This report seeks the Deputy Mayor's approval of the LFC's decision to secure and pay an uplift in salary costs for the Fire Safety (Protection) unit and the relaxation of abatement rules for the purposes of staff recruitment and retention.
- 6.2. Under section 9 of the Policing and Crime Act 2017, the LFC is established as a corporation sole with the Mayor appointing the occupant of that office. 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 LFC specific or general directions as to the way the holder of that office is to exercise his or her functions.
- 6.3. By direction dated 1 April 2018, the Mayor set out those matters, for which the LFC would require the prior approval of either the Mayor or the Deputy Mayor. Paragraph (b) of Part 2 of the direction requires the LFC 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". Accordingly, the expenditure identified in this report requires prior approval. Additionally, paragraph 3.1 of the direction states:

"The Deputy Mayor for Fire shall be consulted as far as practicable in the circumstances before a decision on any of the following is taken: ... Any other decision that can be reasonably considered to be novel, contentious or repercussive in nature, irrespective of the monetary value of the decision involved (which may be nil)."

Accordingly, the Deputy Mayor's approval is sought. Officers have indicated at 2.6 above that the Deputy Mayor has been consulted on the proposals in respect of which approval is sought.

- 6.4. In developing the proposals and the LFC decisions in respect of which the Deputy Mayor's approval is sought General Counsel for the LFC has advised as follows:
 - 6.4.1 When carrying out his functions, the LFC, as the fire and rescue authority for Greater London, is required to "have regard" to the Framework (Fire and Rescue Service Act 2004 (the 2004 Act), section 21). The LFC may depart from the Framework if he wishes. However, he must: take a conscious decision to do so; have a good reason for doing so; and explain his reasoning.
 - 6.4.2 The Framework sets out the following (which must be considered when re-hiring retired staff):
 - The re-appointment of principal fire officers to the same or similar posts within the same fire and rescue authority, a short time after they have retired, has caused concern in recent years and increases costs for taxpayers. These individuals very often receive their pension benefits on retirement (such as their tax-free lump sum) and then return on favourable terms, including an increase in take-home pay by avoiding employee pension contributions.
 - Fire and rescue authorities must not re-appoint principal fire officers after retirement to their previous, or a similar, post – save for in exceptional circumstances when such a decision is necessary and in the interests of public safety. Any such appointment must be transparent, justifiable and time-limited.
 - In the exceptional circumstance that a re-appointment is necessary and in the interests of public safety, this decision should be subject to agreement by a public vote of the elected members of the fire and rescue authority; or a publicised decision by the appropriate elected representative of the fire and rescue authority, taking into account the legislative requirements of PCC FRA Chief

Fire Officer appointment procedures. The reason why the re-appointment was necessary in the interests of public safety, and alternative approaches were deemed not appropriate, must be published and the principal fire officer's pension must be abated until they cease to be employed by a fire and rescue authority.

- To ensure greater fairness and the exchange of talent and ideas, all principal fire officer posts must be open to competition nationally. Fire and rescue authorities must take account of this in their workforce planning.
- While the above requirements only extend to principal fire officers, we expect fire and rescue authorities to have regard to this principle when re-appointing at any level.

6.4.3 The LFC should be clear that the hiring of retired staff members and the payment of an abatement meets the requirements of the Framework. Therefore, if the LFC is of the view that the Framework's requirements are met or there is good reason to depart from the Framework and proceed with the recommendations as drafted (which must be explained), the LFC may do so.

6.4.4 The information in this report set out in detail the challenges in recruiting staff and the public safety impacts occasioned by these challenges and, if the LFC is so minded, provide reasonable justification to depart from the provisions of the National Framework in respect of the rehiring of retired staff and the payment of sums in relation to pensions abatement.

6.4.5 LFB's Pay Policy Statement 2023-24 (PN 821) states:

"9.1 Unless there are exceptional circumstances, LFC's policy is to abate an employee's pension where the scheme rules provide for it, where the employee is a pensioner of the LFC and the combined remuneration from pay and pension exceeds the final pensionable salary of the employee. Between November 2017 and September 2020, the LFC did not apply abatement to re-employed fire safety inspecting officers and other suitably qualified fire safety specialist officers due to skills shortages and fire safety work volumes following the Grenfell Tower incident. Since September 2020 normal abatement provisions have been re-instated in Fire Safety, and therefore apply across all departments.

"10.1 The LFC endorses the Home Office's policy position which is included in the Fire and Rescue National Framework (May 2018), i.e. fire and rescue authorities must not re-appoint principal fire officers after retirement to their previous, or a similar, post save for in exceptional circumstances when such a decision is necessary in the interests of public safety. Any such appointment must be transparent, justifiable and time-limited. In the exceptional circumstance that a re-appointment is necessary in the interests of public safety, this decision should be subject to agreement by a public vote of the elected members of the fire and rescue authority, or a publicised decision by the appropriate elected representative of the fire and rescue authority, taking into account the legislative requirements of PCC (Police and Crime Commissioner) FRA (Fire and Rescue Authority) Chief Fire Officer appointment procedures. The reason why the re-appointment was necessary in the interests of public safety, and alternative approaches were deemed not appropriate, must be published and the principal's fire officer's pension must be abated until they cease to be employed by the fire and rescue authority."

6.4.6 If the Deputy Mayor approves the LFC's decision to agree the recommendations in this report, then the provisions of the Pay Policy Statement (above) are to be interpreted as though the LFC's decision amends that statement so it accords with that decision.

6.4.7 The statutory basis for the actions proposed in this report is provided by the 2004 Act, under which the LFC must make provision for the purpose of fire safety (section 6). In accordance with the provisions of section 112 of the Local Government Act 1972 the LFC may also:

"appoint such officers as they think necessary for the proper discharge by the authority of such of their or another authority's functions as fall to be discharged by them ... An officer appointed

... shall hold office on such reasonable terms and conditions, including conditions as to remuneration, as the authority appointing him think fit."

6.4.8 Under section 5A of the 2004 Act, the LFC may also do anything that he considers incidental or indirectly incidental to his core functions.

6.4.9 The recommendations are therefore within the LFC's powers, and the proposals seek to ensure that the LFC can discharge their functions both efficiently and effectively.

Appendices and supporting papers:

LFC-23-061 Protection Staff Retention

LFC-23-061 Appendix 1: Pay Comparisons – April 2023

LFC-23-061 Appendix 2: Equality Impact Assessment

LFC-23-061 Appendix 3: Prevention and Protection LFB Data based on staff numbers as at 30 April 2023

LFC-23-061 Appendix 4: LFB Data based on staff numbers as at 30 April 2023

LFC-23-061 Appendix 5: LFB Business Case

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 be published either 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 9 October 2023.

✓

INTERIM CHIEF FINANCE OFFICER:

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

Signature:



Date:

09/10/2023