

# GREATER LONDON AUTHORITY

## REQUEST FOR MAYORAL DECISION – MD3183

### Settlement relating to legal claim from the family and estate of Ella Adoo-Kissi-Debrah

#### Executive summary:

The Chief Officer of the Greater London Authority (GLA) is being asked to settle a claim brought against the Mayor of London (the Mayor), acting on behalf of the GLA, and Transport for London (TfL) by the family and estate of Ella Adoo-Kissi-Debrah (Ella).

The claim arose from Ella's death on 15 February 2013, from causes that were found to have included exposure to air pollution. The alleged acts and omissions by the Mayor and TfL that are the subject of this claim relate to the previous Mayoral administration. The incumbent Mayor is the defendant to this claim, as he is the holder of the office of the Mayor of London. The claimants have also issued a claim form in the High Court against the Department for Environment, Food and Rural Affairs; the Department for Transport; and the Department of Health and Social Care.

The settlement payment will be apportioned between the GLA (75 per cent) and TfL (25 per cent).

The Chief Officer is requested to make this decision, as there is a potential conflict of interest if the Mayor was to make any decision on settlement of this claim.

#### Decision:

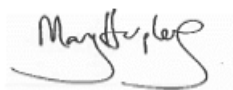
That the Chief Officer of the GLA approves settlement of the claim made by the estate and family of Ella Adoo-Kissi-Debrah against the Mayor of London, in accordance with the terms set out in Part 2 of this decision form.

#### Chief Officer

I confirm that I do not have any disclosable pecuniary interests in the proposed decision and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

#### Signature:



#### Date:

6 November 2023

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

### **Decision required – supporting report**

#### **1. Introduction and background**

- 1.1. In December 2020, a claim was brought in the High Court against the Mayor, Transport for London (TfL) and other parties (together, the defendants). The claim arose from the death of Ella Adoo-Kissi-Debrah (Ella) on 15 February 2013, from causes that were found to have included exposure to air pollution.
- 1.2. The claimants for the claim were: Ella's family; and Ella's estate.
- 1.3. The claimants sought damages for alleged breaches, by the defendants, of EU law relating to air quality and the European Convention on Human Rights (ECHR). These breaches, the claimants said, contributed to or caused Ella's death.

#### The inquest

- 1.4. Ella was born on 24 January 2004. She suffered from unusually severe asthma, first diagnosed when she was six years old, and as a result was admitted to hospital on numerous occasions. Ella's home was located about 25 metres from the South Circular Road, one of the busiest roads in London.
- 1.5. In the early hours of 15 February 2013, Ella became unwell and had difficulty breathing. An ambulance attended, but during the transfer to hospital she suffered a seizure. Ella died in hospital at 3.27am.
- 1.6. An inquest took place into Ella's death on 26 September 2014. The inquest was relatively narrow in scope, with the evidence limited to the medical cause of death and the medical treatment administered in the hours before Ella's death. The coroner concluded that the medical cause of death was '(a) acute respiratory failure, (b) severe bronchial spasm – severe asthma attack which caused acute respiratory failure'.
- 1.7. In 2017-18, Ella's family obtained a report from Professor Stephen Holgate, Professor of Immunopharmacology, and Honorary Consultant Respiratory Physician, at University Hospital Southampton NHS Foundation Trust. He concluded that it was likely that unlawful levels of air pollution contributed to the cause and severity of Ella's fatal asthma attack; and that there is a real prospect that, without unlawful levels of air pollution, Ella would not have died.
- 1.8. Ella's family obtained approval from the Attorney General to make an application to the High Court seeking to quash the determination made at the original inquest. On 2 May 2019, the High Court made this quashing order and ordered a fresh inquest.
- 1.9. The second inquest took place between 30 November and 11 December 2020 at Southwark Coroner's Court before Assistant Coroner Philip Barlow. Ella's family; the Mayor; TfL; the Department for Environment, Food and Rural Affairs; the Department for Transport; Department for Health and Social Care; and the London Borough of Lewisham (LB Lewisham) were all interested persons in the inquest.
- 1.10. The Coroner concluded that Ella died of 'asthma contributed to by exposure to excessive air pollution'. He also found that:
  - air pollution had been a significant contributory factor to both the induction and exacerbations of Ella's asthma
  - during the course of her illness, between 2010 and 2013, Ella was exposed to levels of nitrogen dioxide and particulate matter in excess of World Health Organization guidelines
  - the principal source of her exposure was traffic emissions

- during this period, there was a recognised failure to reduce levels of nitrogen dioxide to within the limits set by EU and domestic law, which possibly contributed to Ella's death
- Ella's mother was not given information about the health risks of air pollution and its potential to exacerbate asthma; and, had she been given this information, she would have taken steps that might have prevented Ella's death.

- 1.11. The medical cause of death was recorded as: acute respiratory failure; severe asthma; and air pollution exposure.
- 1.12. On 20 April 2021, the coroner issued a Prevention of Future Deaths report, raising three areas of concern. The second of these was addressed to the Mayor (as well as Central Government departments and LB Lewisham), and related to low public awareness of the sources of information about national and local pollution levels. The Mayor responded on 16 June 2021, confirming his commitment to raising awareness of the dangers of air pollution, and setting out the policies and tools used to help raise awareness of sources of information about local pollution levels.

#### Civil claim

- 1.13. The background and circumstances of the civil claim and settlement are included in Part 2 of the decision.
- 1.14. The Chief Officer (for the reasons outlined in section 4) is requested to approve settlement of the claim made by Ella's estate and family against the Mayor, in accordance with the terms set out in Part 2 of this decision form.

## **2. Objectives and expected outcomes**

- 2.1. The objective and expected outcome of this decision is to settle the claim made by Ella's estate and family against the Mayor.

## **3. Equality comments**

- 3.1. There are no specific equality issues arising from this decision.

## **4. Other considerations**

#### *Chief Officer approval of this decision*

- 4.1. The document entitled 'Mayoral Decision-Making in the Greater London Authority' sets out the 'reserved Mayoral matters', which are powers that should normally only be exercised by the Mayor. It follows that these powers fall outside of the parameters of the general delegation and other delegations to staff.
- 4.2. These powers are divided into category 1 and category 2 reserved Mayoral matters. Category 1 matters are those reserved by law for the personal exercise of the Mayor only. Decisions relating to these matters may not be delegated under any circumstances. Category 1 matters are not relevant for the purposes of this decision.
- 4.3. Category 2 matters are those that are, by policy choice, normally exercised only by the Mayor. Decisions relating to these matters can, in certain and narrowly defined circumstances, be delegated to senior members of staff. One subcategory of category 2 matters is novel, contentious or repercussive matters (NCR decisions), for which the financial value of the decision is not relevant.
- 4.4. The proposed settlement of this claim is considered an NCR decision, and is therefore a category 2 matter.

- 4.5. Certain post holders are authorised, separately and individually, to exercise category 2 Mayoral powers in place of, and to the same extent, as the Mayor in certain circumstances. One of these is if the Mayor considers it would be inappropriate to personally exercise the power – for example, because of a potential conflict of interest or a risk of pre-determination; or if they do not wish to prejudice their future involvement in the matter. In those circumstances, the Chief of Staff, the Chief Officer (Head of Paid Service), any Mayoral appointee and any Corporate Director can act in the Mayor's stead. This can take place following consultation with the Chief of Staff and the Head of Paid Service (or consultation between these two post holders, if one or other of the two is exercising the power).
- 4.6. The alleged acts and omissions by the Mayor and TfL that are the subject of this claim relate to the previous Mayoral administration of Boris Johnson. The incumbent Mayor is the defendant to this claim, as he is the holder of the office of the Mayor of London. The Mayor knows Ella's mother through her campaigning work on air pollution, and has met with her several times. There is therefore a potential conflict of interest if the Mayor was to make any decision on settlement of a claim brought by Ella's family and/or on behalf of Ella's estate. It is therefore considered appropriate that the Chief Officer of the GLA makes the decision.

## **5. Financial comments**

- 5.1. This is included in Part 2 of the decision.

## **6. Legal comments**

- 6.1. The GLA consists of the Mayor and the London Assembly. Section 30 of the Greater London Authority Act 1999 (GLA Act) provides that the GLA shall have power to do anything which it considers will further any one or more of its principal purposes. These principal purposes include promoting the improvement of the environment in Greater London.
- 6.2. Under section 34 of the GLA Act, the Mayor 'may do anything ... which is calculated to facilitate, or is conducive or incidental to, the exercise of any functions of the Authority' exercisable by him. The settlement of these legal proceedings is incidental to the exercise of the Mayor's functions.

## **7. Planned delivery approach and next steps**

- 7.1. Following approval of this and the related TfL decision, the process to formally agree the settlement will be initiated. Once formally agreed, officers will carry out the actions needed to meet its terms.

## **Appendices and supporting papers**

None.

### Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FoIA) 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 it has been approved or on the defer date.

### Part 1 - Deferral

#### Is the publication of Part 1 of this approval to be deferred? YES

If YES, for what reason: Until the settlement is formally agreed, and can be announced in accordance with its conditions.

Until what date: **[Day after the date the Mayor gives public acknowledgment regarding settlement: TBC]**

### Part 2 – Sensitive information

Only the facts or advice that would be exempt from disclosure under the FoIA should be included in the separate Part 2 form, together with the legal rationale for non-publication.

#### Is there a part 2 form – YES

### ORIGINATING OFFICER DECLARATION:

Drafting officer to  
confirm the following  
(✓)

#### Drafting officer:

Claire Hamilton has drafted this report in accordance with GLA procedures and confirms the following:

✓

#### Sponsoring Director:

Philip Graham has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

#### Mayoral Adviser:

David Bellamy has been consulted about the proposal and agrees the recommendations.

✓

#### Advice:

The Finance and Legal teams have commented on this proposal.

✓

#### Corporate Investment Board

This decision was agreed by the Corporate Investment Board on 6 November 2023.

✓

### INTERIM CHIEF FINANCE OFFICER:

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

#### Signature:



#### Date:

06/11/2023

### CHIEF OF STAFF:

I am satisfied that this is an appropriate request to be submitted to the Mayor.

#### Signature:



#### Date:

06/11/2023