

REQUEST FOR DEPUTY MAYOR FOR FIRE & RESILIENCE DECISION – DMFD89

Title: Legal Costs Related to the Grenfell Tower Fire

Executive Summary:

This report seeks the approval of the Deputy Mayor for Fire and Resilience for additional expenditure on legal costs relating to the Grenfell Tower fire of £723,227 (£657,479, plus 10% margin). Prior authority was granted by the Deputy Mayor on 24 December 2019 (Deputy Mayor for Fire & Resilience Decision 46) to incur expenditure of £5,787,223 for 2019/20 and 2020/21, to secure legal advice and representation for the London Fire Commissioner and appropriate individuals in relation to the Grenfell Tower fire, including but not limited to the Grenfell Tower Inquiry, and to include any consequent or related legal action in respect of the Grenfell Tower fire.

The reasons for the additional costs are primarily an increase in the documents the London Fire Commissioner had to review for disclosure to the Grenfell Tower Inquiry and an increased need to analyse disclosure provided to, and received from, the Grenfell Tower Inquiry.

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 authorises the London Fire Commissioner to incur additional expenditure of up to £723,227 to secure legal advice and representation for the London Fire Commissioner and appropriate individuals in relation to the Grenfell Tower fire as further detailed in the Part 2 paper.

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:

17 November 2020

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

Decision required – supporting report

1. Introduction and background

- 1.1 This report to the Deputy Mayor sets out the background for the request to incur expenditure of £723,227 (£657,479, plus 10% margin) to secure legal advice and representation for the LFC and appropriate individuals in relation to the Grenfell Tower fire. Budgetary provision has been made on an ongoing basis for the costs of the London Fire Brigade (LFB) arising out of the Grenfell Tower fire that occurred on 14 June 2017.
- 1.2 On 24 December 2019, the Deputy Mayor for Fire and Resilience approved expenditure for 2019/20 and 2020/21 (Deputy Mayor for Fire and Resilience Decision 46). The forecasted figure for 2019/20 was £3,444,981 and for 2020/21 it was £1,816,131 (totalling £5,261,112). A margin of 10% on spending for each year was agreed; the total amount of expenditure currently authorised is therefore £5,787,223.
- 1.3 The LFC forecasts that its expenditure to the end of September 2020 will be £5,353,568, which is within the approved spend approved by the Deputy Mayor. However, predominantly as a result of two additional items of work (explained in section 2) there will be additional cost, over and above the approved figure. The London Fire Commissioner estimates the additional cost to be £657,479. Authority is now sought for that additional expenditure. Legal costs as a result of the Grenfell Tower fire will continue beyond March 2021 and authority will be sought for 2021/2022 later in the year for any additional legal costs. Costs are monitored on a monthly basis but LFC is required to react to significant requests from both the Grenfell Tower Inquiry (GTI) and the Metropolitan Police at short notice and therefore providing an accurate longer term forecast remains difficult.

2. Objectives and expected outcomes

External Legal Resource

- 2.1 It has been necessary for the LFC to engage additional internal and external legal resources to manage the considerable additional demands placed on the LFC legal team, both for representation of the LFC and those employees and former employees who will be giving evidence in Phase 2 of the GTI and to identify, sift and present very large volumes of documents and material to the GTI. To date the LFC has served 91 statements and provided over 100,000 documents to the GTI.
- 2.2 The LFC used all of the information and experience available to it when preparing the cost projection for 2020/21. The scale and complexity of the matter means that estimating costs remains a challenge. There are two main unforeseen items of work that required increased legal costs at the end of 2019/20 and the beginning of 2020/21. Whilst savings have been made elsewhere, those items have resulted in the need for the LFC to seek authority for additional expenditure for 2020/21.
- 2.3 The position remains that relying primarily on the LFB's in-house support for the work required to support the LFC is not possible. Whilst in-house legal staff have continued to provide significant input the demands and volume of the work mean that it is not sustainable to rely entirely on that resource. In addition, the specialism of the in-house team is required to advise on policy work that is necessary as part of the transformation work that the LFC is undertaking. The specialism and intensity of the demand for the legal advice on Grenfell (largely driven by outside agencies) requires focussed and expert legal input. Accordingly, it has been necessary to continue to obtain external legal support.
- 2.4 The rigorous systems of appointment of external support therefore ensures best value. The 'audit' of the LFC costs bill by the insurers when they review bills for reimbursement adds an additional level of

assurance that the legal costs are reasonable.

- 2.5 The London Fire Commissioner is required by the Mayoral Direction of 1 April 2018 to consult with, and seek prior consent from the Deputy Mayor, Fire and Resilience on a range of matters, including a "...commitment to expenditure (capital or revenue) of £150,000 or above as identified in accordance with normal accounting practices." A number of the individual items (discussed in Part 2 of this report) do not fall within the category of matters for which prior approval must be sought: they are contracts and arrangements already entered into, or individually fall below the £150,000 threshold. However, it is considered prudent to provide details of the costs, insurance reimbursement and an overall financial picture, in addition to the reporting through the ordinary budget mechanisms, to seek prior approval of the Deputy Mayor for the avoidance of doubt.

3. Equality comments

- 3.1 The London Fire Commissioner and the Greater London Authority are required to have due regard to the Public Sector Equality Duty (s149 of the Equality Act 2010) when taking decisions. This in broad terms involves understanding the potential impact of policy and decisions on those with protected characteristics (as set out in 3.3 below) 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:
- (a) eliminate discrimination, harassment and victimisation and other prohibited conduct;
 - (b) advance equality of opportunity between people who share a relevant protected characteristic and persons who do not share it; and
 - (c) 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:
- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic where those disadvantages are connected to that characteristic;
 - (b) 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; and
 - (c) 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:
- (a) tackle prejudice; and
 - (b) promote understanding.
- 3.8 An Equality Impact Assessment (EIA) was undertaken on 27 July 2020 in relation to the legal costs related to the Grenfell Tower Fire. The EIA found that there is likely to be negligible impact on those with protected characteristics. The position is unchanged in this report on the basis that this report does not propose any change which will impact on either the public or service users but simply seeks authority to incur additional expenditure in respect of legal costs in relation to the LFC's response to the GTI.

4. Other considerations

Workforce comments

- 4.1 The Fire Brigades Union is a core participant in the GTI and has its own legal representation. In addition, it is also providing support and funding for a significant number of employer's liability personal injury claims against the LFC. In the circumstances, decisions regarding LFC spend on legal representation and advice are not suitable for work force consultation, and the confidentiality rules preclude any meaningful discussion.

Sustainability implications

- 4.2 There are no sustainability implications arising from this report.

5. Financial comments

- 5.1 This decision recommends approval for additional expenditure of £723,227, based on an increase in projected spend on legal costs of £657,479 plus a 10% margin. This, in addition to the existing approved spend of £5,787,223 will result in total approved spend of up to £6,510,450.
- 5.2 This expenditure is demand led and the increased cost reflects work necessary to address this demand. The majority of these legal costs are covered by insurance and therefore costs are reimbursed as appropriate. Expenditure where there is uncertainty on whether this is covered by insurance is discussed and negotiated with the insurer and the balance not recovered is met from budgets set aside for this purpose as experience develops.

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").

- 6.3 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...”
- 6.4 The part 2 decision sets out the updated forecast costs position for legal services for Grenfell Tower Fire related matters.
- 6.5 The proposed recommendations are within the London Fire Commissioner’s general powers. Section 5A(1) of the Fire Rescue and Services Act 2004 (‘2004 Act’) states a relevant fire and rescue authority may do anything it considers appropriate for the carrying out of any of its functions or anything that is considers appropriate for purposes incidental whether directly or not in relation to its functional purposes. Section 6 to 9 of the 2004 Act sets out the core functions of a fire and rescue authority, which includes and is not limited to, fire safety, firefighting, road traffic accidents and other emergencies.
- 6.6 The participation by and representation of the London Fire Commissioner in the Grenfell Tower Inquiry and associated enquiries and legal matters falls within S5A(1) of the 2004 Act.

Appendices and supporting papers:

None.

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 – Yes

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.

✓

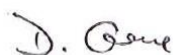
Corporate Investment Board

This decision was agreed by the Corporate Investment Board on 2 November 2020.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature



Date

17 November 2020