

## REQUEST FOR DEPUTY MAYOR FOR FIRE AND RESILIENCE DECISION – DMFD156

### Title: Personal Injury Settlements – 2022-23

#### Executive summary:

This report seeks the approval of the Deputy Mayor for Fire and Resilience for the London Fire Commissioner (LFC) to commit expenditure up to the amount set out in the part 2 decision to settle personal injury (PI) claims in the 2022-23 financial year. The expenditure per claim would be limited to the amount set out in part 2 of the decision, as would the overall expenditure for claims over the year; the authorised expenditure limits are set out in part 2 of this report. There would be further reporting requirements for the LFC's General Counsel to inform the Deputy Mayor about potential and confirmed expenditure on claims, and use of the authority across the year as a whole.

This authority would enable the LFC to conclude PI claims without a requirement to seek approval for each claim, as is current practice, provided costs stay within the approved limits. It is commonplace in PI claims that the precise compensation figure and legal costs are not known at the outset. They may increase during the development of the case, and the ability to settle quickly is likely to reduce the overall cost to the LFC, since it reduces legal costs.

The Deputy Mayor gave approval for the LFC to commit expenditure for PI claims in the remainder of the financial year 2021-22 (Deputy Mayor for Fire and Resilience decision 132).

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

#### Decision:

That the Deputy Mayor for Fire and Resilience authorises the LFC to commit expenditure on PI claims for the amounts set out in part 2 of the decision, in respect of settled claims in 2022-23, provided all of the following requirements are met:

- (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 2022-23 identified in part 2 of the decision
- (iii) spend per claim is contained within the limit identified in part 2 of the decision
- (iv) the LFC's General Counsel notifies the Deputy Mayor upon receipt of cases anticipated to exceed £150,000, and upon final settlement of such cases
- (v) the LFC provides the Deputy Mayor with a year-end financial update on spend that occurred within the terms of this authority.

#### 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:

28/2/22

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

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

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

- 1.1 Report LFC-0645y to the London Fire Commissioner (LFC) sets out the background for the request to approve expenditure for the LFC to commit expenditure on personal injury (PI) claims for the amounts set out in part 2 of the decision, in respect of settled claims in 2022-23.
- 1.2 The majority of PI claims (or indeed the settlement of any other litigation) are less than £150,000; and are settled under the delegation provided in the LFC Scheme of Delegation, which provides for the settlement of any claim, including claims for costs, by or against the LFC up to £150,000 by General Counsel. Decisions to settle over £150,000 are a matter for the LFC and trigger the current Mayoral Direction of 2018, requiring 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...” PI cases are settled on the basis of advice provided by specialist counsel, which relies on well-established guidelines on damages, and on previous reported legal cases that set precedents and principles, and in relation to legal costs, on the advice of a costs draftsman experienced in such matters.
- 1.3 The procedure for dealing with high-value claims is not straightforward, especially if liability and/or causation are in dispute. The final value of these claims is often only fully quantified as the parties progress through the litigation process. The risk of not being able to negotiate settlement of these high-value claims at short notice is the LFC being penalised in terms of additional costs and reputationally, by being perceived as delaying settlement.
- 1.4 The main type of claims that are likely to exceed the amount that triggers the Deputy Mayor’s prior approval and exceeds the current LFC delegation to General Counsel are:
  - mesothelioma
  - possibly other asbestos-related claims (asbestosis, lung cancer)
  - cancer-related claims
  - psychiatric injuries (usually PTSD)
  - any claim that results in a medical retirement.

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

- 2.1 Under the way the current governance arrangements are implemented, each case would need to be presented for prior approval and decision, as and when the final figures and counsel’s advice are available. In litigation terms, this has the potential for delay resulting in increased costs, and for another urgent approval for the LFC to commit expenditure being requested. The current procedure also does not lend itself to unforeseen events that occur in the litigation between the period of the Deputy Mayor’s approval, the LFC’s decision and final settlement.

- 2.2 It is recognised that the number and costs of cases received have a budgetary implication. Accordingly, it is proposed that this arrangement be subject to reporting mechanisms to the Deputy Mayor. This would include notifying the Deputy Mayor of cases where expenditure may exceed £150,000; and notifying the Deputy Mayor of confirmed costs when such cases are settled. The Deputy Mayor will also receive an update at the end of 2022-23 on expenditure incurred on PI claims under this authority.
- 2.3 The authority sought is limited to the financial year 2022-23. Its use and effectiveness would be reviewed prior to any proposal to extend the authority for future years.

### **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 There are no specific equality implications arising from this report.

#### **4. Other considerations**

##### *Workforce comments*

- 4.1 As this report concerns individual issues, no staff-side consultations have been undertaken.

##### *Sustainability and procurement implications*

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

##### *Conflicts of interest*

- 4.3 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 authority is delegated to settle all PI claims up to an amount contained in part 2 of this report, including costs of up to the amount contained in part 2 of this report. The totality of these claims must not exceed £1,800,000, otherwise there will be a requirement for Deputy Mayor's approval. Within 2021-22 there is core funding of £1,000,000; and the 2022-23 budget process has identified a further growth requirement of an amount contained in part 2 of this report. The 2022-23 draft budget proposal therefore includes an amount contained in part 2 of this report as base funding. There is currently forecasted to be an amount, as contained in part 2 of this report, remaining within the Compensation reserve as at 31 March 2022; therefore, currently identified resources total the amount contained in part 2 of this report. The residual balance may be funded through the reallocation of reserves at year-end; however, this must be considered as part of the use of reserves strategy, and prior approval must be granted by the Deputy Mayor.
- 5.2 There are no direct financial implications for the GLA.

## **6. Legal comments**

- 6.1 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 GLA 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 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 LFC 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 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...”.
- 6.3 The proposals in this report seek to provide authority to the LFC to settle PI claims in excess of £150,000. Accordingly, this falls within those matters set out in the 2018 Direction, and therefore requires prior approval of the Deputy Mayor. It is understood that authority to settle claims would be delegated by the LFC to the LFC’s General Counsel.

### **Appendices and supporting papers:**

Part 2 of the decision

Part 1 of report LFC-0645y – Personal Injury Settlements – 2022-23

**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**

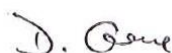
This decision was agreed by the Corporate Investment Board on 28 February 2022

✓

**EXECUTIVE DIRECTOR, RESOURCES:**

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

**Signature**



**Date**

**1/3/22**