

REQUEST FOR DEPUTY MAYOR FOR FIRE AND RESILIENCE DECISION – DMFD132

Title: Personal Injury Settlements

Executive summary:

This report seeks the approval of the Deputy Mayor for Fire and Resilience for the London Fire Commissioner (LFC) to commit expenditure for personal injury (PI) claims in the remainder of the financial year 2021-22. 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 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 2021-22, for the balance of the financial year 2021-22, provided: (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 2021-22 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; and (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:

21/12/21

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

Decision required – supporting report

1. Introduction and background

- 1.1 Report LFC-0548 to the London Fire Commissioner (LFC) sets out the background for the request to approve expenditure for London Fire Brigade (LFB) to settle personal injury (PI) claims.

2. Objectives and expected outcomes

PI litigation cases

- 2.1 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 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...”. 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.
- 2.2 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 approach an assessment of damages hearing. The risk of not being able to negotiate settlement of these high-value claims at short notice is being penalised in terms of additional costs and, reputationally, by being perceived as delaying settlement.
- 2.3 The main type of claims that are likely to exceed the amount that triggers the Deputy Mayor’s prior approval 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.
- 2.4 The relevant process for such claims is outlined below.
- Letter of claim*
- Letters of claim do not include figures for damages and are focused on liability.
 - Mesothelioma/asbestos claims will usually not be contested on liability. The values of all potentially significant claims are difficult to assess at the outset.

Procedure

- In the case of pre-action mesothelioma claims, medical evidence and a schedule of loss will usually follow within two to three months from the letter of claim, unless the claimant dies during this period and the claim is delayed due to probate.
- In issued claims, once the medical evidence and a schedule of loss is served, counsel is instructed to advise on the totality of the claim. This is the first opportunity where there is an accurate assessment of the likely value of the claim.
- Following a liability decision, proceedings will usually be issued if a settlement has not been reached.
- The value of the claim is endorsed on the claim form. However, these values are usually unreliable, as evidence is updated as the claimant's circumstances change.
- Procedural hearings follow, but an accurate assessment of the value of the claim is not usually provided until towards the end of the process, when witness and medical evidence is updated.
- If liability is not in issue, settlement will be attempted either by way of an offer to the claimant's solicitors and/or at a meeting between the parties (i.e., a joint settlement meeting).
- Where liability is not in dispute, mesothelioma claims are usually fast-tracked to an assessment of damages hearing.
- Final details of loss and costs estimates are often served by the claimant very close to settlement hearings or trial, which leaves little time to obtain updated counsel's advice on quantum in order to be in a position to enter settlement negotiations.

- 2.5 In the case of higher-value insured claims, there will be additional reporting requirements to LFB's insurer who can potentially exercise control over the case. This has never happened to date but would impact upon the governance process, with details provided in part 2 of this report.

Existing approval process

- 2.6 There are some cases in which the LFC could potentially be asked to agree settlement figures by the end of this financial year. 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 being requested. The current procedure also does not lend itself to unforeseen events that occur in the litigation between Deputy Mayor approval and final settlement.
- 2.7 Options considered for how to manage these cases more effectively are as follows:
- Early prior approval to settle claims and costs could be sought on those cases on an individual basis, based on early estimates as to claims, with an unlimited authorisation provided to LFC to settle in excess of those sums, with the proviso that Counsel's advice is obtained and the Deputy Mayor is consulted.
 - The cases are settled on specialist counsel advice based on well-established legal guidelines and causation is rarely a disputed issue; therefore, the parameters for discretion in any

decision-making when the matter is presented to the Deputy Mayor are limited. Having regard to the unpredictable nature of litigation, this is therefore an area of decision-making in which a broad authorisation to LFC could usefully be granted. Such an authorisation could be provided on conditions including that specialist counsel opinion be obtained, as well as advice from a costs draftsman on costs; and that the delegation be capped to include costs up to a maximum amount.

Authority sought

- 2.8 Based on the details of the cases anticipated this financial year; the expert external advice that is sought on quantum and costs; the difficulties in anticipating exact figures, in terms of settlement and costs, well in advance within the litigation process; and the financial benefits of early settlements, it is proposed that the Deputy Mayor's prior authority to incur expenditure for the balance of 2021-22 be sought up to a maximum figure per case. It is proposed that, if approved by the Deputy Mayor, the LFC would authorise the LFC's General Counsel to settle claims within the terms of the Deputy Mayor's approved decision.
- 2.9 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 2021-22 on expenditure incurred on PI claims under this authority.
- 2.10 The authority is limited to the financial year 2021-22. 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 implications

4.2 There are no sustainability implications to note.

5. Financial comments

5.1 This report recommends that authority is agreed to settle all PI claims up to the amount set out in the part 2 form, including costs, as long as the agreed spend is contained within the total funding identified. The 2021-22 Budget includes a core budget for this expenditure, and a reserve is being established for any costs that may arise above this for a further amount, as part of the report on the 2020-21 out-turn position. Any spend above the amount specified in the part 2 form will need the prior approval of the Deputy Mayor. This core budget was increased in the 2021-22 Budget Report and will be reviewed again as part of this year's budget process.

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 (or in the alternative a specific PI claim) in excess of £150,000, and accordingly this falls within those matters set out in the 2018 Directions and therefore requires prior approval of the Deputy Mayor. It is understood that the LFC would authorise the LFC’s General Council to settle claims within the terms of the Deputy Mayor’s approved decision.

Appendices and supporting papers:

Part 2 form

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

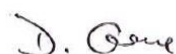
This decision was agreed by the Corporate Investment Board on 25 October 2021

✓

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature



Date

1/11/21