

GREATER LONDON AUTHORITY

REQUEST FOR DEPUTY MAYOR FOR FIRE & RESILIENCE DECISION – DMFD46

Title: Legal Costs Related to the Grenfell Tower Fire

Executive Summary:

Report LFC-0241y to the London Fire Commissioner seeks approval for the total projected spend as set out in Part 2 of this decision to secure legal advice and representation for the Commissioner and appropriate individuals in relation to the Grenfell Tower fire. It also seeks to authorise the Director of Corporate Services to agree matters relating to the Commissioner's insurance arrangements as set out in Part 2 to this decision, with the conditionality of reporting and consultation as set out in this decision. Further, the report seeks for the Deputy Mayor for Fire and Resilience to waive any further prior approvals that may be required in association with those insurance arrangements.

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:

The Deputy Mayor for Fire and Resilience:

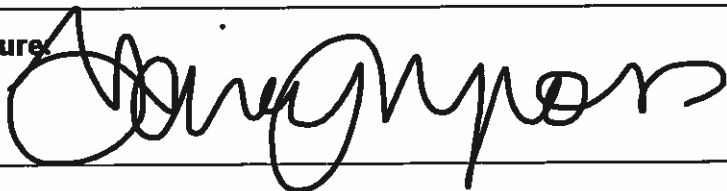
- Approves the expenditure by the London Fire Commissioner to secure continuing legal services relating to the Grenfell Tower fire as set out in report LFC-0241 to the Commissioner
- Waives the requirement for further approvals relating to the Commissioner's insurance arrangements relating to legal services arising from the Grenfell Tower fire, conditional upon the receipt of periodic expenditure reporting relating to such legal services as determined by the Deputy Mayor at her Fire and Resilience Board.

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:

24/12/19

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

Decision required – supporting report

1. Introduction and background

- 1.1. On 21 July 2017, the London Fire and Emergency Planning Authority (LFEPA) considered the overall likely cost implications for the London Fire Brigade of the Grenfell Tower fire which occurred on 14 June 2017, and made budgetary provision accordingly, recognising that those costs applied not only to 2017/18 but would also arise in future years. A total sum of £6.2m for the organisation is identified for 2017/18, and an ongoing sum of £5.8m per year. Paragraph 9 of that report noted that Table 1 identified one off and ongoing annual spend. In the table, £925k was estimated for legal costs as an ongoing yearly item, and provided '*Item: Legal costs of supporting the investigation, appearing and being represented at the Inquiry and managing subsequent litigation*', '*Resource: LFB will be required to participate fully in the Public Inquiry, which requires substantial internal and external legal input*' and notes: '*this includes expenditure on temporary staff and counsel*'. The report provided that the arrangements be put in place to progress the items pending further discussion about funding. Paragraph 13 of the report requested that authority be given to officers to incur the costs in Table 1 where those decisions would normally exceed delegated authority.
- 1.2. The budgets for the London Fire Commissioner ('LFC') approved by the Mayor since 2018, under the new governance arrangements, have made appropriate provision for such legal spend with a small incremental budget increase each year. External legal support arrangements were put in place in 2017 under the delegated powers and are ongoing.

2. Objectives and expected outcomes

- 2.1. Following the LFEPA decision in 2017, additional internal and external legal resources were put in place immediately and provision has continued each year thereafter to manage the considerable additional demands placed on the LFC legal team, both for representation of the LFC and those firefighters directly involved in the fire at Grenfell Tower, and to identify, sift and present very large volumes of documents and material to the Grenfell Tower Inquiry ('GTI'). To date the LFC has served 44 statements and provided 49,000 documents to the GTI.
- 2.2. The GTI has completed Phase 1 of its inquiry and a report will be produced by the GTI in due course. Phase 2 will follow, most probably starting in 2020. The request by the GTI for large numbers of documents and various statements on a range of subjects continues at pace during 2019/20 and will likely be an ongoing feature of Phase 2 in 2020/21.
- 2.3. In addition to the GTI, the LFC and other parties are also engaged in enquiries being made by the MPS, which also requires legal input.
- 2.4. Set out in Appendix 1 to the report to the Commissioner, appended to Part 2 of this decision, is Table A illustrating the total legal costs to-date, and those projected for this financial year and for the next financial year. It is extremely difficult to accurately predict the totals for each legal resource listed in the table, or when the legal resource will be needed. The requests from the GTI for information and documents can be wide-ranging and the timing of those various lines of enquiry and the actions required by LFC are not within the control of the LFC. Additionally, such requests can come at short notice, with prompt action required. The type of legal resources required and engaged for 2019/20 (counsel, external solicitors, digital data search companies, etc.) are largely the same as those originally engaged in 2017/18 and utilised in 2018/19. It is, however, difficult to predict which legal resource will be needed for a particular statement or disclosure exercise—for example, junior counsel, or external solicitors, or the extent of the resource required. Accordingly, it is proposed that a total figure be approved with decision-making on the detail delegated to officers, rather than specific sums

being approved for particular resources.

- 2.5. Fees for external solicitors and counsel are paid on an invoice basis sent by them periodically, usually monthly. The figures for these set out in the table are an indication of those annual costs, rather than an annual contract price, and as explained above, these figures can fluctuate depending on the actions, requests and decisions by other agencies.
- 2.6. Costs for counsel based on hourly rates were negotiated with the Clerk at the outset of the matter and accordingly were agreed in 2017 in respect of the Queen's Counsel and the Lead Junior and are very competitive rates when compared with other counsel of similar seniority and expertise. Counsel is selected based on expertise and suitability as well as price. Any costs for subsequent instructions of new junior counsel for various tasks are also negotiated by senior officers in the in-house legal team to ensure best value.
- 2.7. The selection of external solicitors is also undertaken by a similar exercise based on expertise, cost, and availability. In the case of one firm they are on the Crown Commercial Framework, which is created following a competitive tender exercise and in addition the LFC negotiated a further reduction in those rates. With other external firms, costs have been negotiated, but scarce expertise and short time scales for legal input have been factors in the pricing.
- 2.8. PA Consulting, an expert firm on document identification and sifting, was selected from a framework and at certain stages of the appointment the fees have been specifically negotiated. The contract with PA Consulting was entered into in 2017/18 and has extension provisions included. 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.
- 2.9. The costs for 2019/20 are predicted to be higher than those in previous years, then reducing in 2020/21 (although much depends on the timing of Phase 2—costs currently predicted for 2019/20 could be incurred in 2020/21). Within the confines of that which the LFC is able to share under the Inquest rules, the figures forecast are based on the stage reached by the Inquiry in relation to Phase 1 of the Inquest, the high level of demands for information made by the GTI, the preparation by the LFC, and for the GTI for Phase 2 and the enquiries being made by the Metropolitan Police Service's Operation Northleigh.
- 2.10. In addition, the higher costs reflect a change in arrangements as matters have progressed. Previously, a high number of tasks were performed by internal staff (whose hourly rates are much lower than the external support). Experience of the last two years shows that relying primarily on in-house support for those tasks is not sustainable; the number of hours worked compared with the target number set for the lawyers on Grenfell Tower-related work shows the team have been working at 150 per cent of expectation since 2017, which has had a detrimental impact on staff wellbeing and could if continued affect the quality of support in the legal matters. Some work is distributed to other in-house lawyers, but this starts to impact on other aspects of the Brigade's legal work. Due to the specialism and intensity of the demand for the legal input regarding the Grenfell Tower fire (largely driven by outside agencies) the legal input needs to be focussed and expert. In addition, the constant provision of information to the GTI is a distraction for senior legal staff working on Grenfell Tower matters, whose expertise is more beneficially focussed on strategic oversight and input and advice on critical statements, etc. Accordingly, it has been necessary to make arrangements for an increase in external legal support.
- 2.11. The scoping of the legal costs becomes more difficult to gauge for 2020/21 since much depends on the timing of Phase 2 and any matters that may flow from that.
- 2.12. The London Fire Commissioner is a legal entity in its own right, established by the Policing and Crime Act 2017. The Mayor of London has the power to issue directions to the Commissioner, which the Commissioner is obliged to comply with. The 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."

- 2.13. While a number of the individual items in the Table attached as Appendix 1 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 £150k threshold—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.
- 2.14. For the reasons explained above the estimate of costs for individual items may fluctuate, and the point at which such resources are needed is difficult to predict. Accordingly, it is proposed that prior approval be sought for an inclusive figure set out in Part 2 of this decision to be incurred over the two-year period with a 10 per cent margin on that forecast.

3. Equality comments

- 3.1. The Public Sector Equality Duty – and the potential impacts of this decision on those with protected characteristics (age, disability, gender reassignment, pregnancy and maternity, race, sex, religion or belief, sexual orientation) – has been considered by the London Fire Commissioner and the Deputy Mayor for Fire and Resilience at the Deputy Mayor's Fire and Resilience Board on 15 October 2019.
- 3.2. The duty requires the London Fire Commissioner to have regard to the need to:
- eliminate discrimination, harassment and victimisation and other behaviour prohibited by the Act.
 - advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and
 - foster good relations between people who share a relevant protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 3.3. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 3.4. The Commissioner and the Deputy Mayor have considered their duty under the Act, concluding that there are no impacts upon those with a protected characteristic; no opportunities to advance equality of opportunity; nor an opportunity to foster good relations between those who share a protected characteristic and those who do not. They recognise that whilst those opportunities may arise during the period of the considerations of matters arising from the Grenfell Tower fire, this decision is constrained to the effective legal support required by the Commissioner.

4. Other considerations

Workforce

- 4.1. The Fire Brigade Union is a core participant in the Grenfell Tower Inquiry and has its own legal representation. In the circumstances, decisions regarding LFC spend on legal representation and advice are not suitable for workforce consultation. Further, confidentiality rules preclude any meaningful discussion.

5. Financial comments

- 5.1. This report recommends that projected spend on legal costs be agreed in 2019/20 and in 2020/21 including a 10 per cent margin of tolerance, as set out in the report to the Commissioner appended to Part 2 of this decision, in relation to the Grenfell Tower fire. The forecast expenditure in 2020/21 will be included as part of the budget process for future years. The report notes that these figures can fluctuate depending on the actions, requests and decisions by other agencies. Actual legal expenditure in relation to this work, net of any relevant insurance income, will continue to be reported on as part of the published Quarterly Financial Position reports. The proposed expenditure will be funded from the Commissioner's existing budgets. No further funding from the Greater London Authority is required.

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 Table in Appendix 1 of report LFC-0241y to the Commissioner sets out the forecast costs position for legal services for Grenfell Tower Fire related matters. The position regarding reimbursement under the insurance provisions is set out in the body of this report, as is the position regarding the application of the Mayoral Direction.
- 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 5A(1) of the 2004 Act.

Appendices and supporting papers:

1. Part 2 – Confidential facts and advice

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

If YES, for what reason:

Until what date: (a date is required if deferring)

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

Tom Middleton 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 XXXX.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

Date

- 5.1. This report recommends that projected spend on legal costs be agreed in 2019/20 and in 2020/21 including a 10 per cent margin of tolerance, as set out in the report to the Commissioner appended to Part 2 of this decision, in relation to the Grenfell Tower fire. The forecast expenditure in 2020/21 will be included as part of the budget process for future years. The report notes that these figures can fluctuate depending on the actions, requests and decisions by other agencies. Actual legal expenditure in relation to this work, net of any relevant insurance income, will continue to be reported on as part of the published Quarterly Financial Position reports. The proposed expenditure will be funded from the Commissioner's existing budgets. No further funding from the Greater London Authority is required.

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..."*.
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- 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 55A(1) of the 2004 Act.

Appendices and supporting papers:

1. Part 2 – Confidential facts and advice

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If YES, for what reason:

Until what date: (a date is required if deferring)

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

Martin Clarke 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 noted by the Corporate Investment Board on 6 January 2020.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. D. Clarke

Date

9.1.20