

GREATER **LONDON** AUTHORITY

REQUEST FOR DEPUTY MAYOR FOR FIRE & RESILIENCE DECISION – DMFD68

Title: Authority to settle a personal injury claim

Executive Summary:

The London Fire Commissioner seeks authority to settle a personal injury claim brought on behalf of the estate of an ex-firefighter, in which the range of reasonable settlement requires the consent of the Deputy Mayor.

The London Fire Commissioner Governance Direction 2018 sets out a requirement for the London Fire Commissioner to seek prior consent before '*[a] commitment to expenditure (capital or revenue) of £150,000 or above*'. The Direction also provides the Deputy Mayor with the authority to '*give or waive any approval or consent required by [the] Direction*'.

Decision:

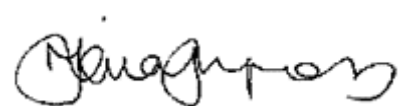
The Deputy Mayor for Fire and Resilience consents to the expenditure outlined in the Part 2 form of this decision for the settlement of a personal injury claim as set out in report LFC-0322 to the London Fire Commissioner.

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:

22 June 2020

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

Decision required – supporting report

1. Introduction and background

- 1.1. The London Fire Commissioner seeks authority to settle a personal injury claim brought on behalf of the estate of an ex-firefighter, in which the range of reasonable settlement requires the consent of the Deputy Mayor.
- 1.2. The claimant brings this claim, which is a fatal Mesothelioma case. Malignant Mesothelioma is a rare and aggressive cancer which usually develops in the linings of the lungs or abdomen. It is associated with exposure to asbestos.
- 1.3. The claimant's updated Schedule of Loss has been served, upon receipt of which, Counsel drafted a Counter-Schedule of Loss/Special Damages and also provided a final advice on quantum.
- 1.4. If the claimant obtains a judgment at court that is less than an offer by the Commissioner, then generally the court will apply costs on the standard basis.
- 1.5. However, if the claimant obtains a judgment that is at least as advantageous, if not better than the terms of the offer, and the offer is made more than 21 days before trial, then unless the court considers it unjust to do so, it will order that the claimant is entitled to:
 - Interest on the whole or part of any money awarded at not more than 10% above base rate for some or all of the period starting with expiry of the relevant period; and
 - Its costs on the indemnity basis (which is more generous than the standard basis) from the date of expiry of the relevant period to the date of settlement or trial/hearing.
- 1.6. This means that the London Fire Commissioner would have to pay more in terms of costs and interest than it would have had to as a 'penalty' for not accepting the claimant's offer.

Liability

- 1.7. Liability, subject to causation, was admitted in the defence filed and served on the basis that the claimant's deceased husband was exposed to asbestos during the course of his employment with the London Fire Commissioner and as a consequence developed Mesothelioma as a result of the exposure to asbestos.
- 1.8. It is agreed that the deceased was, on the balance of probabilities, exposed to asbestos whilst employed by the London Fire Commissioner and that such exposure was negligent, on the balance of probabilities. That takes account of the deceased's witness statement.
- 1.9. Counsel also agrees that the deceased was exposed to asbestos during his time as a firefighter employed by a county council and that such exposure was also negligent. Counsel has advised that the county council are unlikely to succeed in defending on the basis of lack of knowledge or level of exposure.

2. Objectives and expected outcomes

- 2.1. Consent by the Deputy Mayor for Fire and Resilience allows the Commissioner to effectively settle matters with the claim and in line with the expectations of the court.

3. Equality comments

- 3.1. Decision-takers have due regard to the Public Sector Equality Duty when considering reports for decision.
- 3.2. Under s149 of the Equality Act 2010 (the Equality Act), as a public authority we must have due regard to the need to eliminate discrimination, harassment and victimisation, and any conduct that is prohibited by or under the Equality Act; and to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not.
- 3.3. The Public Sector Equality Duty (PSED) is as follows:
 - a) The London Fire Commissioner must, in the exercise of their functions, have due regard to the need to:
 - i. Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Equality Act 2010. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful.
 - ii. Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - iii. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
 - b) The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, and sexual orientation.
- 3.4. There are no specific equality implications arising from this report.

4. Financial comments

- 4.1. The expenditure is to be funded through sums available to the Commissioner. There are no direct financial implications for the GLA.

5. Legal comments

- 5.1. General Counsel is the author of this report.
- 5.2. 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.
- 5.3. 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").
- 5.4. 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...".
- 5.5. The settlement of this claim exceeds General Counsel's delegation and prior approval of the Deputy Mayor is therefore required prior to settle this claim.

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

Until what date:

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 22 June 2020.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature



Date

22 June 2020