



LONDON FIRE BRIGADE

DMFD156 Appendix 1

Report title

Personal Injury Settlements – 2022/23

Report to

Corporate Services Directorate Board
Commissioner's Board
Deputy Mayor's Fire and Resilience Board
London Fire Commissioner

Date

7 December 2021
14 December 2021
18 January 2022

Report classification :

For Decision

The subject matter of this report deals with the following LFB strategic priorities:

Delivering excellence

Delivering excellence by achieving the optimal settlement of a personal injury claim against the London Fire Commissioner.

Report number – LFC-0645y

For Publication

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE DECISION-MAKER

Executive Summary

General Counsel seeks authority to settle personal injury claims up to the amounts set out in Part 2 of this report for the financial year 2022/23 which exceeds General Counsel's current delegation to settle claims, as permitted by the London Fire Commissioner's Scheme of Governance. Such delegation would be subject to reporting requirements to the Deputy Mayor, Fire and Resilience for financial monitoring purposes.

This report replicates a previous report for the same delegated authority in respect of dealing with claims in 2021/22 which is currently progressing through the decision-making process.

For the Deputy Mayor

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: (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; and (v) the LFC provides the Deputy Mayor with a year-end financial update on spend that occurred within the terms of this authority.

This LFC decision will only be taken after further consultation with the Greater London Authority's finance and legal advisers and Corporate Investment Board.

For the London Fire Commissioner

The London Fire Commissioner delegates authority to the General Counsel to settle PI claims for the amounts set out in part 2 of the decision, in respect of settled claims in 2022-23 subject to compliance with the following reporting requirements; i) the LFC takes 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 compensation matters of the amount contained in part 2 of this report; iii) General Counsel notifies the Deputy Mayor upon receipt of cases anticipated to exceed £150,000, and upon final settlement of such cases; and iv) the LFC provides the Deputy Mayor with a year-end financial update on spend that occurred within the terms of this authority.

1. Introduction and background

- 1.1 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.

1.2 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 progress through the litigation process. 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.

1.3 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.

Existing approval process

1.4 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, LFC decision and final settlement.

Authority sought

1.5 Based on the details of the cases anticipated in 2022-2023; 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 LFC authorise General Counsel to settle claims up the value on the terms set out in the recommendations.

1.6 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.

1.7 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.

1.8 A list of current cases that are likely to exceed £150,000 is attached as **Appendix 1** to part 2 of the report.

2. Equality comments

- 2.1 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.
- 2.2 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.
- 2.3 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.
- 2.4 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.
- 2.5 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.
- 2.6 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.
- 2.7 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.

2.8 There are no specific equality implications arising from this report.

3. Other Considerations

Workforce comments

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

Sustainability comments

3.2 There are no sustainability implications arising from this report.

Procurement comments

3.3 There are no procurement implications arising from this report.

4. Financial comments

4.1 This report recommends that authority is delegated to settle all personal injury 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 and therefore currently identified resources totals the amount contained in part 2 of this report. The residual balance may be funded through the re-allocation of reserves at year-end, however this must be considered as part of the use of reserves strategy and prior approval granted.

5. Legal comments

5.1 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.

5.2 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") 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...”;

- 5.3 The proposals in this report seek to provide delegated authority to General Counsel 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

List of Appendices

Appendix	Title	Open or confidential
1.	List of Personal Injury cases	Confidential

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

Heather Woodham has drafted this report, with assistance of the lawyer dealing with personal injury claims, and confirms the following:

Assistant Director/Head of Service

Kathryn Robinson, General Counsel has reviewed the documentation and is satisfied for it to be referred to Board for consideration.

✓

Advice

The Finance and Legal teams have commented on this proposal.

✓

Heather Woodham Legal Advisor, on behalf of General Counsel (Head of Law and Monitoring Officer)

James Buttery, Financial Advisor, on behalf of the Chief Finance Officer