

Report title

Authority to Settle a Personal Injury Claim

Report to	Date
Corporate Services Directorate Board	8 December 2020
Commissioner's Board	17 December 2020
Deputy Mayor's Fire and Resilience Board	5 January 2021
London Fire Commissioner	

Report by	Report number
General Counsel	LFC-0464

Protective marking: **OFFICIAL SENSITIVE – legal privilege applies**
Publication status: Published with redactions

Summary

General Counsel seeks authority to settle a personal injury claim regarding an ex-firefighter with the London Fire Brigade, in which the range of reasonable settlement exceeds General Counsel's delegation to settle claims, as permitted by the London Fire Commissioner's Scheme of Governance.

Recommended decision

For the London Fire Commissioner

Subject to the Deputy Mayor giving prior approval for expenditure up to £710,000, the London Fire Commissioner delegates authority to the General Counsel to settle the personal injury claim, up to a maximum settlement figure of £560,000 (Gross) plus costs up to £150,000.

Background

1. The claimant (Mr Lee Goldfinch) brings this claim for Personal Injury as a result of an accident at work on 8 October 2015. The Claimant was employed as a firefighter and was leaning against a parked fire engine when it unexpectedly moved due to the handbrake being released, causing a blunt trauma just above the Claimant's left knee. Liability is admitted in full by the Defendant, but causation and quantum are in dispute. The Claimant was aged 39 at the time of the accident.
2. The Claimant was conveyed to hospital on the day of the accident, but no bony injury was identified. The Claimant was off work for two weeks and then returned to full duties. However, rather than improving progressively, which is what one would have expected following such an injury, the condition of his knee deteriorated over time. He underwent

an arthroscopic procedure on 23 January 2017, in which a tear in the medial meniscus was identified and resected. He did not return to work following that procedure and reported continuing deterioration rather than improvement. He underwent a second arthroscopy on 11 June 2018, but again this appears to have resulted in no significant improvement in his condition. At the time of this operation, his treating surgeon noted that: -

“whilst I am hopeful that the above procedure will improve his knee symptoms to some extent, I would not be surprised if he continues to have discomfort or weakness of the knee in the longer term because of the degenerative changes which are essentially irreversible.”

3. The Claimant was offered redeployment within the Fire Service but instead elected to take medical retirement with effect from 14 February 2019 (*“Injury due to Service”*).
4. Liability for this accident was admitted by the Defendant on 10 July 2017. Therefore, the claim proceeds on quantum (value) alone.
5. The Claimant claims compensation for pain, suffering and loss of amenity (‘general damages’) and the financial impact of his injury/condition. The financial loss is calculated using several elements, including loss of earnings (if any) due to the incident, care and pension loss.
6. Proceedings were issued and then served in February 2019 seeking “in excess of £200,000”, but not fully quantified at that stage. Since then the Parties have been attending to procedural matters by way of complying with the Court’s Order for Directions i.e. Lay Witness evidence, Medico-Legal Expert Reports and claimant’s Schedule of Special Damages/Financial Losses and (*“LFC”*) Counter-Schedule of Special Damages/Financial Losses.
7. The Claimant’s schedule of loss dated 24 June 2020 quantified the claim in excess of £830,000 (including General Damages). However, Counsel has to date been unable to draft a robust Counter-Schedule of Loss/Special Damages due to outstanding documentation in relation to elements of the claim. The provisional advice from Counsel values the claim at £560,000 (Gross).
8. An Assessment of Damages Hearing (2-3 Day Trial) is to be listed for April 2021. However, the Parties are attempting to effect settlement by way of a (*“JSM”*) Joint Settlement Meeting (ADR process) no later than 19 March 2021, pursuant to a court order dated 17 November 2020,
9. Based on Counsel’s current advice authority is sought to settle the claim up to £560,000 (Gross) damages plus costs up to £150,000.
10. If an offer of settlement is not received from the claimant’s solicitors prior to the (*“JSM”*) then LFC will put forward an offer of settlement in accordance with Part 36 of the Civil Procedure Rules (CPR Part 36).

11. There are significant costs implications in relation to a CPR Part 36 Offer, which should incentivise the Claimant to reach settlement before trial. If the matter proceeds to trial and the Claimant fails to obtain a judgment that exceed the Part 36 Offer by London Fire Commissioner, then their costs will be significantly higher.

Strategic drivers, including the relevant pillar of the Transformation Delivery Plan

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

Finance comments

13. This report recommends that authority is agreed to settle a personal injury claim for up to £710,000. This expenditure is expected to contribute to an overspend against the compensation budget and add to the use of the earmarked compensation reserve to drawdown the full value of £1,000,000. After this draw there would remain unfunded expenditure of £696,000, and this will be considered as part of the Brigade wide position in the quarter 3 financial position report, along with any implications to the general reserve.
14. The compensation budget level for future years has also been assessed as part of the budget process and the Budget Submission to the Mayor (LFC-0432-D) includes an increase to this budget of £400k from 2021/22 to reflect the future expected requirement.

Workforce comments

15. As this report concerns an individual issue, no staff-side consultations have been undertaken.

Legal comments

16. General Counsel is the author of this report.
17. 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.
18. 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").

19. 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...”.
20. The settlement of this claim exceeds General Counsel’s delegation and prior approval of the Deputy Mayor is therefore required prior to settling this claim.

Sustainability implications

21. There are no sustainability implications.

Equalities implications

22. The London Fire Commissioner and the Greater London Authority are required to have due regard to the Public Sector Equality Duty (s149 of the Equality Act 2010) when taking decisions. This in broad terms involves understanding the potential impact of policy and decisions on those with protected characteristics (as set out in 3.3 below) taking this into account and then evidencing how decisions were reached.
23. 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.
24. 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.
25. The Public Sector Equality Duty requires decision-takers in the exercise of all their functions, to have due regard to the need to:
 - a. eliminate discrimination, harassment and victimisation and other prohibited conduct.
 - b. advance equality of opportunity between people who share a relevant protected characteristic and persons who do not share it.
 - c. foster good relations between people who share a relevant protected characteristic and persons who do not share it.
26. 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:
 - d. remove or minimise disadvantages suffered by persons who share a relevant protected characteristic where those disadvantages are connected to that characteristic;
 - e. 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;

- f. 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.
- 27. The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include steps to take account of disabled persons' disabilities.
- 28. 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:
 - g. tackle prejudice, and
 - h. promote understanding.
- 29. This decision relates to the particular circumstances of an individual employee and no equality duty implications arise and simply seeks authority to incur expenditure for the settlement of a personal injury claim.

Grounds for redaction within the report

- 30. In preparing this report General Counsel has identified sections of the text that it believes attract legal professional privilege (LPP), i.e. that these sections should be afforded special protection, enabling the Commissioner as client to retain confidentiality in relation to certain communications pertaining to legal advice and the conduct of litigation or anticipated litigation. LPP is a right of the client, and it is for the client to seek to exert it or waive it. It is recommended that the Commissioner exerts his rights to withhold the highlighted sections because the additional details contain within them would divulge to a third party details of the Commissioner's operational and tactical approach to the ongoing and anticipated legal matters. The report also contains some personal information.

List of appendices to this report:

- a) none