



LONDON FIRE BRIGADE

Decision title

Authority to settle a personal injury claim

Recommendation by
General Counsel

Decision Number
LFC-0348y-D

Protective marking: **OFFICIAL**

Publication status: Published with redactions

Summary

Report LFC-0348y 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 exceeds General Counsel's delegation to settle claims, as permitted by the London Fire Commissioner's Scheme of Governance.

Decision

The London Fire Commissioner delegates authority to the General Counsel to settle the personal injury claim, [REDACTED]

Andy Roe
London Fire Commissioner

This decision was remotely
Date signed on Monday 22 June 2020

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Report title

Authority to settle a personal injury claim

Report to	Date
London Fire Commissioner	20 May 2020
Report by	Report number
General Counsel	LFC-0348y

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Summary

General Counsel 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 exceeds General Counsel's delegation to settle claims, as permitted by the London Fire Commissioner's Scheme of Governance.

Recommendation

The London Fire Commissioner delegates authority to the General Counsel to settle the personal injury claim, [REDACTED].

Background

1. The claimant [REDACTED] brings this claim, which is a fatal mesothelioma case on behalf of [REDACTED]. 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.

2. The claimant alleges that [REDACTED] was exposed to asbestos materials between [REDACTED].

[REDACTED]

[REDACTED]

4. The claimant's updated Schedule of Loss was served on [REDACTED], upon receipt of which, Counsel drafted a Counter-Schedule of Loss/Special Damages and also provided a final advice on quantum on [REDACTED]. It should be noted that Counsel's provisional advice on quantum was [REDACTED].

5. [REDACTED]

[REDACTED]

7. There are significant costs implications in relation to the CPR Part 36 Offer. If the claimant obtains a judgment at court that is less than the CPR Part 36 Offer then generally the court will apply costs on the standard basis.

8. However, if the claimant obtains a judgment that is at least as advantageous, if not better than the terms of the Part 36 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.

9. 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 Part 36 offer.

Liability

10. Liability, subject to causation, was admitted in the defence filed and served on [REDACTED], 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.

11. 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 and the medical report of [REDACTED].

12. Counsel also agrees that the deceased was exposed to asbestos during his time as a fire

fighter employed by [REDACTED] and that such exposure was also negligent. Counsel has advised that [REDACTED] are unlikely to succeed in defending on the basis of lack of knowledge or level of exposure.

13. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

15. Documentation and witness evidence obtained for the purpose of assessing previous claims of this type have established that:

[REDACTED]
[REDACTED]
[REDACTED]

16. Mesothelioma claims are known as 'single fibre' (a claimant need only be exposed to one fibre of asbestos).

Medical evidence

17. The claimant relies on the expert evidence medical report of [REDACTED]
[REDACTED].

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

26. Counsel's initial advice dated [REDACTED]

27. Counsel's final advice, together with the Counter-Schedule of Loss/Special Damages was provided on [REDACTED]

[REDACTED]

Authority sought

29. [REDACTED]

[REDACTED]

Finance comments

31. This report seeks authority to settle a personal injury claim brought on behalf of the estate of an ex-firefighter, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

34. The most significant demand against the compensation budget in any one year is likely to be for the amounts set aside in the provision for new cases. This make it difficult to forecast the compensation costs, and therefore the reason for the reserve, to help smooth the impact of any significant cost of new cases in any one year. The position will be reviewed and reported on as part of the regular financial position reports

35. [REDACTED]

[REDACTED]

[REDACTED]

36. As part of the budget setting process for 2021/22, the demand against the compensation budget will be reviewed to determine the adequacy of the budget going forward.

Workforce comments

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

Legal comments

38. General Counsel is the author of this report.

39. 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.

40. 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").

41. 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..."*.

42. 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.

Sustainability implications

43. There are no sustainability implications.

Equalities implications

44. Decision-takers have due regard to the Public Sector Equality Duty when considering reports for decision.
45. 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.
46. 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.
47. There are no specific equality implications arising from this report.

List of appendices to this report:

- a) none