

Report title

Legal Costs Related to the Grenfell Tower Fire

Report to

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

Date

8 December 2020
17 December 2020
5 January 2021

Report by

General Counsel

Report number

LFC-0463

Protective marking: **OFFICIAL-SENSITIVE – legal privilege applies**

Publication status: **Published with redactions**

I agree the recommended decision below.



Andy Roe
London Fire Commissioner

This decision was remotely
signed on Thursday
Date 25 February 2021

Summary

Under the Mayor's Direction of April 2018, prior authority is to be sought from the Deputy Mayor for Fire and Resilience to incur expenditure on legal costs relating to the Grenfell Tower fire. This report seeks an increase to the 2019/20 - 2020/21 approval and sets out the projected legal costs for 2021/22, the position regarding reimbursement via the insurance policies and seeks the Commissioner's agreement to continue to arrange legal advice and representation.

For the London Fire Commissioner

1. Subject to the Deputy Mayor, Fire and Resilience giving prior approval to the expenditure, the London Fire Commissioner delegates authority to the Director of Corporate Services to incur additional expenditure of £265,826 to the previously delegated authority of £6,510,449 for 2019/20 and 2020/21 to secure legal advice and representation for the LFC and appropriate

individuals in relation to the Grenfell Tower fire, including but not limited to the Grenfell Tower Inquiry, and to include any consequent or related legal action in respect of the Grenfell Tower fire.

2. Subject to the Deputy Mayor Fire and Resilience giving prior approval to the expenditure, the London Fire Commissioner delegates authority to the Director of Corporate Services to incur expenditure of £2,953,984 for the period 2021/22 plus 15% margin to secure legal advice and representation for the LFC and appropriate individuals in relation to the Grenfell Tower fire, including but not limited to the Grenfell Tower Inquiry, and to include any consequent or related legal action in respect of the Grenfell Tower fire.
3. Notes the position regarding the reimbursement of legal costs relating to the Grenfell Tower fire via insurance, and the sum currently in dispute.

Background

Evidence analysis 2020/21 and ongoing costs

1. Budgetary provision has been made on an ongoing basis for the costs of the London Fire Brigade arising out of the Grenfell Tower fire that occurred on 14 June 2017. On 17 November 2020, the Deputy Mayor approved an updated figure for expenditure for 2019/20 and 2020/21. It was indicated in the last report submitted to the Deputy Mayor that legal costs as a result of the Grenfell Tower fire will continue beyond March 2021 and authority will be sought for 2021/2022 separately and this report does so. The Report explained that the increase sought for 2019/20 and 2020/21 predominantly related to work required to analyse evidence received from and disclosed to the Grenfell Tower Inquiry. The analysis work was advised by leading counsel. Due to the nature of the work, it was very difficult to provide an accurate forecast of the cost.
2. The analysis work has been ongoing since the submission of the report in August 2020. Throughout that time, the process by which the work is undertaken has been refined to ensure that it is of most benefit to the LFC. Changes have also been made to ensure that appropriate cost savings are made in respect of senior counsel's time by ensuring that there is a reduced need for them to review the underlying documents. With the work having progressed for a further 4 months, the LFC is in a better position to forecast the total work required and therefore the cost. As a result, the forecasted cost of the work required during 2020/21 has increased by approximately £265,826.

Legal Advice and Representation in various legal forums

3. The Inquiry is currently within phase 2 of its work. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Work in connection with the Inquiry and related proceedings will certainly continue into 2022/23 and authority for expenditure relating to that period will be sought in due course.

[REDACTED]
[REDACTED]

[Redacted]

External Legal Resource

6. It has been necessary for the LFC to engage additional internal and external legal resources to manage the considerable additional demands placed on the LFC legal team. This is required to ensure proper representation of the LFC and those employees and former employees who will be giving evidence in Phase 2 and to identify, sift and present very large volumes of documents and material to the GTI. To date the LFC has served 99 statements and provided over 100,000 documents to the GTI. The scale and complexity of the matter means that estimating costs remains a challenge.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

13. [Redacted]

14. Against that background, Appendix 1 sets out the total legal costs to date and forecasted expenditure for 2021/22. It is extremely difficult to predict accurately the totals for each legal resource listed in Appendix 1, or when the legal resource will be needed.

The insurance position

[Redacted]

[Redacted]

[Redacted]

Equality Impact

18. 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.

19. 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.

20. 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.
21. 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.
22. 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:
 - a. remove or minimise disadvantages suffered by persons who share a relevant protected characteristic where those disadvantages are connected to that characteristic;
 - b. 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;
 - c. 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.
23. 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.
24. 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:
 - a. tackle prejudice, and
 - b. promote understanding.
25. An Equality Impact Assessment (EIA) was undertaken on 27 July 2020 in relation to the legal costs related to the Grenfell Tower Fire. The EIA found that there is likely to be negligible impact on those with protected characteristics. The position is unchanged in this report on the basis that this report does not propose any change which will impact on either the public or service users but simply seeks authority to incur additional expenditure in respect of legal costs in relation to the LFC's response to the GTI.

Procurement and Sustainability

26. There are no sustainability implications arising from this report.

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

27. Delivering excellence through the provision of quality legal representation.

Workforce Impact

28. The Fire Brigade Union is a core participant in the Grenfell Tower Inquiry and has its own legal representation. [REDACTED]

[REDACTED] In the circumstances, decisions regarding LFC spend on legal representation and advice are not suitable for work force consultation, and the confidentiality rules preclude any meaningful discussion.

Finance comments

29. This report recommends that authority is agreed to commit to additional expenditure of £265,826 for a total estimated spend of £6,510,449 over 2019/20 and 2020/21. This expenditure is reflected in the financial position report as at the end of Quarter 2. The report also recommends that projected spend on legal costs be agreed of £2,953,984 in 2021/22 plus 15%, in relation to the Grenfell Tower fire. This will result in a financial pressure of [REDACTED] as the total cost in 2021/22 less the amount that will be recovered from the insurers. This pressure will be included as part of the Final Budget Report for 2021/22.

30. 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.

31. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] This forecast expenditure and income will continue to be reported on as part of the regular financial position reporting.

Legal comments

32. 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.

33. 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").

34. 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..." 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. However, 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.

35. The Commissioner may, under s222 Local Government Act 1972, where it is considered 'expedient for the promotion or protection of the interests of the inhabitants of their area ...

prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name, and ... they may, in their own name, make representations in the interests of the inhabitants at any public inquiry held by or on behalf of any Minister or public body under any enactment."

36. It is implicit in the above that the Commissioner may authorise spending and the instruction of outside experts. Notwithstanding this, the powers granted by s222 of the 1972 Act constitute a function of the Commissioner and 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. This includes incurring spending in furtherance of the powers under s222 of the 1972 Act.
37. The participation by and representation of the London Fire Commissioner in the Grenfell Tower Inquiry and associated enquiries and legal matters falls within s222 of the 1972 Act and S5A(1) of the 2004 Act.

Grounds for redaction within the report

38. 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. The overall spending envelope is to be made public, as this non-specific figure is not considered to be covered by LPP. 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, including the ongoing dispute with the insurer the anticipated civil claims and the other matters discussed above in relation the Grenfell Tower Inquiry. In addition, some of the information in the report was received from the GTI under the terms of the confidentiality undertaking that the GTI asks all core participants to sign. Therefore, it is recommended that those aspects are withheld until such a time as the confidentiality over the information is removed, for example when and if the GTI puts the information into the public domain.

List of Appendices

Appendix	Title	Protective Marking
1.	Forecast costs position for legal services	OFFICIAL-SENSITIVE

Grenfell Tower Fire Legal costs analysis 01/12/20
Appendix 1

A	B	C	D
Legal Related Spend	2019/20 spend	2020/21 End of year forecast as at 1 December 2020	2021-2022 forecast
Internal Legal Staff costs			
<i>Sub total</i>			
External advice and representation			
Queens Counsel			
Junior Counsel			
LFB Evidence Analysis Junior Counsel			
Drafting Rule 9 statements for Phase 2 - Counsel			
Management of Rule 9 process - Junior Counsel			
Solicitors			
Grenfell Civil Claims (Counsel costs)			
Inquiry Paralegal 2021/22			
<i>Sub total</i>			
<i>Potentially recoverable amount</i>			
Disclosure costs			
Inquiry Paralegal 2020/21			
Junior Disclosure Counsel			
Disclosure Paralegals			
Disclosure Officer			
Solicitors (disclosure)			
Disclosure software processing and hosting costs			

OFFICIAL – LEGAL PROFESSIONAL PRIVILEGE

Legal professional privilege (FOIA section 42(1))

42(1) Information in respect of which a claim to legal professional privilege is exempt information.

Sub total	[REDACTED]		
Recoverable amount (66%)	[REDACTED]		
	[REDACTED]		
Non recoverable costs			
Insurance Claims Advisor	[REDACTED]		
Costs Draftsman (Knapp Richardson)	[REDACTED]		
Sub total	[REDACTED]		
	[REDACTED]		
TOTALS			
	3,374,056	3,402,220	2,953,984
Total potentially recoverable costs		[REDACTED]	
Total non recoverable costs		[REDACTED]	