



LONDON FIRE BRIGADE

Report title


Personal Injury Settlements

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Corporate Services Directorate	22 June 2021
Commissioner's Board	30 June 2021
Deputy Mayor's Fire and Resilience Board	26 August 2021
London Fire Commissioner	

Report by	Report number
General Counsel	LFC-0548

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I agree the recommended decision below.



Andy Roe
London Fire Commissioner

This decision was remotely signed on 11 January 2022

Date

Summary

General Counsel seeks authority to settle all personal injury claims up to [REDACTED] for the balance of the financial year 2021/22 which exceeds General Counsel's delegation to settle claims, as permitted by the London Fire Commissioner's Scheme of Governance.

Recommendation

For the London Fire Commissioner

), That provided the LFC takes the advice of specialist counsel on settlement and provided the spend is contained within the total funding identified of [REDACTED] London Fire Commissioner delegates authority to the General Counsel to settle the claims and costs of each personal injury claim for the balance of the financial year 2021/2022 in excess of up to [REDACTED]

Background

1. It is commonplace in Personal Injury ['PI'] claims that the precise compensation figure and legal costs are not known at the outset. They may increase during the development of the case, and the ability to settle quickly is likely to reduce the overall cost to the LFC, since it reduces legal costs. The requirement to follow the current LFC decision making route and to seek prior authority of the Deputy Mayor, Fire and Resilience ('the Deputy Mayor') to settle such matters is not always conducive to this and possible solutions are provided in this report.

Personal Injury Litigation cases

2. 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 Commissioner up to £150,000* by General Counsel. Decisions to settle over £150,000 are a matter for the LFC and trigger the current Mayor Directions 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 which set precedents and principles, and in relation to legal costs, on the advice of a costs draftsman experienced in such matters.
3. The procedure for dealing with high value claims is not straightforward especially if liability and/or causation are in dispute and the final value of these claims is often only fully quantified as the parties approach an assessment of damages hearing. 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.
4. The main type of claims which are likely to exceed [REDACTED] are:
 - Mesothelioma
 - Possibly other asbestos related claims (asbestosis, lung cancer)
 - Cancer related claims
 - Psychiatric injuries (usually PTSD)
 - Any claim which results in a medical retirement.

A list of current cases that are likely to exceed [REDACTED] is attached as **Appendix 1** with relevant dates.

The relevant process for such claims is outlined below:

Letter of claim

- Letters of claim do not include figures for damages and are focussed on liability.
- Mesothelioma/Asbestos claims will usually not be contested on liability and generally exceed [REDACTED]. The values of all potentially significant claims are difficult to assess at the outset.

Procedure

- In the case of pre-action mesothelioma claims, medical evidence and a schedule of loss will usually follow within 2–3 months from the letter of claim unless the claimant dies during this period and the claim is delayed due to probate.
- In issued claims, once the medical evidence and a schedule of loss is served counsel is instructed to advise on the totality of the claim. This is the first opportunity where there is an accurate assessment of the likely value of the claim.
- Following a liability decision, proceedings will usually be issued if settlement has not been reached.
- The value of the claim is endorsed on the claim form. However, these values are usually unreliable as evidence is updated as the claimant's circumstances change.

- Procedural hearings follow but an accurate assessment of the value of the claim is not usually provided until towards the end of the process when witness and medical evidence is updated.
 - If liability is not in issue settlement will be attempted either by way of an offer to the claimant's solicitors and/or at a meeting between the parties (i.e. a Joint Settlement Meeting).
 - Where liability is not in dispute mesothelioma claims are usually fast-tracked to an assessment of damages hearing.
 - Final details of loss and costs estimates are often served by the claimant very close to settlement hearings or trial which leaves little time to obtain updated counsel's advice on quantum in order to be in a position to enter settlement negotiations.
5. In the case of higher value insured claims there will be additional reporting requirements to LFB's insurer who can potentially exercise control over the case. This has never happened to date but would impact upon the governance process:
- Claims where value (including costs) is likely to exceed [REDACTED] are notified to LFB's insurer (QBE) who can, if they choose, influence the way the claim is dealt with.
 - The insurer can appoint one of their panel firms to take over the claim if the value of an individual claim is likely to exceed [REDACTED]
 - LFC could potentially be in a position where settlement decisions are made by the insurer in high value claims which require payment.
6. A recent example of the challenges presented by the current approval process can be highlighted in the case of A in Appendix 1. An Assessment of Damages hearing was set for [REDACTED]. However, in view of [REDACTED] [REDACTED] The Parties are already attending to procedural matters, so an adjourned hearing could be set at short notice.
7. Another example is a (PI) case that settled after obtaining Deputy Mayor approval to settle both the damages and costs claim. [REDACTED] and [REDACTED] which had been included in the original estimate that went to the Deputy Mayor. Consequently, an additional (second) report has had to be submitted to the Deputy Mayor to settle the claimant's solicitors' costs which are in excess of the Deputy Mayor's original approval.

Solution Options

8. There are four cases in the attached Appendix which the LFC could potentially be asked to agree settlement figures by the end of the financial year (Cases A, B, C & D in Appendix 1) and others which will arise at a later stage. While hearing dates have been affected by the government measures in respect of COVID-19, and this has had some impact on the timetable for all aspects of the proceedings, settlement of cases remains a real issue. The estimated dates when these cases could potentially be settled are provided. In these cases, the final hearings are not likely to be until autumn or early 2022 with settlement potentially taking place before the end of March 2022. This does however assume that the court sets a very tight timetable in order to deal with the considerable backlog and those litigation directions are adhered to (and the LFC has no control over the Claimant), so that the window

between the crystalizing of settlement figures and the hearing remains as described, otherwise the window to obtain prior approval before any hearing date dwindles and could even settle within this financial year. It is also in the interest of the LFC to settle at the earliest opportunity in any event for costs purposes. The options on how to manage these cases are as follows:

(a) Under the current governance arrangements each case would need to be presented for prior approval and decision as and when the final figures and counsel's advice is available, which in litigation terms has the potential for delay resulting in increased costs, and the possibility of 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 and final settlement. The case of A in the attached Appendix shows that events occur between Deputy Mayor approval and settlement which are not entirely foreseeable at the time a request for approval is being made i.e. the death of the claimant.

(b) Early prior approval to settle claims and costs could be sought on those cases set out in Appendix 1 on an individual basis, based on early estimates as to claims, with an unlimited delegation provided to General Counsel to settle in excess of those sums, with the proviso that Counsel's advice is obtained and the Deputy Mayor is consulted.

(c) The cases are settled on specialist counsel advice based on well-established legal guidelines and causation is rarely a disputed issue, therefore the parameters for discretion in any decision making when the matter is presented to the Commissioner, or the Deputy Mayor, are limited. Having regard to the unpredictable nature of litigation this is therefore an area of decision making in which a broad delegation to General Counsel could usefully be granted. Such a delegation could be provided on conditions including that specialist counsel opinion be obtained, as well as advice from a costs draftsman on costs exceeding [REDACTED] and that the delegation be capped at [REDACTED] to include costs up to a maximum of [REDACTED].

Authority sought

9. Based on the details of the cases anticipated this financial year (attached as Appendix 1), 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 Deputy Mayor's prior authority to incur expenditure for the balance of 2021/2022 be sought up to a maximum figure per case and that delegation be given to General Counsel by LFC to settle these matters as set out in Option (c) above. It is recognised that the number and costs of cases received have a budgetary implication and accordingly it is proposed that this arrangement be subject to reporting mechanisms to the Deputy Mayor.

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

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

Finance comments

11. This report recommends that authority is agreed to settle all personal injury claims up to [REDACTED], including costs of up to [REDACTED], as long as the agreed spend is contained within the total funding identified of [REDACTED]. The 2021/22 Budget includes a core budget for this expenditure of [REDACTED], and a reserve is being established for any costs that may arise

above this for a further [REDACTED], as part of the report on the 2020/21 outturn position. [REDACTED] will need the prior approval of the Deputy Mayor. This core budget was increased from [REDACTED] in the 2021/22 Budget Report and will be reviewed again as part of this year's budget process.

Workforce comments

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

Legal comments

13. General Counsel is the author of this report.

14. 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.

15. 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...";

16. 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.

Sustainability implications

17. There are no sustainability implications to note.

Equalities implications

18. The London Fire Commissioner and decision takers are required to have due regard to the Public Sector Equality Duty (s149 of the Equality Act 2010) when taking decisions.

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, Sexual orientation.

21. The Public Sector Equality Duty requires the LFC, in the exercise of all his functions (i.e. everything the LFC does), 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 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 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 to the need to—
- a) tackle prejudice, and
 - b) promote understanding.
25. There are no specific equality implications arising from this report.

List of Appendices to this report:

Appendix 1 – not for publication – official sensitive