

Resolution of Outstanding Outsourced Discrimination, Bullying and Harassment Cases

Report to:

Investment and Finance Board
Commissioner's Board
Deputy Mayor's Fire Board
London Fire Commissioner

Date:

27 June 2024
9 July 2024
23 July 2024

Report by:

Gareth Liptrot, Interim Head of the Professional Standards Unit

Report classification:

For decision

For publication

I agree the recommended decision below.



Andy Roe
London Fire Commissioner

Date **This decision was remotely
signed on 9 September 2024**

PART ONE

Non-confidential facts and advice to the decision-maker

Executive Summary

Following the publication of the London Fire Brigade's Culture Review in November 2022, LFB took the decision to move the responsibility for all advice on and investigation into concerns of discrimination, bullying and harassments (DBH), including reviewing all relevant cases going back five years from the date of publication. This was taken to ensure all cases were considered fairly, impartially and independently, and provide reassurance to staff, and delivered in line with a Culture Review recommendation. This was taken on by CMP Solutions, an external organisation with specific expertise in workplace investigations.

The level of demand from staff was high, which shows the need for this commitment from LFB. As we move to a new model of handling these concerns, we now need to provide appropriate funding for the investigation of the final cases as funding was provided on an interim basis only.

For the London Fire Commissioner

The London Fire Commissioner agrees that up to £420,000 be allocated from the Budget Flexibility Reserve for the purpose of resolving the complex DBH investigations that remain from the first phase of work with CMP.

1 Introduction and background

- 1.1 In March 2021, the London Fire Commissioner initiated an independent review of LFB culture. Nazir Afzal was appointed to conduct this, and his final report was published in November 2022.
- 1.2 In his review, Mr. Afzal found that LFB, at its best, is a beacon of distinguished service, selflessness, and bravery. However, he also found evidence of institutional racism and misogyny, as well as poor treatment of the disabled and neurodiverse. The review acknowledges the central role that HR plays in determining organisational culture and describes the LFB People Services department as non-strategic and disconnected, inefficient, ineffective and slow.
- 1.3 The Culture Review made 23 recommendations overall, including a recommendation for a more detailed independent review of People Services by an HR specialist.
- 1.4 On publication, the LFC announced that all complaints relating to discrimination, harassment or bullying would be handed to an external complaints service (CMP), to assure staff that their complaints would be handled independently and fairly, whilst improvements to LFB's own functions were made. CMP, as an independent organisation, taking responsibility for advice and investigation would demonstrate a clear commitment to independence, enabling those colleagues who felt they could not speak up for fear of victimisation to share their concerns.
- 1.5 This was initially for six months, with an agreed budget of £503,489 to be provided (LFC 0780) up until the end of May 2023. This was the first phase of LFB's work with CMP.
- 1.6 In April 2023 (LFC-23-044y) this was extended with a further £747,910 required up until September 2023, and then a further £150,000 was approved, along with £250,000 of contingency under LFC 23 086.
- 1.7 In January 2024, this contract was extended by a further fifteen months, with primary responsibility for new DBH complaints moving to the newly formed Professional Standards Unit (PSU). The PSU in January 2024 was implemented following the restructure of LFB's People Services function to maintain and uphold standards of behaviour across LFB, including taking appropriate action if necessary, in any conduct or DBH matters. No additional funding was provided for allegations under investigation by CMP under the original contract.
- 1.8 As part of the transfer of responsibility from CMP to the PSU, CMP stopped taking new investigations directly, but were required to continue any investigation ongoing that had been commissioned by early February 2024. This is the second phase of this work.
- 1.9 As of June 2024, CMP are progressing or have completed 69 investigations for LFB, including five that are still being scoped. The original approval to move to CMP could not provide an estimate of usage, so funding was provided on an interim basis. With nineteen investigations remaining for the first phase of this work, we can provide an estimate of the funding required to bring this activity to a successful resolution.
- 1.10 The outstanding amount due comes to £170,000, which is to resolve all remaining ongoing investigations under the first phase of work. The five investigations currently being forecasted, as well as contingency for any over-running investigation, is proposed at a figure of between £150,000 and £250,000, bringing this request to £320,000 to £420,000 in total. Barring any unexpected eventualities, that will close all investigations that remain from the first phase of work with CMP, commissioned as a result of the Culture Review. A range is being provided as the investigations may shift in scope and duration as they progress, and an exact figure is difficult to provide at the outset.

2 Objectives and expected outcomes

- 2.1 The complete movement of all DBH matters to an external organisation was an outcome of the Culture Review, and quickly implemented by LFB to ensure that staff could raise concerns in confidence outside LFB, and feel confident that they would be investigated fairly and impartially.

The 2023 Staff Survey showed that only 39% of LFB staff had confidence that if they raised a concern that it would be handled appropriately.

- 2.2 The implementation of the PSU has seen an initially high level of engagement and concerns being raised. CMP have continued to provide a helpline for advice and guidance for concerned staff in LFB, and usage of this sits at roughly one contact per month, compared to between ten and twenty at the end of 2023.
- 2.3 The commitment made by LFB in response to the Culture Review was to consider all complaints and concerns raised relating to DBH, and staff have raised their concerns with CMP on the basis of this commitment. At the outset of the commissioning to CMP, this was an unprecedented step. There was no way of knowing the likely take-up of complaints, nor the complexity and duration of any subsequent investigations.
- 2.4 If, at this late stage of the resolution of a Culture Review recommendation, LFB decided against making the funding available for the remaining CMP investigations, CMP would stop all investigations immediately. This would mean those staff who have raised a concern about their treatment in the manner LFB has instructed them to do so would then see no resolution, and there would be a requirement for the entire matter to be re-investigated from the start within LFB.
- 2.5 This is not a tolerable position for the final resolution of a Culture Review Recommendation. Withdrawing from a commitment made to all staff to independently consider concerns relating to DBH due to higher-than-expected take-up and therefore cost would in effect reverse LFB's commitment to root out institutional racism and misogyny, and remove the trust of those staff who spoke up on LFB's insistence. The PSU would need to consider this, but they will not be able to demonstrate that they are fully independent as CMP are.

3. Equality comments

- 3.1 The LFC and the Deputy Mayor for Planning, Regeneration and the Fire Service 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.
- 3.2 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.
- 3.3 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.
- 3.4 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.
- 3.5 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.

3.6 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.

3.7 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.

3.8 The Culture Review identified institutional racism and misogyny as significant issues for LFB, with staff experiencing negative treatment and detrimental outcomes relating to ethnicity and gender. CMP were commissioned to review historic cases relating to DBH, as well as take any new concerns relating to DBH. The additional funding for CMP will mean that colleagues who have raised concerns relating to protected characteristics under the Equality Act 2010 will not need to go back to the start of their investigation process, avoiding significant distress and concern. This will disproportionately impact women and colleagues from an ethnic minority background.

4 Other considerations

4.1 Failing to deliver on a much-publicised commitment made as a response to the Culture Review will significantly harm LFB's reputation both internally and externally. It also will provide a high risk of employment tribunal claims for the impact on staff.

Sustainability comments

4.2 N/A

Procurement comments

4.3 The funding of the CMP work is part of an existing contract with CMP – Procurement colleagues have been integral to ensuring a clear understanding of the current and future financial position.

4.4 The proposed procurement will be undertaken in compliance with the Public Contracts Regulations 2015 and the LFC's standing orders and policies.

Communications comments

4.5 No communication should be required – the conclusion of the CMP contract has already been shared with all LFB staff.

5. Financial comments

5.1 This report is requesting an increase in funding allocation beyond the previously agreed £1,651,399 limit by between £320,000 and £420,000 to resolve all ongoing and forecasted complex DBH investigations under the first phase of work with CMP, including a contingency for any over-running investigations. Barring any unexpected eventualities, that will close all investigations commissioned through CMP as part of this first phase as a result of the Culture Review.

5.2 The additional fund is to be spent in the 2024/25 year.

- 5.3** It is proposed that in the first instance, any underspends or savings in the People Services budget for the 2024/25 year would contribute towards the additional funding requirement, before drawing on the Budget Flexibility Reserve. However, it is unlikely that there will be savings or underspends, hence, the full cost is earmarked to be met from the Budget Flexibility Reserve.
- 5.4** The 2024/25 forecast opening balance of the Budget Flexibility Reserve (BFR) was £14,200,000 as set out in the LFC Final Budget 2024/254 (LFC-24-027). This report included a forecast balance on the BFR at the end of 2024/25 of £8,800,000. The LFC is now finalising its first financial position report for 2024/25 (Q1) and this will include an updated forecast year end position on the BFR, reflecting the draw of up to £420,000 for which approval is sought in this report. The Q1 report is expected to be published on 16 August 2024.

6. Legal comments

- 6.1** 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.
- 6.2** 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 Planning, Regeneration and the Fire Service (the "Deputy Mayor"). Paragraph (b) of Part 2 of 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...".
- 6.3** In accordance with Section 5A Fire and Rescue Services Act 2004 (FRSA 2004), the London Fire Commissioner, being a 'relevant authority,' may do 'anything it considers appropriate for the purposes of the carrying- out of any of it's functions...'
- 6.4** Additionally, s7 of the Fire & Rescue Services Act 2004, states that the fire and rescue authority must make provision for the purpose of extinguishing fire in its area etc and in doing so must secure the provision of personnel, services and equipment necessary efficiently to meet normal requirements.
- 6.5** Following the Culture Review, CMP was commissioned to handle all complaints relating to discrimination, harassment and bullying. Paragraph 1.8 of the Report, states that funding had been provided on an interim basis and there is now an outstanding amount of additional funding required to enable CMP to complete its investigatory task concerning discrimination, harassment and bullying.
- 6.6** The Deputy Mayor for Planning, Regeneration and the Fire Service may authorise the London Fire Commissioner to commit the expenditure of up to £420,000 for resolving the remaining discrimination, harassment and bullying investigations from the first phase of work with CMP.
- 6.7** The London Fire Commissioner may agree that the sum of up to £420,000 is allocated from reserves for the purpose of resolving the remaining discrimination, harassment and bullying investigations following the authority given by the Deputy Mayor for Planning, Regeneration and Fire Service.

List of appendices

| Appendix | Title | Open or confidential* |
|----------|-------|-----------------------|
| 1 | None | |

Part two confidentiality

Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part Two form, together with the legal rationale for non-publication.

Is there a Part Two form: NO