

Decision title

Grenfell Tower Inquiry Legal Costs

Recommendation by
General Counsel

Decision Number
LFC-0241y-D

Protective marking: **OFFICIAL - Sensitive**
Publication status: Published with redactions

Summary

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

Decision

That the London Fire Commissioner:

- 1) Notes the position regarding the reimbursement of legal costs relating to the Grenfell Tower fire via insurance, and the sum currently in dispute;
- 2) Agrees to the total projected spend of £5,261,112 for the period 2019/20 to 2020/21 (estimated to be £3,444,981 for 2019/20 and £1,816,131 for 2020/21) plus 10 per cent 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) Authorises the Director Corporate Services to incur legal costs up to the total in 2 above;

Cont/d

- 4) Authorises the Director Corporate Services (upon receiving and taking into account specific legal and financial advice on merits and quantum) to agree a settlement figure, or to decide to progress matters to arbitration following mediation in respect of the disputed costs with the insurers, provided that the Deputy Mayor for Fire and Resilience, is periodically supplied with a summary of the legal and or financial advice on the settlement and that best endeavours be used to consult the Deputy Mayor, Fire and Resilience before any final decision is made.

Andrew Roe
London Fire Commissioner



Date 9 Jan 2020

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Report title

Legal Costs Related to the Grenfell Tower Fire

Report to

Commissioner's Board
Fire and Resilience Board
London Fire Commissioner

Date

11 September 2019
15 October 2019

Report by

General Counsel

Report number

LFC-0241y

Protective marking: **OFFICIAL-SENSITIVE – commercial sensitivity**

Publication status: **Published with redactions**

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 sets out the projected legal costs for 2019/20 and 20/21, the position regarding re imbursement via the insurance polices and seeks the Commissioner's agreement to continue to arrange legal advice and representation.

Recommended decisions

That the London Fire Commissioner:

1. Notes the position regarding the reimbursement of legal costs relating to the Grenfell Tower fire via insurance, [REDACTED];
2. Agrees to the total projected spend of £5,261,112 for the period 2019/20 to 2020/21 (estimated to be £3,444,981 for 2019/20 and £1,816,131 for 2020/21) plus 10% 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. Authorises the Director Corporate Services to incur legal costs up to the total in 2 above;

[REDACTED]

- [REDACTED]
5. Agrees prior approval of the Deputy Mayor for Fire and Resilience be sought to incur the projected legal expenditure set out in 2 above relating to the Grenfell Tower fire; and
- [REDACTED]

Background

1. On 21 July 2017 LFEPA considered the overall likely cost implications for the London Fire Brigade of the Grenfell Tower fire which occurred on 14 June 2017, and made budgetary provision accordingly, recognising that those costs applied not only to 2017/18 but would also arise in future years. A total sum of £6.2m for the organisation is identified for 2017/18, and an ongoing sum of £5.8m per year. Paragraph 9 of that report noted that Table 1 identified one off and ongoing annual spend. In the table, £925k was estimated for legal costs as an ongoing yearly item, and provided '*Item :Legal costs of supporting the investigation, appearing and being represented at the Inquiry and managing subsequent litigation*', '*Resource; LFB will be required to participate fully in the Public Inquiry, which requires substantial internal and external legal input*' Notes; this includes expenditure on temporary staff and counsel'. The report provided that the arrangements be put in place to progress the items pending further discussion about funding. Paragraph 13 of the report requested that authority be given to officers to incur the costs in Table 1 where those decisions would normally exceed delegated authority.
2. The budgets for the London Fire Commissioner ('LFC') approved by the Mayor since 2018, under the new governance arrangements, have made appropriate provision for such legal spend with a small incremental budget increase each year. External legal support arrangements were put in place in 2017 under the delegated powers and are ongoing.

The insurance position

The LFC, as with all public bodies, has insurance policies which cover litigation costs.

[REDACTED]

Accordingly, the LFC would expect reimbursement of the legal invoices to date (see Table A in Appendix 1 for annual figures). The LFC has a policy excess of £750k and has been reimbursed by the insurers £496,585 to date and further invoices are being processed and expected to be paid this financial year.

[REDACTED]

[REDACTED]

5.

[REDACTED]

Also, with the passage of time and the rapidly developing position on legal costs, it is considered appropriate to revisit the financial thresholds, decisions and delegations.

External Legal Resources

6. Following the LFEPA decision in 2017 additional internal and external legal resources were put in place immediately and provision has continued each year thereafter to manage the considerable additional demands placed on the LFC legal team, both for representation of the LFC and those firefighters directly involved in the fire at Grenfell Tower, and to identify, sift and present very large volumes of documents and material to the Grenfell Tower Inquiry ('GTI'). To date the LFC has served 44 statements and provided 49,000 documents to the GTI.
7. The GTI has completed Phase 1 of its inquiry and a report will be produced by the GTI in due course. Phase 2 will follow, most probably starting in 2020. The request by the GTI for large numbers of documents and various statements on a range of subjects continues at pace during 2019/20 and will likely be an ongoing feature of Phase 2 in 2020/21.
8. In addition to the GTI, the LFC and other parties are also engaged in enquiries being made by the MPS, which also requires legal input.
9. Set out in Appendix 1 is Table A illustrating the total legal costs to date, and those projected for this financial year and for the next financial year. It is extremely difficult to accurately predict the totals for each legal resource listed in the Table, or when the legal resource will be needed; the requests from the GTI for information and documents can be wide ranging and the timing of those various lines of enquiry and the actions required by LFC are not within the control of the LFC. Additionally, such requests can come at short notice, with prompt action required. The type of legal resources required and engaged for 2019/20 (counsel, external solicitors, IT data search companies etc) are largely the same as those originally engaged in 2017/18 and utilised in 2018/19; it is however difficult to predict which legal resource will be needed for a particular statement or disclosure exercise – for example junior counsel, or external solicitors, or the extent of the resource required. Accordingly, it is proposed that a total figure be approved with decision making on the detail delegated to officers, rather than specific sums being approved for particular

resources.

10. Fees for external solicitors and counsel are paid on an invoice basis sent by them periodically, usually monthly. The figures for these set out in the Table are an indication of those annual costs, rather than an annual contract price, and as explained above, these figures can fluctuate depending on the actions, requests and decisions by other agencies. Costs for counsel based on hourly rates were negotiated with the Clerk at the outset of the matter and accordingly were agreed in 2017 in respect of the QC and the Lead Junior and are very competitive rates when compared with other counsel of similar seniority and expertise. Counsel is selected based on expertise and suitability as well as price. Any costs for subsequent instructions of new junior counsel for various tasks are also negotiated by senior officers in the in-house legal team to ensure best value. The selection of external solicitors is also undertaken by a similar exercise based on expertise, cost, and availability. In the case of one firm they are on the Crown Commercial Framework, which is created following a competitive tender exercise and in addition the LFC negotiated a further reduction in those rates. With other external firms, costs have been negotiated, but scarce expertise and short time scales for legal input have been factors in the pricing. PA Consultancy, an expert firm on document identification and sifting, was selected from a framework and at certain stages of the appointment the fees have been specifically negotiated. The contract with PA Consulting was entered into in 2017/18 and has extension provisions included. The rigorous systems of appointment of external support therefore ensures best value. The 'audit' of the LFC costs bill by the insurers when they review bills for reimbursement adds an additional level of assurance that the legal costs are reasonable.
11. The costs for 2019/20 are predicted to be higher than those in previous years, then reducing in 2020/21 (although much depends on the timing of Phase 2 – costs currently predicted for 2019/20 could be incurred in 2020/21). Within the confines of that which the LFC is able to share with others under the Inquest rules, the figures forecast are based on the stage reached by the Inquiry in relation to Phase 1 of the Inquest, the high level of demands for information made by the GTI, the preparation by the LFC and for the GTI for Phase 2 and the enquires being made by the police.
12. In addition, the higher costs reflect a change in arrangements as matters have progressed; previously a high number of tasks were performed by internal staff (whose hourly rates are much lower than the external support). Experience of the last two years shows that relying primarily on in-house support for those tasks is not sustainable; the number of hours worked compared with the target number set for the lawyers on Grenfell shows the team have been working at 150% since 2017 which had a detrimental impact on staff wellbeing and could if continued affect the quality of support in the legal matters. Some work is distributed to other in-house lawyers but this starts to impact on other aspects of the Brigade's legal work, and due to the specialism and intensity of the demand for the legal input on Grenfell (largely driven by outside agencies) the legal input needs to be focussed and expert. In addition, the constant provision of information to the GTI is a distraction for senior legal staff working on Grenfell, whose expertise is more beneficially focussed on strategic oversight and input and advice on critical statements etc. Accordingly, it has been necessary to make arrangements for an increase in external legal support.
13. The scoping of the legal costs becomes more difficult to gauge for 2020/21 since much depends on the timing of Phase 2 and any matters that may flow from that.
14. The London Fire Commissioner is a legal entity in its own right, established by the Policing and Crime Act 2017. The Mayor of London has the power to issue directions to the Commissioner,

which the Commissioner is obliged to comply with. The Commissioner is required by the Mayoral Direction of 1 April 2018 to consult with, and seek prior consent from the Deputy Mayor, Fire and Resilience on a range of matters, including a "...commitment to expenditure (capital or revenue) of £150,000 or above as identified in accordance with normal accounting practices." While 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, 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. For the reasons explained above the estimate of costs for individual items may fluctuate, and the point at which such resources are needed is difficult to predict. Accordingly, it is proposed that prior approval be sought for an inclusive figure of £5,261,112 to be incurred over the two-year period with a 10% margin on that forecast. The estimated costs for 2019/20 and 2020/21 are £3,444,981 and £1,816,131 respectively.

Finance comments

15. This report recommends that projected spend on legal costs be agreed of £3.4m in 2019/20 and £1.8m in 2020/21 plus 10%, in relation to the Grenfell Tower fire. The forecast expenditure of £1.8m in 2020/21 will be included as part of the budget process for future years, and if agreed will form part of the Budget Submission to the Mayor in November 2019. 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.

16.



Workforce comments

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

Legal comments

18. 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.
19. 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").
20. 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...".

21. The Table in Appendix 1 of this report sets out the forecast costs position for legal services for Grenfell Tower Fire related matters. The position regarding reimbursement under the insurance provisions is set out in the body of this report, as is the position regarding the application of the Mayoral Direction.
22. The proposed recommendations are within the London Fire Commissioner's general powers. 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. Section 6 to 9 of the 2004 Act sets out the core functions of a fire and rescue authority, which includes and is not limited to, fire safety, fire fighting, road traffic accidents and other emergencies.
23. The participation by and representation of the London Fire Commissioner in the Grenfell Tower Inquiry and associated enquiries and legal matters falls within S5A(1) of the 2004 Act.

Sustainability implications

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

Equalities implications

25. The Public Sector Equality Duty – and the potential impacts of this decision on those with protected characteristics (age, disability, gender reassignment, pregnancy and maternity, race, sex, religion or belief, sexual orientation) – has been considered by the London Fire Commissioner and the Deputy Mayor for Fire and Resilience at the Deputy Mayor's Fire and Resilience Board on 15 October 2019.
26. The duty requires the London Fire Commissioner to have regard to the need to:
- eliminate discrimination, harassment and victimisation and other behaviour prohibited by the Act.
 - advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and
 - foster good relations between people who share a relevant protected characteristic and those who do not including tackling prejudice and promoting understanding.
27. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
28. The Commissioner and the Deputy Mayor have considered their duty under the Act, concluding that there are no impacts upon those with a protected characteristic; no opportunities to advance equality of opportunity; nor an opportunity to foster good relations between those who share a protected characteristic and those who do not. They recognise that whilst those opportunities may arise during the period of the considerations of matters arising from the Grenfell Tower fire, this decision is constrained to the effective legal support required by the Commissioner.

List of Appendices

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

43(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

Grenfell Tower Fire Legal costs analysis 29/8/19

Appendix 1

| Legal Related Spend | 2017/18 Spend | 2018/19 Spend | 2019/20 End of year forecast as at August 2019 | 2020/21 Forecast |
|---|----------------|------------------|--|------------------|
| Internal Legal Staff costs | 183,529 | 315,574 | 268,290 | 399,960 |
| External advice and representation | | | | |
| Queens Counsel | 66,435 | 342,519 | 383,052 | 303,600 |
| Junior Counsel | 46,774 | 182,665 | 335,832 | 304,560 |
| Review Junior Counsel | 0 | 0 | 96,000 | 0 |
| Review for Phase 2 | 0 | 0 | 2,500 | 0 |
| Junior Counsel | 31,480 | 97,765 | 120,000 | 0 |
| Paralegal | 0 | 0 | 37,739 | 19,007 |
| Paralegals | 0 | 67,025 | 88,978 | 38,014 |
| Lead Officer | 0 | 57,849 | 59,740 | 25,960 |
| Solicitors | 162,327 | 150,746 | 342,689 | 0 |
| Solicitors | 0 | 69,017 | 55,615 | 95,430 |
| Solicitors | 0 | 207,565 | 1,003,282 *some may arise 2020/21 | 166,500 |
| Insurance Claims Expert | 4,075 | 5,858 | 35,429 | 3,500 |
| Costs Draftsman | 0 | 0 | 5,000 | 0 |
| Disclosure software processing and hosting costs | 95,631 | 453,042 | 368,114 | 279,600 |
| Counsel costs | 10,038 | 153,964 | 242,721 | 180,000 |
| TOTAL | 600,289 | 2,103,589 | 3,444,981 | 1,816,131 |
| <ul style="list-style-type: none"> • Green- disputed • Blue – non recoverable • Other – covered by insurance | | | | |