

Decision title

Legal Costs Related to the Grenfell Tower Fire

Recommendation by
General Counsel

Decision Number
LFC-0402-D

Protective marking: **OFFICIAL - Sensitive**

Publication status: Published with redactions

Summary

Under the Mayor's Direction of April 2018, prior authority was sought from the Deputy Mayor for Fire and Resilience to incur additional expenditure on legal costs relating to the Grenfell Tower fire. Prior authority was granted by the Deputy Mayor on 15 October 2019 to incur expenditure for 2019/20 and 2020/21 within financial limits. The reasons for the additional costs are primarily an increase in the documents the London Fire Commissioner had to review for disclosure to the GTI and an increased need to analyse disclosure provided to, and received from, the GTI.

Decision

That the London Fire Commissioner

1. Agrees to an increase of £657,479 (plus 10% margin), on the estimated spend of £5,787,223 that was previously approved for 2019/20 and 2020/21, to secure legal advice and representation for the London Fire Commissioner (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. Authorises the Director of Corporate Services to incur legal costs up to the total in paragraph one above.



Andy Roe
London Fire Commissioner

Date **This decision was remotely
signed on Tuesday 24 November**

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Report title

Legal Costs Related to the Grenfell Tower Fire

Report to

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

Date

4 August 2020
12 August 2020
18 August 2020

Report by

General Counsel

Report number

LFC-0402

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 additional expenditure on legal costs relating to the Grenfell Tower fire. Prior authority was granted by the Deputy Mayor on 15 October 2019 to incur expenditure for 2019/20 and 2020/21 within financial limits. The reasons for the additional costs are primarily an increase in the documents the London Fire Commissioner had to review for disclosure to the GTI and an increased need to analyse disclosure provided to, and received from, the GTI.

Recommended decisions

That the London Fire Commissioner

1. Agrees to an increase of £657,479 (plus 10% margin), on the estimated spend of £5,787,223 that was previously approved for 2019/20 and 2020/21, to secure legal advice and representation for the London Fire Commissioner (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. Authorises the Director of Corporate Services to incur legal costs up to the total in paragraph one above.

Background

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 15 October 2019, the Deputy Mayor approved expenditure for 2019/20 and 2020/21. The forecasted figure for 2019/20 was £3,444,981 and for 2020/21 it was £1,816,131, plus a margin of 10% on each year (£526,111). The total amount of expenditure currently authorised is therefore £5,787,223. The LFC forecasts that its expenditure to the end of September 2020 will be £5,353,568, which is within the approved spend approved by the Deputy Mayor. However, predominantly as a result

of two additional items of work (explained below) there will be additional cost, over and above the approved figure. The LFC estimates the additional cost to be £657,479. Authority is now sought for that additional expenditure. Legal costs as a result of the Grenfell Tower fire will continue beyond March 2021 and authority will be sought for 2021/2022 later in the year.

External Legal Resource

2. 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, both for 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 91 statements and provided over 100,000 documents to the GTI.
3. The LFC used all of the information and experience available to it when preparing the cost projection for 2020/21. The scale and complexity of the matter means that estimating costs remains a challenge. There are two main unforeseen items of work that required increased legal costs at the end of 2019/20 and the beginning of 2020/21. Whilst savings have been made elsewhere, those items have resulted in the need for the LFC to seek authority for additional expenditure for 2020/21.

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
8. The position remains that relying primarily on in-house support for the work required to support the LFC is not possible. Whilst, in-house legal staff have continued to provide significant input the demands and volume of the work mean that it is not sustainable to rely entirely on that resource. In addition, the specialism of the in-house team is required to advice on policy work that is necessary as part of the transformation work that the LFC is undertaking. The specialism and intensity of the demand for the legal advice on Grenfell (largely driven by outside agencies) requires focussed and expert legal input. Accordingly, it has been necessary to continue to obtain external legal support.
9. 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.
10. 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, with which the Commissioner is obliged to comply. 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." 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. 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 a figure of £657,479 (plus 10% margin) over and above the £5,787,223 was previously approved by the Deputy Mayor to be incurred over 2019/20 and 2020/21.

The insurance position

11. The LFC, as with all public bodies, has public and employer's liability insurance policies that cover litigation costs and damages.
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]



Equality Impact

14. 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 exercising our functions and taking decisions.
15. 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.
16. 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.
17. The Public Sector Equality Duty requires us, in the exercise of all LFC 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.
18. 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.
19. 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.
20. 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.

21. An Equality Impact Assessment (EIA) was undertaken on 27 July 2020. The impact assessment found that there is likely to be negligible impact on those with protected characteristics.

Procurement and Sustainability

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

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

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

Workforce Impact

24. 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

- [REDACTED] This report recommends that projected spend on legal costs be increased by £657,479 plus a 10% margin, for a total increase of £723,227. This, in addition to the existing approved spend of £5,787,223 will result in total approved spend of up to £6,510,450. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Legal comments

26. 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.
27. 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").
28. 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..."

- [REDACTED] The Table in Appendix 1 of this report sets out the updated forecast costs position for legal services for Grenfell Tower Fire related matters. [REDACTED]
[REDACTED]
[REDACTED]

30. 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.
31. 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.

List of Appendices

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

Grenfell Tower Fire Legal costs analysis 23/7/20

Appendix 1

The LFC has existing approval from the Deputy Mayor to spend £5,787,223 in years 2019/21 and 2020/22. Authority is now sought to spend an additional £657,479. That additional amount is calculated as follows:

- £3,374,056 (Amount spent in 2019/20, highlighted yellow below) + £3,070,646 (Updated forecast for 2020/21, highlighted yellow below) - £5,787,223 (Existing approved amount) = £657,479

A	B	C	D	E	F	G
Legal Related Spend	2019/20 (end of year actual spend)	Forecast provided for 2020/21 in previous report to Deputy Mayor	Updated 2020/21 forecast	Difference between 2019/20 forecast provided in Deputy Mayor report against actual 2019/20 end of year figures	Difference between 2020/21 forecast provided in Deputy Mayor report against 2020/21 forecast as at 17 July 2020	Column E + Column F (Total difference between figures provided in previous report for 2019/20 and 2020/21 against total actual spend for 2019/20 and updated forecast for 2020/21)
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)						
<i>Sub total</i>						
<i>Potentially recoverable amount</i>						
Disclosure costs						
Inquiry Paralegal						

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.

Junior Disclosure Counsel						
Disclosure Paralegals						
Disclosure Officer						
Solicitors (disclosure)						
Disclosure software processing and hosting costs						
Sub total						
Recoverable amount						
Non recoverable costs						
Insurance Claims Advisor						
Costs Draftsman						
Sub total						
TOTALS						
	3,374,056		3,070,646			
Total potentially recoverable costs						
Total non recoverable costs						